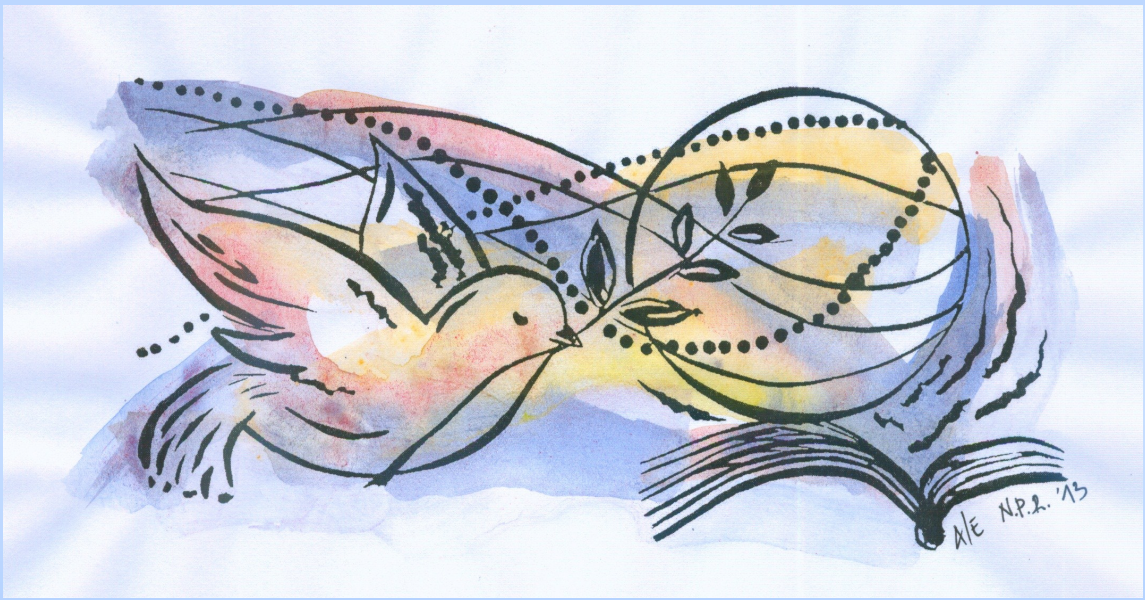
FIRST INTERNATIONAL SCIENTIFIC CONFERENCE
„PROMOTING HUMAN RIGHTS: RECENT DEVELOPMENTS

PROCEEDINGS



MIT UNIVERSITY
FACULTY OF LAW, INTERNATIONAL
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MIT UNIVERSITY
Faculty of legal sciences international relation and diplomacy

FIRST INTERNATIONAL SCIENTIFIC CONFERENCE „PROMOTING HUMAN RIGHTS: RECENT DEVELOPMENTS”

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PROMOTING HUMAN RIGHTS: RECENT DEVELOPMENTS

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Dear participants, dear guests

I am happy I am here today at the second International Conference of MIT University which is dedicated to promoting the human rights. I would like to thank and also to congratulate the professor Zoran Filipovski and the Organizing Committee of the Conference, whose vision and tireless work made this day possible.

The idea of creating a scientific conference, where scientists and young professionals from the field of human rights protection will take part, inspired a vision which has culminated in today's conference. This conference will bring together eminent and recognized professionals in the field of human rights. At this conference, the main word will be given to young scientists and researchers. This conference will offer us the opportunity to exchange knowledge and experiences with participants from various European countries.

In fact, the vision for developing the idea for human rights is increasingly apparent. Human rights are becoming a more important segment of everyday life. I am sure that we all understand the importance of this topic, and along with our life experience and experts' advice of this field, this conference will succeed to contribute for developing awareness of countries, nations and governments, and together as human beings we will find a way to face the challenges of the human rights issue, and will succeed to deal with it.

While I'm standing here today in front of you, surrounded by many famous and recognized human rights experts, community leaders, academic elite and proven experts from other fields, I am reminded of how we are privileged and that we enjoy many of these benefits.

A lot of people in this world don't have the opportunity to experience what we have.

Unfortunately, it is important to emphasize that most of the people on this planet don't enjoy many of those privileges that we consider today as the essential needs and most fundamental rights for the existence of every individual.

It's true that there has been a great progress worldwide, regarding the protection and promotion of human rights, in every sector of the society and in every single segment of the society. However, inequality still exists. Although most of the population of the world enjoys the benefits of the modern achievements and development of the science, in large part of the world, even the basic human right isn't respected. That is the right to feel as a human being.

Dear guests, we are all aware that inequality among people still exists, and will probably continue to exist in the near future. But together, through discussion, research and debate, as people and as scientists, we can contribute to develop awareness within the whole population of the country, and gradually start building a new society where economic development, prosperity, social progress, and peace will contribute the just rule of the law in all countries of the world, and by this, we will start a new era of the mankind, an era where everyone will be equal to the others, and the sun will shine equally for everyone.

THANK YOU

Director genral of MIT University
Biljana Apostolova M.A.

Ladies and gentlemen, dear Excellencies and colleagues

It's a great pleasure to greet you on behalf of myself and on behalf of the organizational board and to thank you for your presence and your contribution to the second international conference of MIT University Skopje, titled as Promoting the human rights – a contemporary development.

I hope and I truly believe that this event will allow us to enrich our knowledge for this very sensitive topic of nowadays, but it will also be an incentive for a new collaboration weaved in the efforts for protecting the human dignity everywhere in the world.

We've been witnesses in the past period of many challenges in the field of human rights.

Many countries, including European union members have faced serious economic problems as a result of the world financial crisis that influenced on the thorough respect of economic, social and culture rights of the citizens.

Syrian people have suffered a lot and tirelessly led their battle for democracy. They enhanced the whole world and opened another rhetorical question: how to separate the wheat from the chaff? Under the growing influence of religious extremists, many rebels of Syria accepted the attributes of fighters of the world's Jihad and made it particularly difficult for the Western countries to support the Syrian uprising.

" Arab Spring" seemingly released the citizens of North Africa from the tyranny and transformed the totalitarian regimes in systems which,

unfortunately, do not realize the announced change in the protection of the human dignity of the individual. Simultaneously, the question of universality of human rights against the influence of cultural relativism remains open and unanswered, so does the issue of human health protection from genetically modified foods, bioethical problems, freedom of speech on the Internet, and much more.

The voice of public opinion and awareness is the key to overcome all these challenges facing the world today and this conference is a modest but sincere and serious attempt to contribute to the endless battle for human rights.

The Former Secretary General of the United Nations, Mr. Kofi Annan has said: "There is no development without security, there is no security without development, and they both don't exist without the respect for human rights". I would add that respect for human rights is impossible without human rights defenders, and that is us, all of us, who through our daily work contribute to integrate human rights in the political and cultural framework of the national and regional agendas.

The key to understand and respect the human rights in the 21st century is how to decrease the gap between the promise of our ideals and the reality of our time.

Dear friends,

The diversity of this gathering and the different expertise of all participants in this conference creates great preconditions for your discussions in the next two days. I'm looking forward to the outcome.

To sum up, I would like to turn onto the work of the distinguished James Baldwin, stating: "Nothing is more desirable than being released from suffering, but also, nothing is more frightening than being divested of a crutch." To deny

one's basic rights means not only to inflict suffering, but it also means that you suffer yourself.

It's high time, that we stopped to rely on what we can't do, regardless our life roles.

Allow me to say that the realization of the dreams requires constant attention, commitment and dialogue, focus on the dignity of every human being, of our neighbors, of the members of our family, of our town, of our country and of the whole world.

It requires faith and confidence in what we are and what our goals are.

Therefore, at the day of this important conference, I ask each of you, distinguished guests, representatives of the academic profession, dear Excellencies and colleagues, to think clearly about what you will do, together with your friends and partners to move the world ahead?

I wish you a fruitful and successful work!

Thank you!

Rector of the MIT University
Professor Jugoslav Ziberoski, Ph.D

Your Excellences, Ambassadors in the Republic of Macedonia
Dear University Rectors, from the country and abroad
Dear Deans, colleagues and friends,
Dear students,
Ladies and Gentlemen,

It is my great honor to welcome you all to the international conference "Promoting Human Rights: Recent Developments", organized by the Faculty of Legal Sciences, International Relations and Diplomacy with intention to grow up in a traditional event where the scientists will be able to share their knowledge and results of the conducted researches within the legal jurisprudence.

First of all, I would like to express my deepest gratitude to the director of MIT University, Mrs. Biljana Apostolova, to the Rector Prof. Jugoslav Ziberoski and to our supporters for their understanding and partnership in co-organizing this international event. I also take this opportunity to thank my colleagues whose outstanding assistance was crucial for realization of this event.

Honestly, I am very pleased to have many eminent scholars here among us, from the neighboring countries, EU countries as well as distinguished representatives of NGOs and the international organizations in the country.

The subject of this scientific conference will be the exchange of empirical data from complex, theoretical and practical knowledge for finding mechanism for improving the protection of the corpus of human rights and freedom. This methodological approach is intended to expand the views of accepting mechanisms that will allow correlation instead of the scientists'attitudes polarization that we've had so far,in relation with the universal views against the cultural relativist views towards citizens' rights protection. The objective of this conference is to enable a proper employment of the experience from the field of euro-integration processes in the future activities of scientists and professionals, which will be crucial for easier implementation by the experts responsible for the realization of these processes in the South-East Europe countries.

In the academic public, it has already been known that nothing speaks louder for the quality and nature of the social order but the position of the individuals within.

Human rights are integral part of the peace and security, economic development and the social justice. They enhance the rule of law and fully release the creativity of the individuals and the society. Human rights, together with the peace, the democracy and the development are leading principles in the twenty first century.

I am indeed proud that, here we will be able to discuss this topic that has exceptional significance and present a landmark of whether the society has democratic or totalitarian character.

I am convinced that this Conference is a perfect place to hear the voice of the academic public, its expectations and suggestions to find a new ways and tools for improvement of basic human rights and freedoms in future.

Once again, I would like to thank you for your presence. Your experience and especially the one of the academic and expert public, their readiness to share their knowledge, ideas and expertise are very valuable and needed.

At the end, I invite you all to have fruitful discussions, interesting debates and concluding remarks in the next few days.

Dean of the faculty of legal sciences, international relations and diplomacy,

Assistant professor Zoran Filipovski, Ph.D

HUMAN RIGHTS AND SUBJECTIVE WELL-BEING AS A SYSTEM OF CONNECTED VESSELS

Miroslav Pendarovski[1], PhD
Ivana Stoimenovska[2], M.Sc.
Maja Stojanoska Inadeska,

ABSTACT

This paper aims to link the human rights and their respectance with the subjective well-being . The introduction is actually numbering the basic goals 1.understanding of human rights in psychological terms 2.determination 3.description and explanation of subjective well-being and their similarities and differences , their mutual connection and interrelatedness The first part of the paper discusses about the human rights of the first, second and third generation of psychological aspect and their impact on the subjective sense of well-being. There are also listed a series of relevant older and newer research findings. The second part is about reviewed, analyzing and exsploring the phenomena of subjective well-being and their connection with the perception of human rights and their interaction. In the end is conclusion about the possible aspects of connection and the relativity of both socio-psychological and social phenomena.

Keywords: Human Rights, subjective well-being,dependence , Relativity

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INTRODUCTION

To talk about the human rights and not to see the fact that their compliance is essential for the subjective sense of well-being, is like an attempt to discover the essence of the most important things without the important substrate. From the other hand, to emphasize the importance of subjectively well-sense in hope that it will come only when all human rights will be respected, is like

to hope that the utopia will become most real paradigm of human social and psychological well-being. In these world there are and can be no absolutes, death as a single point of failure flagrant is the only absolute, everything else is relatively hunting the absolute. In that sense, when we talk about the human rights we can impose the metaphor called ***relative absoluteness*** due to the fact that, although the rightfully human rights hail from the previously generally accepted moral principles and goals of society (e.g. peace and justice) and from the individual values: dignity, autonomy, equality, freedom and so on (според : Фрчкоски Љ.Д. 2005. Меѓународно право за правата на човекот. Скопје : Магор, стр. 12), however, the fact remains that in their denote absoluteness they remain relatively respected in his functionalist state. This means that what is set as absolute value without realistic capacity for just such enforcement work is left to the relative percentage of pragmatic worship under the cultural, social, psychological and ethical development of the human. On the other hand, when it comes to subjective well-being, as a combination of the life satisfaction and the level of experience of personal happiness (Diener, E., Lucas, R., 1999. Personality and subjective well-being.In: Kahneman, D., Diener, E., Schwarz, N. (Eds.), Well-Being:The Foundations of Hedonic Psychology. Russell Sage Foundation,New York, pp. 213– 229), can be used for so-called concept ***absolute relativity.*** This only emphasizes subjective phenomenological matrix on still more subjective phenomenon being that unlike propagated and rightful human rights is completely "hanging" abstract ideological structure that is not listed anywhere, rightful, labeled and there are no universal collective quantification of when is touched or not. In such a situation impose the only possibility of such a conception of subjective well-being in a pragmatic sense, i.e. the rest of it is to reconcile the fact that it reach the largest possible degree of well-being is actually absolute for each respective individual in psychological terms. Of course, the people vary in their ability to reach and preserve their own well-being, each in their own way and there are major differences as well as human rights are not respected everywhere, always and for everyone the same way and still exist as such in the declarations and laws. If we look at the general principle expressed in the above concepts, we can think and feel as if it were a fatalistic theory that believes only in that neither

human rights neither its well-being sometimes, somehow and with some method and development would be reached. But we should not forget that the concepts of the development are exactly where exist awareness of the realism of each of these two dependent variables that man should first lay the ultimate paradox of the negative and then to review, identify, disassemble and eventually perhaps to consider the possible outcome. Therefore, this paper attempts to their goals and objectives to attend with determination, deliberation and understanding of these two phenomena from a psychological perspective and then to focus on the crucial differences as well as their connection and finally to try to give general directions to places of their mutual development. Indeed the purpose of state for worship the human rights is not the basic for general socio-psychological, moral and social well-existence of humans. Is the goal of positive psychology and the fight for better quality of life and subjective well-being is not raising on that well-being on the collectively with an increased awareness that respect for other's rights and is essential for their own benefit.

HUMAN RIGHTS AS RELATIVE ABSOLUTENESS

Human rights have always represented something that is inherently, increase to the man, mostly because of their naturalistic or seated organismic viability. They are *self-found*, not based on any previous concept of God, Nature or so. They don't have basis outside themselves (според : Фрчкоски Љ.Д. 2005. Меѓународното право за правата на човекот. Скопје : Магор, стр. 14). The fact that derives from moral theories, political theories and philosophical conceptions of Hobbes and Locke suggests initial and always persistent humanistic nature of which they are embedded in its very essence. In that sense, they represent *Item itself, Dasein* (German: *da* - there; *sein* - being), exsistence, self-made principle increased of universal human values and his basic needs: safety, dignity, respect, endurance. This means that they can not and should not make any objection on grounds only and not guaranteed as it was done back in the 17th and 18th century with the establishment of the so-called first generation rights – individual, civil and political rights, then in the 19th and 20th century with the establishment of so-called second

generation rights – in economic, social and cultural area and of course the third generation of collective etc. solidarity rights have yet to establish themselves in international law. Or as, in general, according to most definitions is that *they are value with natural right to express the origin living minimum necessary spiritual and material values completely filled life of man,* which means ensuring equal possibilities of each person to show their human qualities and satisfies their social, cultural, spiritual and other needs. Obviously, and this is confirmed in the literature that human rights are essentially always individual even there where they are declared as collective. Speaking with the language of Bergaev, the society does not have personality, individuality in humanist terms, but that his "personality" it gains of the collective from the citizens. That (society) is "heartless" in anthropological and psychological sense, unfortunately, there where the rights are not respected of its people is that (heartless) in the literal sense of the word. In this context, the "personality" of society is capable of (not)well-being dependent on the feeling of their citizens that create the bond called social life in accordance with the level of respect for one of the basic prerequisites for it (the feeling of well-being) and it is respect for the human rights. If we look inside the human rights of any generation, we will notice that all are woven with direct or indirect personifications of things/events that make up the subjective grace. So in that way, some of the rights of the first generation: right to privacy, right to freedom of thought, conscience and religion, rights of the child etc., present the columns of the possible construction of a subjective sense of well-being. For example, right to privacy is a basic human right of its intimacy and in the narrowest sense of the word, without which man is in a danger not only to not feel well-being and happiness, but also to develop essential experience of unidentification, disidentification and self distance and as the ultimate determinant, paranoid suspicion and uncertainty. Thus, the absence of this right leads to a feeling of extreme vulnerability of personal boundaries in psychological terms. The right to freedom of thought and conscience on the other hand, is one of the foundations for building confidence and necessary level of socio-psychological extroversion as a potential opportunity for social opinion on individual perceptions, cognitive processes and decision providence and a

sense of their own competence in intellectual and affective terms. In the situation of disrespect of these rights the man brings it into question their own attitudes, thoughts, interests and certainly reconsidering his thoroughness and authentic personal morality which must not be subject to questioning somebody's review, except when it is justified and necessary. The conscience of nonobservance sample of homo sapiens undeniably stay between the space of questioning, shaking and destruction, especially those more introverted, with less self assurance and personal experience of incompetence. There should not be mentioned the right of the child as a developmental predisposition or blockade, depending on his (non) compliance. Most psychological, especially psychodynamic theories of personality or development theories emphasize early childhood as a cornerstone of all future psychosocial, moral and cultural development of the young life. In the era of exploitation of the child labor, human trafficking, pedophilia and many other examples of flagrant violations of children's rights, the self-esteem of well-being and personal happiness in the most fragile part of the population is a necessary elixir of development of a society. What are the forecast, ideals and achievements of any society without the highest degree of respect for children's rights?

Some of the second generation rights, such as: the right to work, the right to physical and mental health, right to participate in cultural life and the use of scientific progress, etc, also leads us to the paradoxical of their (non) compliance as the antipode of (not) being of their customers. Long ago, Freud pointed out that if the man in two most crucial areas of life: work and love has not reached a satisfactory level of fulfillment, cannot be called happy. That kind of maxim induce that the right to work is essential for good self-esteem and subjective well-being. The people known the dictum that you punished the man if you not give them to work, so he rot inside and present still life that penalizes the society becoming indifferent and useless part of the system. Therefore, he becomes self-defeating inertial device that in the era of unemployment only auto-copied in homegrown same unusable samples. Generally speaking cannot talk about the well-being if it is not satisfy the right of universal health. Despite the paradoxical logic of overfed and unhappy people, people who use health services, expensive diets and still

feeling exhausted and involuntary and on the other hand, people who do not have basic health care nor the possibility of advancing the field of health which are spiritually and personally complacency, remains an undeniable fact. At the social level, the community level, the increasing number of people without basic rights to health can not and must not be a majority that will give comfort to the antipode view that everything is individual. Yes, the capability is individual to survive and submit the insufficient, but it should not be a criterion for assessing the general well-being of entire population and groups. In an era when Maslovs' hierarchy of motives is literally inverted and where many people "live" from self-actualization and ideology trying to attain the basic motives for safety, food and health, in an era when to fill your belly is the last ideal destination, is pointless to talk about the importance of universal human health. On the other hand, the ability and the right to participate in cultural life, to use the virtues of the art and science of every aspect is a necessary condition for social and psychological well-being and exploit their creative potential. In the age of cultural, moral and spiritual "purgatory" of values, when everything is about to (re) value, (re)evaluate, and (re)create badly needed freshness that would come from the fulfillment of the right to literally use cultural and scientific opinion of the postmodern man. And in all that chaos of cultural and scientific supply in the era of information that already creates confusion in the poorly used human intellectual and emotional capacity, disregarding of these rights just brings crisis to this most badly needed identity of modern man – the cultural, the aesthetic. Because, Nietzschean terms, man is man only if he exceed himself, if he become *Übermensch* (German for "Overman, Overhuman, Above-Human) justify its existential determination as super-being, and only then could say that he (the man) will live the real well-being. If we consider the rights for a healthy environment, the right to use the common civilization heritage and other information and development the rights of the third generation, everything becomes even clearer. Disregarding of these rights it just collectivize the general mental hysteria and the schizoid of the individual and so on the army of people who are well-being are growing, not feeling happy and only through retroactive deduction would allow to perform notorious conclusions about the accident of the majority.

If we try to make a brief of the paradigmatic basis of the above from social, cultural, economic, civil and political origin will come to the clear view that they are all on the dignity of human existence, which in its essence is rooted in the subjective sense of well-being. In fact, many studies show that. Vemuri and Costanza in one of their research, from 2005, has examined the impact of several human benefits: social, human, natural assets on subjective well-being. The purpose of this study is to determine the level of national well-being on the basis of data on the states in terms of these areas. Some of the indicators in areas were the traditional economic measures such as Gross Domestic Product (GDP), Gross National Product (GNP), the index of satisfaction with the educational system, health and social protection, the degree of economic sustainability, environmental protection, cultural development, etc. As a criterion of subjective well-being, the authors used quantified questionnaire for self evaluation that respondents assessed at two levels about what is their subjective feeling of well-being: cognitive (such as view-point) and emotional (such as feeling and condition). The results showed that all variables which were measured about the impact on the well-being were positively correlated with the subjective feeling of well-being among the participants, i.e. there where the higher indices of social presence, richness, natural and human benefits, there the level of well-being was greater (Vemuri W.A., Costanza R. 2006. The roll of Human, Social, Built and Natural capital in explaining life satisfaction at the country level: Toward a National Well-Being Index. The University of Vermont : Ecological Economics, 58 (2006), 119-133).

Some other studies (Diener et all., 1995), show similar results, displaying that some of the national indicators of well-being related to human rights still show more correlation with the cognitive aspect of well-being, i.e. the level of satisfaction than the affective level of well-being, i.e. feeling of happiness (Diener, E., Diener, M., Diener, C., 1995a. Factors predicting the subjective well-being of nations. J. Pers. Soc. Psychol. 69 (5),851– 864). These findings confirm that even stronger sense of well-being is a significant aspect of real parameter being and that consistent with the level of respect for the rights of the most areas showing the intimate subjective sense of well-being.

In context of the importance of psychological factors related to human rights,

Easterlyn (Easterlyn, 2003) distinguish two main currents in psychological and economic theories of well-being. According to him, the main psychological theory is called "Theory of the starting point/base" an conception which claims that every individual has a genetic and personal boundaries of basic well-being that after a short period of disruption due to social factors returns to normal. At the social level, the theory states that the level of well-being will not depend on the social, economic and other benefits but simply from the threshold which is determined genetically and psychologically. According to Easterlin, the main economic theory of the well-being is called "more is better" (Samuelson, 1947 ; Varian, 1987) which argues that better social, economic and every other status contributes to greater subjective sense of well-being. However, Easterlin points out that neither psychological nor economic theory is correct and according the researches, well-being is linked up more with social and cultural factors and people often compare themselves with similar on them and with that it relativize the well-being which by the way dependent of the respect of human rights. It means that people who recognize those who are similar to them and have less respected benefits and gains on the social level, they have greater subjective sense of well-being. Opposite of that, if those which whom they compared with, have more benefits and greater human rights, the feeling of less subjective sense of well-being is growing which again it points to the relativity of well-being (Easterlin, R.A., 2003. Explaining happiness. Proc. Natl. Acad. Sci.100 (19), 11176– 11183).

To these findings and in addition to our assumptions are assembling some researches (Diener & Suh, 1999 ; Diener et all., 1995a,b ; Welsch, 2002 ; Cummins, 1998 ; Helliwell, 2003 ; Oswald, 1997 ; Diener et all., 1995a) which results shows that the well-being on a national level is not related to the economic prosperity (high salary, benefits, etc.) but with human rights, equality, fulfillment of basic biological needs and respect for individualism (accordin: Diener, E., Suh, E.M., 1999. National differences in subjective wellbeing. In: Kahneman, D., Diener, E., Schwarz, N. (Eds.), Well-Being: The Foundations of Hedonic Psychology. Russell Sage Foundation, New York, pp. 444–450). Diener and coworkers in another study confirm, once again, that

well-being is correlated with human rights, social equality, also the economic status and the amount of the salary (Diener et all., 1995a). Anyway, these findings once again support the hypothesis of the importance of human rights and almost their causal relation to the subjective sense of well-being.

Turning back to the thesis that in fact, the human rights are essential and individual rights which are based on the personal feelings of respect, dignity and security, we can conclude that the well-being is a individual concept and criterion, because, as Eckersley noted (Eckersley, 2000), the criterions of national well-being always were getting based on individual and personal questionnaires of respondents.

At the end of this section a moral obligation is to consider the claim, i.e. concept of so-called *relative absoluteness* of human rights in the psychological sense. In fact, above mentioned results ensue the conviction in the view that despite inviolable naturalistic, anthropological, psychological and humanistic necessity of respecting the human rights, remain their partial pragmatic outcome in a true respect. In this way is due to several factors. Some of them are located in the area of human low awareness of their rights and his illiteracy of them. Partly thi is due to the low historical consciousness originate of individual life line of “least resistance”, i.e. the concept that the rights *are not our business*. Partly is due to lack of social articulation of respecting the rights of many factors: the power of those who enforce those rights, socio-economic situation of the state level, the level of social awareness on this issue and many others. Other factors in this direction and which prevent smaller relativity of absolute primacy of human rights and their worship, derived from the individual perception of human rights of the individual, the line of their own genetic and psychological sensitivity and ability to recognize the necessity of personal rights in any form, the low place in the scale of rights of personal priorities and many others, a little bit of satisfaction and so on. The third elements are originate from the criteria of assessment of their own well-being which originate from human rights, i.e. from the disproportionate and unprincipled comparing themselves with other, apparently similar without taking consideration of a range of social, cultural and other contexts of individual, national and international level. Also, there are the issues of collective historical precondition accordingly the

experience through the time of the individual, nation, the state in terms of human rights. A range of issues related to the mentality, habits and traditionalism of some individuals and nations, etc.

THE SUBJECTIVE WELL-BEING AS AN ABSOLUTE RELATIVITY

"Everyone is a smith of his own happiness"
National proverb

The national saying that is under the title suggests an eternal dilemma, whether subjective sense of happiness is a matter of fate or of activity and personal effort. It is difficult to answer this question that last forever, and is researched since ancient times, around the 6th century BC. Even then the man is interested for the subjective well-being which basic elements are the feelings of pleasure and happiness. In the documents from that time can found *Eudemonia* term defined as "blossom" of the man or good living. The ancient Romans gave the term *Ataraksia* yet thinking of the form of happiness that is inside the owner and under his control (според : Leahey, 2000).
Somewhere well-being is determined as *immediate reflection of internal-mental, that is subjective phenomenon which is not related to external- objective reality* (според : Јанаков Б. 2006. Среќа : Прирачник за усреќување и добрување. Богданци : СОФИЈА, стр. 17).
These claims brings us back to the concept of absolute relativity of well-being, i.e. on its subjective dependence from the self-esteem of the individual regardless to social and other condition and circumstances. So, if human rights are relative absoluteness, the subjective well-being is absolute relativity. Unlike the human rights that are universally-naturalistic comprehended and are understood and are established and identified with an international convention (1948) the subjective well-being is absolutely intimate thing of its own perception, system of value, habits, interests, attitudes, experiences. That means that each one of us individual and authentic experiences of reality which makes him satisfy and happy and well-being or makes him unhappy and puts him in a bad condition. Lots of researches has proven that subjective

well-being is most dependent on the person and some of its features. (Steel P., Schmidt J., Shultz J. 2008. Refining the Relationship Between Personality and Subjective Well-Being.. University of Calgary : Psychological Bulletin, 2008, Vol. 134, No. 1, 138–161). Namely, above mentioned authors in one of their research comes to results which proves that so-called enduringly subjective feeling of well-being is most connected with characteristics of the person that are relatively stable and positive such as: extroversion, openness to experiences, etc., unlike negative, primarily neuroticism that correlate negatively with subjective well-being. In a view of the short-term subjective feeling of well-being they accentuate that it act on some external social, economic and other factors. This proves the thesis that well-being is subjective and intimate personal feeling depending on stable factors. Many other authors (some mentioned in the previous section of the paper) confirm the same, using different methodological approaches in different conditions (e.g., Diener, Eunkook, Lucas, & Smith, 1999; Lyubomirsky, Sheldon, & Schkade, 2005 Ozer & Benet-Martınez, 2006).

DeNeeve and Cooper (DeNeeve & Cooper, 1998) connecting the subjective well-being with 137 personality traits that reinforces the conclusion that well-being is associated with a person. This result a conclusion that well-being is not related to human rights that are external factors of happiness and satisfaction. Yet, previously presented results from the researches prove the opposite that the human rights impact on well-being. This conclusion is true when it's a question of so-called short-term and externally-dependent sense of well-being. Although human rights are foreign elements of influence and variables that are socially dependent, however, in their essence they relate to their individual needs and quality of life, dignity and respect which are internal personal phenomena. Thus, it is excessively the claim that subjective well-being is strictly under the influence by genetic and personal characteristics that are relatively stable, versus the flexible social flows in terms of respecting the human rights. We can conclude that the true is somewhere here that the subjective perception of the person rights and their (dis)respect create or not create the subjective feeling of well-being but not that it is the true state of things because this is not taken into account a number of other facts. Namely, that does not mean that if the individual

whose rights are not respected note and state that is in well-being and happiness that it is evidence of substantial real being because comes into force the absolute relativity of subjective well-being. That means that its not legalize and staying in the sphere of subjective and deformation for the low awareness of their rights, the lack of knowledge, distorted evaluation criteria and other personal factors leave a small space for agreement. At the end of the day, it would be illusion that from the entire population in which the human rights are not respected, most individuals would feel good and would have had that kind of perception. Exactly on that landmark these two phenomena are diverge, one of them stays in the legitimate and moral right of irrevocability and the other one stays in his utopian subjective picture of it. Reaching the maximum of the well-being, certainly, is almost a perfection and metaphysics for the mind and emotions, just as the achievement of absolutely respect for human rights. But that does not mean that we should be satisfied with absolute relativity in any of these areas, but to seek the points of connection that are in the middle of the relative absoluteness, i.e. the fact that they present process of development and self-revelation through human individual and collective self-conscious activity and in none other case are not given forever and frozen.

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FREEDOM OF EXPRESSION AND MEDIA FREEDOM AS AN ESSENTIAL DEMOCRATIC RIGHTS TO COMMON STANDARDS AND POLICIES OF THE UNION

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ABSTRACT

Freedom of expression is a framework which incorporates several elements, such as freedom of information and freedom of the press and media in general, which again is founded on freedom of opinion and actual connected with it. Freedom of thought is the civil law and the right to freedom of political expressionwhich in certain situations may be subject to restrictions on such freedom.

Freedom of expression is twofold. It can be transferred or express opinions and ideas of all kinds, and to receive information, in any form or in any media, including new technologies. In this direction what must be stressed out is the fact that free and well developed media are the cornerstone of democratic societies. Therefore any restrictions on freedom of expression in print and electronic media, there are numerous examples in the world will represent a violation of the corpus of human rights and fundamental freedoms.

The paper will aim to present the essential provisions of the European Convention on Human Rights and other international documents related to freedom of expression, particularly Article 10 of the ECHR

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under which provision clarifies that this freedom has no importance by itself, but for the protection of other rights and freedoms. From this we can conclude that without wide guarantee of this right and its protection of impartially justice, there is no freedom nor democracy.

The issue of self-regulation of the media in the digital world, by trying to introduce ethical standards in the age of Internet communication, which by the way is only a framework for the development of social media who significantly have changed the way people perceive the media and transform the traditional division of tasks between types of media, will also be subject to the elaboration of this paper.

Keywords: *Freedom of expression, freedom of media, human rights, international treaties, self-regulatory mechanisms to protect the media in the digital era.*

INTRODUCTION

One of the fundamental political rights , freedom of opinion and expression , including the dissemination of information and ideas through any other means of information , is applied to all instruments to protect the corpus of fundamental rights and freedoms of man and citizen. Genesis for its occurrence is located in the XVIII and XIX century, when it was incorporated in the European and the Constitution of the United States. Some philosophers of that time, especially John Stuart Mill, believed that "the right of free press will be the guarantee to fight corruption and tyranny of governments". This basic human right constitute one of four published by President

[1] *See more: Freedom of expression and freedom of media*

Roosevelt , and that was a foundation for the development of future world order[1].

Freedom of expression and freedom of opinion in print and electronic media was essential during the Iron Curtain, when people from Eastern European countries didn't have access to the written Western newspapers, especially independent ones, which denied the right to assess the objectivity and truthfulness of information placed by their political elites , through domestic public media.

Polyvalence of media can negatively influence social system due to violations of freedom of expression through their instrumentalisation, as a tool of government, in the development of state propaganda, especially if they represent a target of attack, or subject to political control.

The concentration of media can be a major obstacle to the freedom of the media, and therefore some countries in the EU have adopted laws which ensure media pluralism.

However in terms of digitized global society, freedom of media and media space seems to be unstoppable, but there are examples in the world where state institutions at all costs try to restrict access to the new electronic media especially the internet pages, primarily because opposing views which can adversely affect national policies. Although in these cases is very difficult to make a distinction regarding what constitutes substantial protection, because the public interest is also essential for the development of a nation, but on the other hand, if there is no development of freedom of thought and expression more than clear is that we can not talk about social progress and development of democratic structures that will be "perpetuum mobile"

[2] *More: Sladjana Dimishkova: freedom of expression and democracy, Cetis print, Skopje, 2008*

for the social, spiritual and economic prosperity of every political system . In this context it must be stressed the fact that there must be correlativity between the freedom of expression and accountability for the sole intention to avoid violation of other basic rights and freedoms of the people, especially the right to privacy.

2. FREEDOM OF EXPRESSION AS A POLITICAL RIGHT

Freedom of expression as a framework which covers freedom of information and freedom of the press is part of political freedoms and is closely related to freedom of opinion as absolute civil right. Certain elements of the right to expression are associated with other rights such as the right of religion, the right of authors to benefit from the protection of moral and material interests of art or scientific work, in legal jurisprudence known as copyright, then the right to education, and as essential feature of the right to free expression is the prohibition of war propaganda and incitement of racial or religious hatred.

Political rights, allowing the right of citizens to participate in political life, express his political personality. With this in mind it can be concluded that freedom of expression is not only a right but a central foundation for the use of the many political rights and freedoms.

Freedom of expression has two dimension nature, it comprises the right to use the speech in public life and the right of citizens to express their thoughts and opinions. Some authors have narrow understanding of this right and see its essential role in the utility that it provides to the parliamentary democracy considering that important societal goals are achieved through speech and public hearings[2].

The protection of this right is important, not only for his essentiality, but primarily because of the complexity it inherent as a center as all

other rights that have a direct connection, which means that protection will be reflected to all other rights that are part of it. It is directly expressed by the norm of Article 10 of the European Convention on Human Rights , where its protection is provided .

“*1.Everyone has the right to freedom of expression. This right shall includes freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.*

2.*The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions , restrictions or penalties as are prescribed by law an are necessary in a democratic society, in the interest of national security , territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary”.*

This article of the convention not only protects speech and all expression that are presented through images, ideas, actions intended to present information, but also their shape. The provision of this article includes both print and electronic media and information systems, as well as art expressions in form of fine art or films.

This provision protects the freedom to hold opinions, which is a fundamental right from which all others arise and whose violation would mean lack of capacity in a democratic society. Freedom of receiving and sending of information and ideas, which in accordance with Resolution 428 of the Parliamentary Assembly of the Council of Europe, means that the use of these rights include media, where can freely traced criticism to the government, if not sufficiently represent

the interests of the citizens, and if this procedure is not sanctioned by any state authority it may be stressed that it is a fundamental indicator of a democratic and free government[3] .

Besides the possibility of states under certain circumstances to hinder freedom of expression, which must be a cumulation of three conditions: a) the interference is legaly provided; b) seeks to protect more interests or more values in society; and c) be necessary in certain terms, such right they frequently abuse.

However it should be noted that no right has more reasons for limitation such this one. If obstruction of freedom of expression must be prescribed by law, then it must be established by Act of Parliament and not by any act of the Government, and of essential importance is to be in accordance to the needs of the democratic gains in every society. This means that states have the obligation in respect to the right of free expression, to incorporate thee freedoms into their national legislation and to provide remedies for violations of that right. In this direction of essential importance is the legislation that regulates the media, because it regulates in details the rights and restrictions in daily practice, and is in line with international documents and national constitutional law. Having in mind the way of implementing the obligation of states to regulate the work of the media, a tool of such regulation is the establishment of bodies, which depends on the states order may have different names, for the supervision of work of the media composed mostly of experts in the area and representatives of civil society, in order to gain greater objectivity in the assessment of the media in terms of their presentation of the truth of the information. This work will enable the protection of freedom of expression guaranteed by Article 10 of the European Convention on Human Rights[4].

[3] *More: Sladjana Dimishkova: freedom of expression and democracy, Cetis print, Skopje, 2008*

[4] *See more: Freedom of expression and freedom of media*

However oversight of the protection of this right is not exhausted by the supervising bodies established for this purpose by the states themselves, but international organizations have established standards for several control and mechanisms for oversight of states in relation to the work of their national bodies. Pursuant to the provisions of the International Covenant on Civil and Political Rights, every state is required every five years to report on the situation of human rights including this subject in this paper, to the UN Human Rights Committee. Since 1997, in the member countries of the Organization for Security and Cooperation in Europe, the designated senior representative for media is obliged to monitor the situation as countries protect the right of free expression including its reflection in all print and electronic media.

The role of professional associations and NGOs is essential, as they can transparently show the state of freedom of the media and the fight against restricting freedom of expression. They can alert towards taking certain measures in cases of limiting freedom of expression, concentration of media space, lack of information transparency and corruption, in particular printed or electronic media . The intention of these organizations is always directed towards the prevention of violations of fundamental human rights and freedoms.

2.1. Freedom of expression and hate speech

Many experts agree that this problem can be solved in two ways. The first way is relates to the operationalisation of a regulation governing this phenomenon, and the use of repressive measures by law enforcement institutions through strict sanctions for violators, while the second way is through preventive activities of educational institutions.

[5]*More: www.zlostorstvaodomraza.com, Legal analysis of the concept of offense hatred and hate speech.*

[6]*More: Handbook The social responsibility of the media" Alen Sinanovic, VESTA Association, 2007.*

[7]*Declaration on the Conduct (the principles of journalism) journalist, 1954*

International documents of the UN and the Council of Europe consider the freedom of expression as is one of the most important rights of the citizen, that no democratic society can function without. The provisions of Article 19 of the Universal Declaration of Human Rights and Article 19 of the International Covenant on Civil and Political Rights guarantees everyone the right to freedom of expression. Also this right is guaranteed by Article 10 of the Declaration on Freedom of Expression and Information of the Council of Europe from 1982, and the Convention for the Protection of Human Rights and Fundamental Freedoms of the Council of Europe as one of the basic principles of democracy.

Although these documents clearly stated that the freedom of expression must be guaranteed with the highest acts of the legal system in all countries, however it is determined that it can be denied if such abuse is aimed at spreading the discrimination which harms the whole society, not just certain social groups to which it is relates. If you have this in mind, more than evident is the intention of the international factor, through legal mechanisms and documents that comprises the international law, to sanction hate speech.

The authors of the European Convention on Human Rights established an institutional framework to overcome extremism, while the European Court of Human Rights, in applicative way , using the rights determined by the Convention, identifies the forms of expression that are contrary to the said Convention, and are related to racism, xenophobia, anti-semitism, aggressive nationalism and discrimination of right of minorities.

Of essential importance are the decisions and judgments of the European Court of Human Rights related to hate speech, considering

their correlation with the right to freedom of expression, freedom of religion, antidiscrimination, reflects the commitment of this Court to the building standards and principles that are based on the protection of the equality and dignity of all citizens through the application of the balancing test between the private and the public interest[5].

3. FREEDOM OF THE MEDIA

Freedom of the media is crucial for the realization of ethical principles in journalism which is closely related to freedom of expression. It is a condition without which the ethics of journalism would be difficult to achieve. Media in which freedom of expression is not guaranteed, can not develop ethical principles as fundament to the democratic approach in communicating the information and building the profession on solid democratic gains outlined in many international documents .

Journalists who work in societies where media freedom is very large, can also say that collide with problems that also undermine the foundations of freedom of expression, and apply to real ethical dilemmas regarding the profession as respect for privacy, reduction of harmful effects of information, honest reporting, opposing pressures, and various corporate influences[6].

International journalists' associations and agencies, as well as national organizations approach the issues relating to professional ethics in journalism very seriously. In this respect, and in accordance with international acts[7] every journalist is obliged to respect the truth and to properly inform the public, journalists are obliged to report only if the facts of every case they receive from sources that are close and confidential , and their duty is not to hide the facts and forge

documents. It is also their duty to use fair methods to obtain news, photographs and documents, and if damage occurs due to semi truth information they are required to correct it. Professionalism among journalists can be determined if they respect the confidentiality of sources of information that are received in confidence. Also its consistency will allow any journalist not to use the plagiarism, malicious intent to twist the facts, defamation, insult, infliction of injustice on persons who are objects in journalistic texts.

Ethics is an essential part of journalism, so this should serve only to satisfy the basic human rights and interests of readers and viewers. To achieve these standards of the profession, it is necessary to invest in education and culture of journalists. Unfortunately, among journalists are not rare those who don't have higher education, or business culture, and what is essential they not possess the competence and professionalism. The consequence of this is failure to work to the highest professional standards, and there are many examples where this situation is tolerated by the owners of the media and political factors that make up the power in a state. Convergence towards the protection of their own interest and the interest of the media is the sole reason for involvement in this type of journalists, although such interest to the political elite and media owners is contrary to the public interest.

The degree of independence of the media presents in fact how they can be the guardian of the public from abuses of power, and in this regard it should be noted the remark of one of the editors of the daily newspaper "Time", saying that the democratically elected government may be corrupted if is not under the control of independent media.
Freedom of expression and freedom of criticism is fundamental to

establishing certain standards of professional journalism. From this fundamental right arise other special rights to freedom of spirit and communicating with other social groups. Freedom of expression allows the journalists no one, and especially state institutions and the political party in power, to prevent the expression of their opinions and views on certain issues that could harm the freedoms and rights of citizens. If this function of the media is in doubt, or the right to expression of professionals from print and electronic media is restricted, then it is more than certain that there is absence of democracy[8].

Pursuant to the provisions of the Declaration on the rights and responsibilities of journalists adopted in Munich in 1971, it is stipulates that journalists must respect the truth and bear the repercussions they may have all for the public to know the truth. Truth should be the premise for journalists to fight for, unless they want to prove in court proceedings initiated for a particular article or statement.

One of the postulates of this Declaration apply to advocacy of human rights and freedoms, fostering a spirit of tolerance and the fight against discrimination. Such explicit principle obliges journalists in their work not to use the freedom of expression to spread discrimination on any basis in the media. Recognition and stratification of professional journalists from those who are not , is strongly correlated with the level of media literacy. The existing codes of conduct of journalists established the principle of antidiscrimination and the obligation of broadcasters to protect individuals and social groups from discrimination without making a distinction who is the offender of their rights[9] .

[8]*More: Prof. Cedomir Cupic: Call Journalist, Yearbook of the Faculty of Political Sciences, University of Belgrade, Republic of Serbia, 2007 years.*

[9]*More: Media, hate speech and marginalized groups: A Guide for Media, Zivko Trajanoski Tamara Causidis and Roberto Belicanec, Skopje, 2013*

CONCLUSION

Freedom of expression in the media can and must be improved, given the fact that in the Republic of Macedonia, as well as in other states of the former Yugoslavia, somewhere less somewhere more, hate speech existed and still exists in hidden form. As one of the rights protected by the European Convention on Human Rights, the right to freedom of expression which is often misused for hate speech which in latent way is still used primarily for political aims, may be increased because nobody responds to it, and dissemination of hate speech in media is commented from readers and viewers call in live. Hate speech is often present on the social networks that increasingly occupy media space.

From the studies made on the ethics of journalism in Southeast Europe it can be concluded that the free press in this region can only exist if the pressure on the media and journalists are reduced and if financial and political influence is completely transparent.

However, it should be noted that in this period when media regulation is adopted, work should be placed on its practical application as well as on prevention in order to improve the journalistic codes, improve the training of journalists, highlighting the professionalism, code of honor and increased professional ethics among journalists. Also of great importance is the existence of a larger control of media free market and self-control of media themselves, in order to respect fundamental humanitarian principles and moral norms.

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ECONOMIC, SOCIAL AND CULTURAL RIGHTS IN THE CONTEXT OF CRISIS

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ABSTRACT

The paper looks at the human rights in the context of the current crisis in European Union. It assesses how the countries that have previously defended and promoted human rights across the globe are watering them down with the excuse of economic recession. Although, crisis and recovery measures are having significant human rights implications, human rights discourse is almost non-existent in discussions related to crisis, and cuts and interventions in the social and economic sector seen as collateral damage of the quest for economic recovery – instead of what they are –fundamental human rights. The paper looks at the current trends in human rights protection in the lights of austerity measures and responses to the economic crisis in Europe. It highlights the weakness and strengths of human rights protection law, with a focus on economic, social and cultural rights, and assesses the consequences that human rights perspective/human rights based approach, can have in selecting policy choices and measures to address the current situation. Although acknowledging interdependence of human rights, the paper is particularly focusing on economic, social and cultural rights, often seen and regarded less the human rights, but more as programmatic aspirations linked to available resources and progressive implementation.

Key words: *human rights, economic, social and cultural rights, economic crisis, austerity measures, European Union*

1. INTRODUCTION

The biggest recession Western Europe is facing since 1930, importantly reveals the failure of the states to create conditions for their citizens to exercise the full range of human rights. It shows the widening gap between

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obligation of the states under human rights law and real human rights implementation as well as reveals the weakness in the human rights protection, particularly in the field of economic, social and cultural rights (ESC right).Economic crisis is placing severe pressure on many of the European states, which are in the face of rising public deficit, poor economic growth and increasing public debt, focusing on reactive measures and austerity programs that are limiting the protection and implementation of human rights. Austerity measures, focusing on cuts in public spending on sectors necessary for creative, innovative in inclusive societies, are promoted as the only possible and viable way of addressing crisis and stimulate growth. The fact that they are contributing to rising unemployment, limiting access to quality free health care and lower quality of education, among others, is often neglected. Furthermore, economic recession and austerity measures, by cutting public funds and support in social, cultural and economic rights, are unequally burdening ordinary citizens and their right to highest available standard of living, while protecting and placing in the center of concerns financial markets, banks and interests of the few that are benefiting from current political, economic and financial system.

Harmful impacts of the crisis on human lives and dignity are thus not only seen as tragic but inevitable consequences of economic crisis; investments in people and sectors such as health, education, employment is often acused of beeing at the root causes of crisis, driving out private sector initiatives and building up the national debt (for example see CESCR, 2010). Furthemore, remainding states of their international obligations to protect, respect and fulfill all human rights in time of crisis, is seen as "socialist" attack to slow down recovery and deepening the crisis. Similar observations were made also from experts surrounding Human Rights Commissioner, who recognized that governments in the time of crisis »…can view human rights as impediments/red tape to economic development« (Comissioner for Human Rights, 2012, p. 3).

Human rights became victims or collateral damage of somehow unquestionable policy prescriptions that promote privatization, deregulation and liberalizations as the only viable, existing in possible way to address economic crisis and calm down the markets in increasingly linked global economic in political world. This, often blind, subscription to global policy packages, is usually closely linked with limiting policy space and lack of vision of leaders and decision makers to envisage alternative, human based and rights friendly policy responses.

However, in the wake of growing dissatisfaction with the current system, that places markets and interests of few, before the communities and people; the recession also presents the opportunity to re-think the prevailing economic and political paradigms based on “market fundamentalism” and seek for policy responses based on norms and values that are placing the humans and our dignity in the center of policy and decision making.

This paper places the human rights at the center of current discussion on economic crisis and austerity measures designed to address the crisis. It looks at the policy trends and global responses to the crisis and their effects on human rights. The paper also assesses weakness and strengths of current human rights system, with particular reference to economic, social and cultural rights. It also looks at the added value of placing the human rights norms and principles (e.g. human rights based approach) in the center of global policy making and responses to economic crisis.

2. THE CHALLENGES AND IMPORTNACE OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS IN THE WAKE OF ECONOMIC CRISIS

Human rights are international agreed and universally accepted legal, moral and political standards and norms, according to which the actions (or omissions and failures to act) of governments can be judged against. They provide us with the tools, mechanisms and entitlement to monitor effects of different policies, including crisis related-measures, on human well-being and people’s capabilities to live life free from want and fear. As universally agreed and accepted legal, moral and political norms, human rights have a potential

to act as a global guidelines for decision making that places humans in the center of our quests for economic recovery. However, in order to fully harness the potential of human rights perspective, it is important to overcome the weaknesses of international and national economic, social and cultural rights accountability mechanisms, including their legal weaknesses and normative gaps, as well as absence of effective control mechanisms of their progressive realization or retrogression in current crisis context.

Economic, social and cultural rights have been for a long time, particularly when judged in relation to civil and political rights, regarded as somehow *»secondary human rights«,* seen more like programmatic aspirations, depending on available resources and subjects to progressive realization, than legally enforceable entitlements. The different perception on both groups of rights is revealed in adoption of two separate covenants – Covenant on Civil and Political Rights, which recognizes civil and political rights as the rights of "immediate effect" (International Covenant on Civil and Political Rights, 1966) and Covenant on economic, social and cultural rights, which links ESC rights to "available resources" and allows for their "progressive implementation" (International Covenant on Economic, Social and Cultural Rights, 1966, par. 2). This formulation is, according to the Committee on Economic, Social and Cultural Rights (ICESCR) "*… reflecting the realities of the real world and the difficulties involved for any country in ensuring full realization of economic, social and cultural rights*."(Committee on Economic, Social and Cultural Rights, 1991, par.1).

Stronger status of civil and political rights also reflects the power plays of global ideologies that were prevailing at the time of the drafting the two Covenants, with the West promoting civil and political rights (CP rights) oriented towards limiting involvement of the states in individuals' pursue of freedoms and decision making, including in the economic sphere. On the other hand, promoted by so called Easter block, economic, social and cultural rights put forward the duty of the state to intervene, if markets and other vehicles of human development, fail to provide basic human dignity and reasonable standard of living for all segments of the populations, including most disadvantaged groups.

International community has reconfirmed the equal value of ESC to their counterparts civil in political rights in Vienna Declaration on Human Rights, by stating that *"All human rights are universal, indivisible and interdependent and interrelated."* In the same document, it has also acknowledged that *"The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis"* (Vienna Declaration and Programme of Action, 1993, par. 5). In the recent years, we have noticed visible progresses in promotion, clarifications of the content and duties of states linked to ESC rights. These improvements are reflected in inclusion of ESC rights into constitutions of several states (South Africa among others), development of a bulk of case law, fact-finding missions and ESC campaigns of human rights organizations across the globe, as well as by adoption of Optional Protocol to the International Covenant on Economic, Social and Cultural Rights. The later, although for now ratified by only ten states (including Spain) (United Nations Treaty Collection, 2013), allows for individual complains in case of violations of the provisions of the Covenant. The content of rights and the obligations of states deriving from Covenant on ESC rights have been also in depth explained in the General Comments developed by the international body monitoring the implementation of Covenant - CESCR.

However, current recession is indeed devaluating the progress made for ESC rights, this equally applies in terms of their normative value as well as their real implementation on the ground – ESC rights are seen as unavoidable collateral damage of the current crisis. As mentioned above, international community has acknowledged specific status of ESC rights in Article 2 of ICESCR, which reads: *»Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the*

present Covenant by all appropriate means, including particularly the adoption of legislative measures.«(Covenant on Economic, social and cultural rights, 1989, par. 2). This vague and indeterminate way, which articulate ESC rights as "resources depended" and "progressive", presents one of the fundamental obstacles for developing a framework for monitoring and demanding accountability for their violation, including their retrogression in the wake of global economic crisis.

However, no matter the weakness of legal articulation of ESC rights, their implementation and promotion should not be left to the discretion of the certain states. This is also the position of the ICESCR (for example see General comment no. 3 of the CESCR on The nature of States parties' obligations), backed with interpretations of several experts (Gómez Isa, 2011; Sepulveda, 2002), that are focusing and "red flagging" the obligations and limits that international law has established and which states should not overstep. Emphasizing this sort of "red line" (Gómez Isa, 2011) in implementation of ESC rights is particularly important in the context of context of crisis.
For example, in relation to the clause of "progressive realization" of rights, the Committee is clear, that "*the fact that realization over time … is foreseen under the Covenant, (it) should not be misinterpreted as depriving the obligation of all meaningful content*« (ICESCR, 1991, par. 1). This is also valid for clause of »maximum available resources« - the international law demands from the states to ensure enjoyment of minimum level of human rights_regardless of their level of economic development (ICESCR, 1991). However, it should be acknowledged that full enjoyment of human rights, including ESC rights, and creation of conditions in which persons can fully exercise their rights, does to some extend depends on available resources. This is also why it is of fundamental importance to bring human rights discussion in the development of financial and economic policies and measures, as well as budgetary processes. Governments must take all the necessary steps, including by proper taxation, to adequately regulate finances,

adopt equitable and expansionary monetary and fiscal policies and find the suitable macroeconomic policy mix that will generate resources and create environment for human rights protection and promotion. Measures for stimulation and defense of decent work, combating income inequality and protection of most vulnerable and by crisis affected population, should particularly be reflected in this policy mix (for more see CESCR, 2012; FRA, 2010). Analyzing human rights through economic and budgetary perspective, has also another important implication - human rights are no longer seen only as a matter of lawyers or human rights expert, but also economists and financial officers, parliamentarians, treasury officials and national auditors. They should be aware of human rights and their work guided "human rights compliant budgeting and fiscal consolidations" (Commissioner for Human Rights, 2012: 3). Economic and fiscal policies do falls under the scrutiny of the international human rights law and thus should be designed in a way that works towards progressive realization of human rights. Commissioner for Human Rights (2012, p. 3) has in this regard also recommended that governments » … take human rights into account when making budgetary decisions, including by scrutinized from a human rights perspective budgeting outcomes and the process." Furthermore, they should also identify positive, neutral or negative effects on rights by economic policies and set red flags for minimum core obligations, by defining minimum essential services and guarantying at least the provision of a minimum protection floor for all vulnerable groups. (Commissioner for Human Rights, 2012)

Furthermore, besides allowing for states to achieve ESC rights progressively, ICESCR also demands form states to fulfill immediate obligations of *taking appropriate steps* towards progressive realization of rights (thus showing their intentions) as well as immediate obligation of *non-discrimination* (CESCR, 1991).The later means that state has to take immediately all appropriate

legislative and other measures to address unequal access to rights for certain groups in society due to de facto or de jure discrimination. The crisis is having disproportionate impact on the rights of most vulnerable groups, *including* children, women, young adults, migrants, ethnic minorities, temporary agency workers and low-skilled people (FRA, 2012). For many of them the crisis has only exacerbated their vulnerability often related to long standing historical or contemporary forms of discrimination. Thus, international human rights obligations demands that we thoroughly assess the consequences and impact of crisis and austerity measures on effective enjoyment of human rights of all segments of population, with particular focus on most vulnerable and deprived groups. This means also identifying disproportionate cuts affecting people with low income (e.g. effects on welfare, housing rights and the rights of children) and measuring distributional effects of measures and policy choices on the population. Commissioner for Human Rights has in this regard also emphasized the importance of establishing who bear the burdens of taxation, and who benefit from budget allocations (Commissioner for Human Rights, 2012).
Importantly, in the context of crisis, convention also introduces the concept of »non-retrogression (CESCR, 1991, par. 1), prohibiting the state parties to the Covenant to undertake any steps or measures that would decrease already established level of rights enjoyment in the country. Despite weaknesses in comprehensive monitoring of ESC rights implementation, the negative trends in this field are obvious and could be detected through disaggregated social indicators, including through rising levels of unemployment, people living under poverty line, deteoreting health conditions, increase in homelessness. These realities are common for majority of European states and are reaching alarming levels in some states, including Slovenia, Spain and Greece.

When does retrogression in ESC rights constitute to the violation of human rights? The view of Committee is that *"any deliberately retrogressive measures … would require the most careful consideration and would need to be fully justified by reference to the totality of the rights provided for in the Covenant and in the context of the full use of the maximum available resources"* (CESCR, 1991, par. 1).

Moreover, if a state intends to take steps that might lead to regression in human rights, it should take into account the resources available, including those provided by international cooperation (CESCR, 1991, par. 1). Or with the words of Isa Gomez (2012), "any retrogressive measure affecting ESCR should be based, firstly, on a careful study of its impact, bearing in mind the need to guarantee the totality of the rights provided for in the Covenant. This leads to the introduction of a key element when assessing the compatibility or not of retrogressive measures in the context of ICESCR: priorities." This means also that the state must recall its international ESCR obligations when undertaking social spending cuts, ensuring that budgets for human rights realization are not disprortionatelly affected. So, as South Centre Executive Director Martin Khor emphasized, "*when countries are faced with the choices which imply a trade-off about what to cut – that the trade-off should always side with human rights: protect jobs and social services rather than narrow commercial interests.*" (United Nations Government Liassoning Services. 2010). However, in reality current policy choices and anti-crisis measurement are obviously placing the interests of (financial) markets, before people, which is clearly demonstrated in the level of money available for rescuing big banks and support economic recovery, as opposed to money available for financing job recovery and similar stimulation programes, for which the familiar response usually is "we don't have the money"…« (United Nations Government Liassoning Services. 2010).

With regards to questioning priorities and policy choices made, that are leading to worsening human rights situation in several countries, the ICESCR has prepared an Open Letter for the State parties to the ICESCR in which clarifies the nature of states obligations in relation to ESC rights and economic crisis. Committee does recognize that »*economic and financial crisis and a lack of growth, impedes progressive realization of economic, social and cultural rights and can lead to retrogression in enjoyment of those rights*«, however it warns the state parties that they should not »act in the breach of their obligations under Covenant" (Committee on Economic, Social and Cultural Rights, 2012, p. 1).
In order not to be in the breach of the provision of the convention in the light of economic crisis, Committee emphasized that any proposed policy change or adjustment, should meet following requirements:

- The policy should be temporary measure covering only the period of crisis;
- The policy is necessary and proportionate, in the sense that adoption of any other policy, or a failure to act, would be more detrimental to economic, social and cultural rights;
- The policy is not discriminatory and comprises all possible measures, including tax measures, to support social transfer to mitigate inequalities that can grow in the time of crisis and to ensure that the rights of the disadvantaged individuals and groups are not disproportionately affected.

The policy identifies the minimum core content of rights, or social protection floor, as developed by International Labor Organization, and ensures protection of this core content at all times. (Committee on the ESC rights, 2012, p. 2).

With this, the CESCR has gave important signal and urged state parties to the ICESCR, to prioritize human rights in the responses to crisis.

3. HUMAN RIGHTS BASED APPROACH TO TACKLING ECONOMIC CRISIS –FOCUSING ON PROCESSES NOT ONLY OUTCOMES

Former Secretary-General of Amnesty International Irene Khan emphasized that human rights constitute the »ethical benchmark« or »moral compass« for testing the validity and effectiveness of any stimulus packages and other short - or long-term measures adopted by governments in response to the crisis (United Nations Government Liassoning Services. 2010.). However, besides judging policy choices and measures in terms of their outcomes and impacts for human rights, full integration of human rights principles in the policy responses (so called rights based perspective to address economic crisis (HRBA)), means also questioning the »methods« of intervention and processes behind. In this respect human rights give programatic and operational framework according to which the policy choices and programes can be (or should not be) made, and are also importantly affecting the ways how we approach the task of redressing economic crisis. In that context of economic crisis the "rights based approach to economic crisis" could be

defined as a concept that integrates all human rights norms, standards and principles of international human rights systems, into the plans, policies and processes aiming at addressing economic crisis, including assessing the impact of austerity measures on human rights (adopted to fit crisis responses from Vandenhole, 2012).

Addressing unequal power relations are in the hearth of human rights. Human rights, by acknowledging duty bearers (states) on one side, and rights bearers (citizens) on the other side, are trying to invert this power relations, by recognizing that guaranteeing the human rights of most vulnerable and margalized, is not a choice, but an obligation. Human rights perspective not only give citizens legal entitlements to claim their right through various mechanisms and institutions (although in reality the possibilities, particularly in the field of ESC rights, to legally enforce human rights claims are relatively limited), but also essentially means that development should be conceptualized as something which originally *belongs* to the people, not to the government or to international agencies (Vandenhole, 2012, p. 6-7). Putting human rights standards as central reference in policy choices related to economic crisis, thus means investing in humans and not capitals, markets and/or selected elite.

HRBA in practice also means that interventions should live up to the selected principles common to most understandings of "human rights based approaches" (Vandenhole, 2012). Those include include:
Principles of non-discrimination, equality and inclusiveness (already more deeply discussed above), should underlay the economic measures and anti-crisis package, guaranteeing that there are not groups that are disproportionally affected by the crisis and crisis induced measures. These principles also demands that, when the economy will recover again, the benefits of growth and social progress should equally be shared among all.
Citizen participation should be "scaled up" and linked with national and international policy processes and international rights frameworks. The participation in national, but more importantly transnational decision making in relation to crisis responses, which – as will be seen in the following

chapter – is often overriding the national decision-making processes, should be particularly encouraged. Participation, linked with demands for increased transparency, should be present in all segments of decision making that influence attainment of human rights, including budgetary and other fiscal processes. The importance of participation in designing the measures for addressing economic crisis, was highlighted also by the Centre for ESC rights (CESCR, 2012, p. 23), which has warned (on the basis of comparing of measures designed in the post war period), that countries do much better in responding and dealing with economic crises when transparency and participation in decision-making is promoted. The right to participation is also prerequisite to claiming all of the rest of the human rights (Vandenhole, 2012), and can - important in the context of crisis - , help to regain trust in sense of policy making, as well as feeling of control over peoples own lives. The feeling of the later is often undermined in the wake of quick and often unreasonable policy choices, resulting in deteriorating conditions of living of ordinary citizens.

Furthermore, HRBA encourages the active linkage between development and law – demanding accountability for actions that have led to crisis as well as for actions exacerbating crisis through design of unsuitable and often (from a human rights perspective) ineffective measures. Thus, this kind of perspective, reject the notion that consequences of crisis are cannot be traced back to decisions of real actors (CESCR, 2012). It also states, that the institutions responsible for implementing fiscal and monetary policies and other measures should be fully accountable for their actions. Duty bearers are obliged to behave responsibly, look out for the larger public interest and be open to public scrutiny. From this perspective, corruption, inefficiency and secrecy are more than just unfortunate practices. They are morally wrong and constitute an aggression against humanity (Vandenhole, 2012, p. 7-8). Furthermore, as Vandenhole (2012, p. 7-8) continued accountability means at least two different but related things: *»On the one hand, the citizen participation, accountability and inclusiveness which ground the RBA approach should be institutionalized in law, not left to the good will of public servants or the presence of specific civil society leaders. On the other hand, economic measures should use the*

language of rights explicitly and encourage citizens to pursue the legal defense of their rights at the national and international levels.

HRBA means also application of the basic principles of the Universal Declaration of Human Rights in the addressing the consequences and root causes of crisis and reasons why countries are not in the possition to create environment in which individuals could effectivelly enjoy their human rights. This includes addressing lack of transparency, lack of regulations of financial sector as well as rising inequalities fostering by dominant market based ideologies, which are being recognized as one of the main reason leading to the current crisis (see for example Concord et all, 2013, p. 7; CESCR, 2012). Thus bringing in the human rights dimension into discussions on crisis must not only be about assessing impacts, but also by understanding and addressing the root causes of crisis, shaping appropriate responses to it and preventing further mistakes and inadequate policy choices.

4. GLOBAL NATURE OF CRISIS VERSUS PRIMARLY DOMESTIC PROTECTION OF HUMAN RIGHTS

International human rights law, in the first place, recognizes the duty of states to protect, fulfill and promote human rights of their citizens and people living on their territories. International human rights system is based in the social contract between the individual citizens of the state and the state itself, as a primarily guarantor of human rights. In this respect human rights give us legal and moral entitlements to be protected from self-interest of the state and the ruling elite as well as enable us to demand from the state, that it creates conditions in which they will be able to fully enjoy our human rights.

National reasons and factors why countries are not in the position to create and maintain the conditions in which their citizens could fully exercise their human rights, are complex and multiple, they can range from corruption, climate and geography related factors, wrong policy choices, negligence of social sectors, etc.. However, in the interconnected and globalized world, factors determining the possibility of state to live up to its promises of human rights, often depends on decisions and steps taken at the international level. This could be clearly seen in the factors that leaded to crisis and particularly

in deciding the measures to respond to the crisis. The later clearly reveilles how much national policy space and crisis decision making, is subjected, shrinked and influenced by powerful institutions such as the World Bank, IMF and OECD or by the EU. The global prescriptions promoted by this powerful global actors, often undermine attempts of states to respond to the crisis in matter consistent with human rights standards as well as in a way that meets popular demands of population.

The power of international financial institutions and their detrimental effects on human rights and social structures (that are often replicating with the current crisis) can be, for example, seen in the experiences of structural adjustment lending to developing countries during the 1980s and 1990s by the World Bank and the International Monetary Fund (IMF). These institutions have coercively imposed the one-size-fits-all policy package of the "Washington Consensus" on developing countries through conditions on loans and grants, demanding from governments' rapid liberalization of their economies, privatization and deregulation of the state. These also meant lesser involvement of the state as a regulatory body and sever cuts in the social expenses and investments in sectors such as health and education. However, the implementation of conditions of structural adjustments, as several researches had pointed out, not only negatively effected economic growth, but had also worsening governments human rights practices (for example see Abouharb and Cingranelli, 2006; Cornia et al, 1987, CESCR, 2012; FRA, 2012; Stiglitz, 2009).

What is particularly worryingly is, that we can draw parallels and similarities between conditions imposed on the states during structural adjustment periods and current responses to address the economic crisis – in both are requiring from countries to reduce spending on things like health, education and development, while making debt repayment and other economic policies priority. Similar policy prescriptions have been thus reinvigorated in the austerity measures and demands of so called "troika" (composed of Central European Bank, International Monetary Fund and European Commission)

policy prescriptions for addressing the crisis that have shattered the foundations of Greece, Spain and are now fiercely penetrating into anti-crisis measures of once solid welfare economies, such as Slovenia. Similar responses, based on austerity measures that were undermining the creative sectors of societies, have also been prevailing response in previous regional and global financial crises, including the ones of 1997/98/99 of Asian and Latin American recession. In this context, is no wander that ILO Director-General Juan Somavia raised the concern that we are in danger that the emerging of fiscal constraints *and* responses to it, will create a *"risk of backsliding to the same old recessionary policies of the past*,"(United Nations Government Liassoning Services, 2010).

The crisis has indeed forced EU leaders to rethink the forms of "economic governance" they were previously subscribing to or were governed. It has also opened doors for promotion of neoliberal policies in several European countries. The adoption of European Union Stability and Growth Pact (European Commission) which argues for stronger rules and penalties to enforce fiscal discipline from each Member State and sets the limits on the amount of public borrowing and debt that Member States are allowed to take on (with the main goal to reassure the financial markets), has lead most of the EU states to adopt fiscal consolidation strategies that are focus primarily on cutting public spending, particularly in the social spheres and avoid tax increases (for more see CESCR, 2012; FRA, 2010). The concerns over the impact of austerity measures package contained in the EC regulations has been expressed also by the European Fundamental Rights Agency (FRA), which warned that regulations "may sometimes pose a risk to the protection of fundamental rights, by requiring Member States to rapidly reduce levels of borrowing, or to make severe cuts in social security expenditures (FRA, 2010, p. 4-5).« This approach, as highlighted by Center for Economic, Social and Cultural Rights (2012) is leading into dangerous "austerity traps", with creating higher unemployment, fewer revenues for government and thus new justifications for cuts in social sector when it is most needed. Worrying element is also that we are addressing economic crisis with the some policy prescriptions and measures, that have actually perpetuated and led to the

crisis in the first place - *a dominant policy paradigm of "market fundamentalism," reflected in widespread liberalization, deregulation and privatization policies – affecting not only the economy but other spheres of life, including health, education … (*Kozul-Wright in United Nations Government Liassoning Services, 2010). More importantly, as argues UNCTAD senior policy analyst, the core of this policies is *"capturing of state" that defends the rights of certain groups (financiers, corporations) at the expense of other groups.«* (Kozul-Wright in United Nations Government Liassoning Services, 2010).

In interlinked and global world reality shows us, that state, although primarily guarantor of human rights, does not always sits in the driving seat: decisions of other, equally powerful actors, such as the international economic institutions, transnational corporations and/or other States, can have large and profound impact on the realisation of socio-economic human rights than the territorial State has (Vandenhole, 2012). In this regards also »national governments appear to be more accountable to international organisations than the parliament or civil society« (Comissioner for Human Rights, 2012, p. 2), which clearly shows the need also to highlight the human rights compliance of international financial actors such as the EU, World Bank and IMF

Despite this power imbalances, national governments remains the main guaranteer of human rights, and thus responsible for promotion *(states must refrain from interfering with or curtailing the enjoyment of human rights),* fullfilment *(states must take positive action to facilitate the enjoyment of basic human rights*) and protection *(obligation to protect requires States to protect individuals and groups against human rights abuse)* of human rights in their territories (Office of the High Commissioner for Human Rights). It is the last notion of »protection« of human rights that assumes that the state is in the position to prevent third parties, including multinationals, international and financial institutions, to contribute or undermine human rights in their territories. However, as Vandenhole (2012) noted, territorial States are not always able (nor willing) to live up to their human rights obligations, also because we find ourselves more and more in the situation in which human

rights problems and issues have become global. However, problematically in that situation is “the human rights law has continued to focus primarily or exclusively on the domestic or territorial State.« (Vandenhole, 2012, p. 1).

The crisis is displaying the power of several State and non-state actors to influence human rights outcomes. This causes calls for adoption of human rights law, in a way that new duty-bearers such as foreign States, transnational corporations and particularly international organizations, including international financial institutions, can be integrated into the human rights legal regime (Vandenhole, 2012). However, placing legal obligation of respecting human rights of actors, other than the state, does not yet exist in international law. However, recent assessments of influence and power of various actors, has led to development and adoption of non-binding frameworks, guidelines and principles, seeking to define human rights obligations of actors other that states. For example, one attempt to define the obligation of human rights of financial institutions is The Tilburg Guiding Principles on World Bank, IMF and Human Rights (2002), which have been drafted by a group of experts, meeting at Tilburg University in 2001-2002. They focus on human rights obligations for international financial institutions (like the World Bank and the International Monetary Fund). The Tilburg principles recognize that The World Bank and the IMF are governed by their member States, and are thus when determine the policies of the two IFIs, also bound by their States' international obligations, including those arising from international human rights law (The Tilburg Guiding Principles on World Bank, IMF and Human Rights, 2002, par, 7). However, beside address the obligations of members States of international financial institutions; Tilburg principles are also addressing international financial institutions themselves as individual actors and direct duty-bearers. Furthermore, another attempt focusing on the obligations of states outside of their territories (so called extraterritorial obligations of the states) are The Maastricht Principles on Extraterritorial Obligations in the Area of Economic, Social and Cultural Rights (2011), which focus exclusively on the human rights obligations of foreign states and their human rights on territories of other states. Although not explicitly focusing on human rights obligations of non-state actors, the

UN independent expert on debt and human rights, has also developed important Guiding principles on foreign debt and human rights (General Assembly, 2011), that should be followed by several actors in the decision-making and execution of debt repayments and structural reform programmes, including those arising from foreign debt relief, in order »to ensure that compliance with the commitments derived from foreign debt will not undermine the obligations for the realization of fundamental economic, social and cultural rights, as provided for in the international human rights instruments.« (Office of the High Commissioner on Human Rights).

Non of the above mentioned document is binding in effect. They constitue so called human rights soft law. However, as Vandenhole (2012, p. 10) has stated *»they may have a declaratory importance to the extent that they codify existing international law«,* as well as they importantly reflect the current thinking and challenges that international community is facing.

CONCLUSION

In 2012 Commissioner for Human Rights (2012, p 2) acknowledged that crisis so far *»seemed like a wasted opportunity from the perspective of human rights work: it has not resulted in a fundamental reassessment of the conditions leading to the crisis or its effects on poverty and discrimination*. Economic crisis does provides with important opportunities to rethink prevailing economic, social and political paradigms (of market fundamentalism) and development models that are in the root causes of crisis, as well as measures designed to respond to the challenge of crisis.

Calls to change prevailing paradigm and warning against returning to "business as usual," have been made by several academics, UN agencies, as well as representatives of civil society organisations. Many of them has firmly demanded that the new international financial architecture that supports development and social justice, should be strengthened by being articulated in terms of international human rights obligations.

Global crisis requires global solutions and new regulatory frameworks, that are operating in accordance with the human rights principles and standard, and are promoting policies that don't impose do not undermine the

capacities of governments to respect, protect and fulfil their human rights obligations. In this regard, human rights - as international agreed universal political, legal and moral standards – do present a common global nominator how to place the humans at the centre of development and progress.

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PROTECTION OF THE HUMAN RIGHTS OF WORKERS FROM MOBBING – CASE OF THE REPUBLIC OF MACEDONIA

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ABSTRACT

The Mobbing is a relatively new modern notion that meets the scientific and professional literature in the Republic of Macedonia in the last 4-5 years. The mobbing itself is defined as repeated, non-physical harassment at work in a certain period, which aims to humble and disdain workers.

Forms of the mobbing that has been occurring in the world and European practice often relate to psychophysical harassment of the workers, various forms of sexual harassment, discrimination, national and religious grounds, and discrimination because of belonging to different economic backgrounds, party and social group.

In terms of legislation in the Republic of Macedonia, amendments to the Labor Law (Official Gazette no. 158 of 09.12.2010 - consolidated text) were not sufficient to protect workers in the private and public sectors of psychophysical harassment at the workplace.

Officially reported data for an attack on men and women and sexual assault against women in the Republic of Macedonia, compared with average data with those of Western Europe are relatively low. This indicates that awareness of victims is relatively low and the number of reported cases is small.

Key words: Mobbing, Human Rights, Workers, Labor Law

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INTRODUCTION

Harassment at work can be physical, psychological or sexual nature, which really constitute a violation of the dignity of the worker / workers and

causing fear or hostile, degrading or offensive environment. Harassment can be a single or multiple actions among colleagues or superiors individuals, between superiors and subordinates or by third parties with whom the employee / worker encounters while performing their duties.

Mobbing as a form of harassment at work is not a new phenomenon and exists when the human race raised as the desire of the human being to govern with others, with a sense of jealousy, envy, hatred. Thorough study of mobbing began 10 years ago. In fact, in the last decade of the 20th century the attitude towards employee and labor rights have been changed. The rights of the employee became larger. Therefore, there were many studies about this phenomenon, in order to better determine what its characteristics, to improve human relations and to prevent of mobbing. On the other hand, high market competition, globalization, organizational change, privatization, merger, restructuring, digitization, economic crisis, job insecurity and expectation of worker flexibility have led to an increase in harassment cases. Moral harassment becomes more obvious than ever. Employers are forced to analyze every problem that has negative effects on labor productivity and the production costs.

International research shows that one of the important factors in increasing the cost is mobbing. So, Leymann estimated the costs that the company has for mobbing and found a fantastic annual loss of 30,000 to 100,000 dollars per worker exposed to mobbing . In Germany however, a worker who is exposed to mobbing makes enterprise between 25,000 and 70,000 per year for loss that occurs due to frequent sick leave, reduced work performance and errors in operation. Statistics show that 50 % of workers exposed to mobbing use sick leave six weeks per year, 31 % of 1.5-3 months , and 11 % were on sick leave for more than 3 months per year Ministry of Justice and Bureau of Justice U.S. gathered data showing that over one million people a year are victims of violent crime in the workplace .

Mobbing was first described by psychologist Heinz Leymann a German psychologist, who lived in Sweden, in 1984. Leymann determined its characteristics, health effects, and founded a hospital to help victims of mobbing.

1. **DEFINTION OF MOBBING IN LEGAL FRAMEWORK IN THE EU COUNTRIES**

At the European level, there is no general agreement on the definition of mobbing and their implementation in the national legislation of the EU member states. Report on harassment at the workplace (2001/2339(INI) from the European Parliament, highlights the fact that there is no internationally accepted definition of mobbing / bullying at work, but there are many definitions, each emphasizing different features of problem. Thus, the European Parliament highlights some common features: "The lack of humanity in the workplace, personal experiences of bullying in the workplace, a sense of exclusion from society, irreconcilable demands of work and lack of funds to meet these requirements".

When in 1995, was decided to increase psychological violence in the workplace, the need arose and institutions to deal with this problem for the whole European Union. Then the European Commission proposed the following definition: "Mobbing includes all incidents where persons are abused, threatened or assaulted in circumstances and events related to their work, including explicit or implicit challenge to their safety, well-being and health."

In this period appeared the need for distinction and indication of the fact that violence in the workplace is not only physical violence but also psychological violence, which had been in close attendance and the consequences are often the worst and difficult to identify.

In 2001, the working groups of the European Union failed to agree on the adoption of the EU statute against mobbing despite opposition from business associations in Spain, Britain and Italy. That same year, the Advisory Committee on Safety, Hygiene and Health Protection at Work of the European Commission adopted a document named "Opinion on violence in the workplace", which was pointed out that:

> "Violence can be defined as a form of misbehavior or action in the relationship between two or more persons, which is characterized by aggressiveness, sometimes repeated and which have harmful effects

> on safety, health and welfare of employees at their place of work. Aggressiveness can be in the form of body language indicating intimidation or contempt or to be actual physical or verbal violence. " According to this document , violence can manifest itself in many ways , ranging from physical aggression to verbal insults , bullying , harassment and sexual harassment , discrimination on grounds of religion , race , disability , sex or , in any case , making a difference and can be applied by any party to the outside or the inside work environment. Important to keep in mind that physical violence can have consequences not only physically but also mentally, this in turn can be immediate or delayed. "

This document confirms the difference between physical and psychological violence, and underscores growing concern about violent behavior, mobbing and sexual harassment, which are more prevalent in Europe. What is emphasized is the fact that these types of behaviors are difficult to identify and even harder to stop. The same document also provides the following definition, which is also well, worth specific mention:

> "Mobbing is a form of negative behavior among colleagues or between hierarchical superiors and subordinates , and the mobbing victim was repeatedly humiliated and attacked directly or indirectly by one or more persons, causing alienation effect".

What should also be noted that, often only a thin line between discrimination, sexual harassment and mobbing exists? Thus, it may be useful to mention the Directive 2000/78/EC of the Council of the European Union, concerning the establishment of a general framework for equal treatment in employment and occupation and which defines and deferred the above terms.

Many European countries have enacted laws specifically targeted to address the problem in those laws formulated definition of mobbing, putting emphasis on specific forms of harassment and adopting the approach of dealing with it on a national level.

Law for Social Modernization of France (2002), Article L 122-49, Paragraph 1 of Code du Travail (Labour Code), accepted in full, definition of mobbing given by the French psychologist Marie-France Hirigoyen (1998), which stated: "Mobbing is psychological harassment which is repeated over actions,

whose purpose or effect is the degradation of workers' working conditions, which can cause damage infliction and attack on human rights and dignity, to harm the physical or mental integrity or compromise professional future victim".

The famous British ACAS Code (Law and Unfair Disciplinary Processes), the defining mobbing as "offensive, intimidating or malicious conduct of their superiors, and the abuse of power that has, by that demeans, defames or violates victim.

Ireland, mobbing defines as: "Repeated, inappropriate behavior directly or indirectly, that of verbal, physical or otherwise, is implemented by one or more persons against another or others, at work or during the employment. Such behavior could be seen as undermining the right to dignity of the worker that he should have the job. "

Belgium however, mobbing defines as follows: "Repeated and abusive behavior, whether conducted inside or outside the company or institution. Manifested by verbal words, threats, actions, gestures or one-sided texts whose purpose or effect of violating personality, dignity or physical or mental integrity of the employee or any other person to whom this section applies, and is related to the implementation of its work and employment." (Loi du 11 juin 2002 - relating to protection from violence, moral harassment and sexual harassment in the workplace).

LEGAL PROTECTION OF MOBBING IN THE REPUBLIC OF MACEDONIA

For people living in developing countries as our, it is difficult to make recommendations for the prevention of "mobbing" that apply in other developed countries. In times of high unemployment, lack of transparency in recruitment, but in the work itself, undefined positions, overtime, inadequate staff, political hires, segregation in the labor market, different culture and different values and standards of living, pay insufficient life, unorganized workers, undefined psychological pressure and unawareness of psychological pressure at work, very little can be recommended for the

prevention of "mobbing". Also, in the country, but the existing labor code that is associated with mobbing, there are a few other laws that in some way connected with this phenomenon.

Summary of some of the regulations of these laws can supplement meager picture of legal protection of mobbing.

Until the end of 2009, the positions of Macedonian experts that there were specific legal norms in force that prohibit and sanction procedures that are implemented by mobbing, but all fundamental rights in terms of human rights and freedoms and the right against discrimination are regulated in Constitution of the Republic of Macedonia, Labour Law, Criminal Law, Law on Protection and Health at Work, the Law on Prevention and Protection from Discrimination, and Collective Agreements.

The right to work is one of the fundamental human rights prescribed by the Constitution of the Republic of Macedonia and numerous international documents for its ratification represent part of domestic law. Constitution as the highest legal act, in the section entitled Civil and Political Rights, Article 9 provides that "citizens of Macedonia are equal in their freedoms and rights, regardless of sex, race, color, national or social origin, political and religious beliefs, property and social status". Article 32 of the Constitution specifically guarantees the right to work. According to this article "Everyone has the right to work, to free choice of employment, protection at work and freedom, as well as material assistance during temporary unemployment. Furthermore, under equal conditions, is open every workplace and every employee has the right to appropriate remuneration. "This article points out that "the exercise of the rights of employees and their positions are regulated by law and collective agreements".

According to the Constitution of the Republic of Macedonia (Official Gazette no.52/1991), and according to the Labour Law (Official Gazette no.52 of 23.04.2012), collective agreements can be signed at the national level in the private and public sector, in order to have additional regulation of the rights arising from the work.

Collective agreements, as sources of law, regulating the rights and duties and responsibilities of workers and employers from the already-based employment are a benefit of modern law. According to Recommendation No.

91 adopted by the General Conference of the International Labour Organization (ILO) in 1951 "a collective agreement is any written agreement on conditions of work and employment, signed by a group of employers, on the other side of one or more representative trade union organizations of workers, or if no such, then representatives of the workers who are selected and approved by a group of workers, and in accordance with national law". Collective bargaining, defined as a procedure that aims to conclude collective agreements and contracts resulting from struggle of the working class and trade unions. The level of the Republic of Macedonia to conclude a general collective agreement for the private sectors of the economy and the general collective agreement for the public sector. The provisions of the general collective agreement for the economy and general provisions of the collective agreement for the public sector refer only to protection from discrimination, means no norms with which the parties will confirm their mutual interests in the field of protection from harassment (mobbing) at work. Article 4 of the general collective agreement for the economy of the Republic of Macedonia states: "In case of discrimination, the employee is entitled to claim damages in the amount of 5 net pay. Basis for calculation of compensation is the average net wage in the country, paid the month before determining the existence of discrimination". Article 6 of the general collective agreement for the public sector, reads: "In case of discrimination under labor law, job applicant or employee has the right to seek redress".

In general collective agreements as mentioned above, there are no provisions for mobbing, but the Federation of Trade Unions of Macedonia signed a special collective agreement which further regulate rights arising from the work, and in the future, their contents can be in the area of protection from harassment. That is their idea that obligatory part of collective agreements should have norms for protection from harassment in the workplace (and thus will include mobbing).

Law on Protection and Health at Work (Official Gazette, No. 92 / 07) standardize measures for safety and health at work, the employer's obligations and the rights and obligations of employees in the area of safety and health at work, as well as preventive measures against occupational risks, the elimination of risk factors for accident information, consultation, training

of workers and their representatives and their participation in planning and taking measures for safety and health at work. Applicable law in Article 56, stipulates punishment for employers if health care is provided by Article 5 of the Act. The penalty amount is determined from 1000-8000 euros in denars for the legal entity (company - employer), and fine (mandatory penalty spot) from 50 euros in denars shall be imposed employee fails to comply with the security measures safety and health at work and use the prescribed personal protective equipment.

From the above mentioned, it can be noted that the Law on Safety and Health at Work, mobbing is not even mentioned. Except in two articles in which very generally provides workers may at his employer to report any defects to their health and safety and to seek intervention of the competent Labour Inspectorate, nothing is specified and accurately determined. Because there is a lack of specific law against harassment, and thus it becomes a bigger problem, generally directing all the problems of the government program for health care and the workplace.

Law on Prevention of Discrimination and Protection (Official Gazette No.50 of 13.04.2010), is a general law that defines all grounds of discrimination, and in accordance with Article 3 of the same, as the basis of direct and indirect discrimination are: calling and encouraging discrimination and discriminatory treatment on the basis of sex, race, color, gender, belonging to a marginalized group, ethnicity, language, nationality, social origin, religion or belief, other beliefs, education, political affiliation, personal or social status, mental or physical disability, age, family or marital status, economic status, health status or any other basis provided by law or ratified international treaty. An important part of analysis of prevention and protection against discrimination on any of the foregoing bases is the determination of the application of the provisions of the Prevention and Protection against Discrimination. So, this law protects persons who are threatened discrimination in many areas, including in the field of work and labor relations. The law recognizes the concepts and harassment and degrading treatment, sexual harassment and discrimination against persons with physical and mental disabilities, but not mobbing as one of the types of harassment in the workplace.

The law is fully harmonized with the EU Council Directive 2000/78, which refers to the general framework for equal treatment in employment and occupation.

Although mobbing according to their structure is an attack on the reputation of the human being and the elements of defamation and violation of basic human rights, the Criminal Code of the Republic of Macedonia (Official Gazette No. 19 of 30.03.2004 - Consolidation), specifically chapter crimes against labor, does not provide an explicit criminal offense of harassment - mobbing at work. Specifically, under Article 166 of the Law, for violations of labor rights are considered - "he who knowingly fails to comply with the law, other regulation or collective agreement, the establishment or termination of employment, the salary and allowances of salary, work time, vacation or absence, the protection of women, youth and the disabled or ban overtime or night work and it hurt, right away or restrict the employee belongs. But there are parts of this Code, which defines the following criminal offenses, which relate to other types of harassment:

Article 137 paragraph 1 (a violation of the equality of citizens) - the sentence refers to the one based on the difference of the floor, race, color, national or social origin, political and religious beliefs, property and social status, language or other personal characteristics or circumstances, deprive or restrict the rights of man and citizen, established by the Constitution, law or ratified international agreement or on the basis of these differences gives citizens in contravention of the Constitution, law or ratified international treaty. Paragraph 2 and 3 of the same article refers to the appropriate official or legal person who has committed the offense defined in paragraph 1 of the same article;

Article 143 (abuse at the office) - a standardized punishment which he is performing his duty harass another, intimidates, insults or generally treats in a way that humiliates human dignity and human personality;

Article 189 (sexual intercourse by abuse of position) - is that it punishes the abuse of his position led to intercourse or other sexual act against a person who it is in terms of subordination or dependence or with

the intention of harassing, intimidating or treating him in a way that humiliates human dignity and personality, imprisonment of up to one year ;

Article 353 , Article 353 -a , 353 -b, article , Article 353 - c (misconduct) - punishable official, who violates the regulations ;

Labor law (as lex fundamentalis labor rights), was first adopted in 2005 (Official Gazette No. 62 / 05). In its decision, the majority was in line with the Conventions of the International Labour Organization, as well as primary and secondary EU legislation in the field of labour. Labour, has undergone several amendments. The main objective of this law is to respect the right of workers to labor in freedom, dignity and the protection of the interests of workers in the employment relationship, or rather, emphasizes preventive measures (technical, medical, ergonomic, social etc.) That eliminates the risk of injury to the health of employees.

By 2009, the amendments of the law recognized a few types of harassment of employees in the workplace. So, Article 6, defined discrimination as one of the types of harassment. The law also provided for women and men to be provided with equal opportunities and equal treatment in employment, including promotion, equal pay for equal work and other rights. Article 7 of the Law, were further developed and defined direct and indirect discrimination against applicants for employment and employees. What should be noted that Article 10 of the Law, in which case the discrimination, allowing compensation (i.e. a job applicant or employee has the right to seek compensation for damages under contract law).

The Labour Law, according to international documents, aimed at banning discrimination (integrated anti-discrimination right of the European Union) and the protection of violation of employment was the decision under Article 9, under which prohibits harassment and sexual harassment. That law defines harassment as any act of unwanted behavior caused by any of the cases referred to in Article 6, which has the purpose or violate the dignity of a job applicant or an employee, and which cause fear or creates a hostile, humiliating or offensive behavior. Obligations under international treaties and implementation of the directives of the European Union (Directive 89/391/EEC), was related to the inclusion of provisions in the law that

prohibited psychological harassment in the workplace or harassment as a form of discrimination. Therefore, on 14 September 2009, were adopted Amendments of the Labour Law.

ANALYSIS OF MOBBING IN THE EASTERN MACEDONIA

Research the legal aspects of mobbing in the country, was conducted from early April to late June 2012. The survey consisted of two parts. The first survey consisted of collecting data and conducting interviews with relevant officials of the Federation of Trade Unions of Macedonia, the labor inspectors and presidents of courts in the region of Stip. The second survey consisted in applying the methodology of standardized questionnaire, or survey on a sample of 100 adults, of both sexes, of all ages and educational levels in the region of Eastern Macedonia.

The main objective of this research was through empirical research and data processing and analysis performed to examine the general opinion which shall determine the general knowledge of the term mobbing, forms of mobbing, occupation of workers and the effects of mobbing and legal protection victims exposed to mobbing in the country. Also, their conclusions will be a real basis for the policy and procedures of the competent authorities, the development of effective anti-mobbing and passing a law on harassment.

The first specific hypothesis

If the new law is enacted for mobbing, the details for measures that employers should introduce to prevent mobbing will be enhanced, protection of employees and procedure of judicial protection will be clearer, education for employees to be able to recognize mobbing will be introduced, the role of trade union representative and health and safety will be clear and precise, the penalties for perpetrators of harassment will be well-known.

Procedures and techniques of research

The first survey consisted in a free and informal interviews conducted by telephone, in which superiors (Law on Free Access to Public Information), gave adequate answers and explanations of their competence and previous

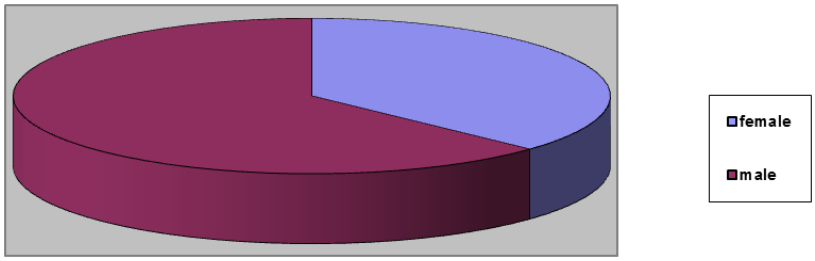
experience with mobbing, and were presented with data that dispose of (not) reported cases of harassment that reached them.

The second survey was applied field survey, offered with 16 questions and 48 answers that respondents provide accurate and true to their opinion. Each respondent was questioned directly, face to face, and answered the questions independently without the presence of third parties, which was of particular importance in achieving objectivity in reply.

Analysis of the Stip region – results from questionnaire

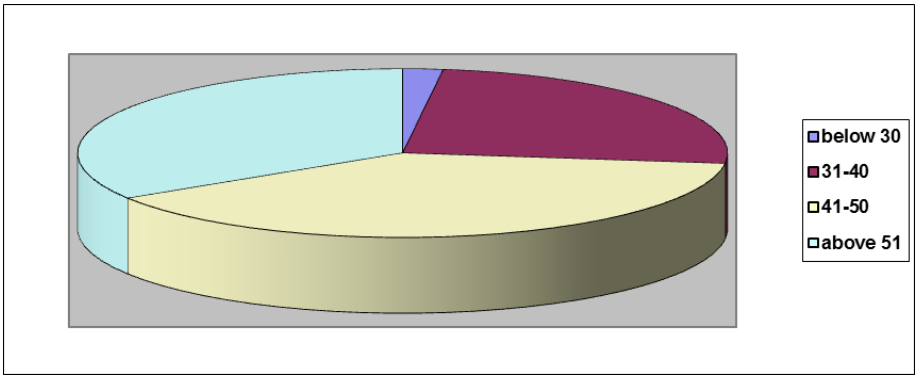
In charts 1, 2, 3, 4, and 5 are presented demographical data for the total sample survey in Stip.

Chart 1. Sex of respondents



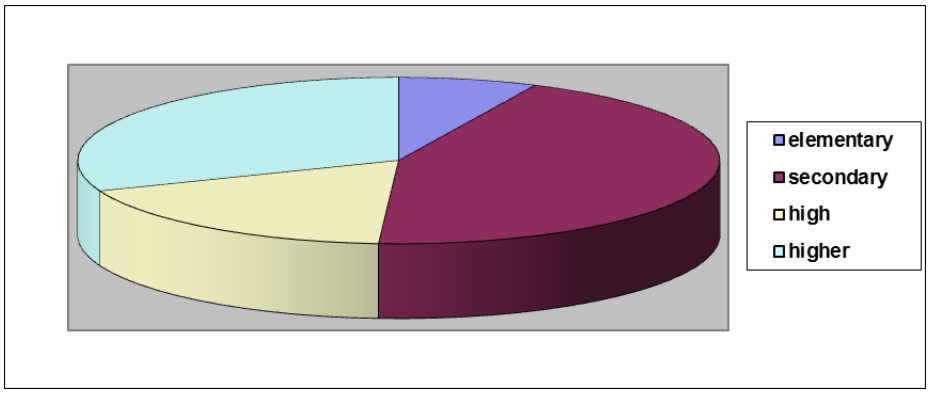
The structure of respondents by sex in Stip region is 37% women, 63% men.

Chart 2. Age of respondents



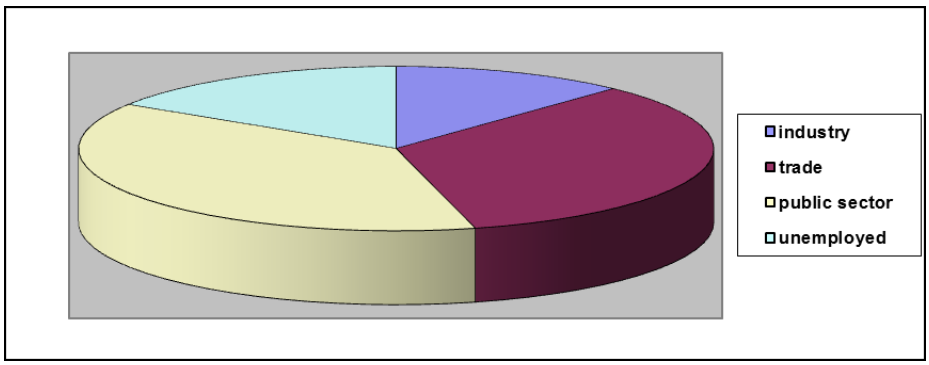
Out of 100 respondents, 30 years of age were surveyed two persons (males) of 31-40 year olds surveyed a total of 25 persons (10 women and 15 men) , aged from 41-50 year old included 39 persons (21 women and 18 men) and over 51 years of age were interviewed 34 persons (6 women and 28 men).

Chart 3. Education of respondents



According to the educational structure of the total 100 respondents, 7 are with primary education (3 women and 4 men), 44 are with secondary education (27 women and 17 men), 18 are with high education (6 women and 12 men) and 31 are with higher education (1 woman and 30 men).

Chart 4. Sector of employment of respondents

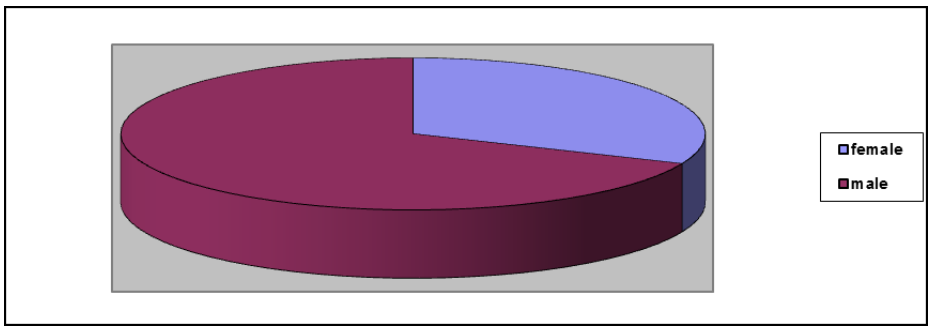


In the sector of employment, 12 out of 100 are working in the industry (7 women and 5 men), 34 are working in the trade (18 women and 16 men), 38 are working in the public sector (6 women and 32 men) and 16 of the total number are unemployed (6 women and 10 men).

Of the 100 respondents, 98 were Macedonians and only two have declared another nationality. Out of 100, 11 females and 24 males of respondents who

noted that were victims of mobbing.

Chart 5. Victims of mobbing



Based on the obtained data it can be seen that the total number of women surveyed (see chart 5), 11 confirmed that they are victims of harassment or have ever been a victim of mobbing. That is 29.7 % of women, or 11 % of the total number of respondents. The chance of occurrence of female victims of mobbing is about 0.4 times smaller than the likelihood of a male victim of mobbing. Of the 63 men, 24 said they were victims of mobbing, or percentage that is 38 % of the men surveyed, or 24 % of respondents. The presented data can highlight high 38 % of men are victims of mobbing, almost every other region in Stip is mobbed. The 37 women interviewed, 22 confirmed that they know other victims of mobbing, and 63 men, only 38 said they know other victims of mobbing, an enviable number of persons victims of mobbing.

Table 1. General knowledge about the legal sanctions of mobbing in Macedonia

General knowledge about the legal sanctions of mobbing in Macedonia	Women	Men
No legal sanctions	9 (24,3%)	21 (33,3%)
Legally sanctioned by the Labour Law	9 (24,3%)	17 (26,9%)
Legally sanctioned by a special (separate) law for preventing of mobbing	19 (51,3%)	25 (39,6%)

According to the data, 30 participants (9 women and 21 men), concluded that in the Republic of Macedonia there are "no legal sanctions for mobbing" or 30 % of respondents do not know that in our country mobbing is regulated by the Labour Law. 26 of the participants (9 women and 17 men) gave the correct answer that mobbing legally is sanctioned with labor law and that means that approximately every 4th respondent is familiar with the legal regulation for mobbing. Majority of 44 participants (19 women and 25 men) reported that in Macedonia there is a special, separate law for preventing of no legal framework for mobbing, which is very high.

Table 2. Changes to legislation

Opinion about legislation	Women	Men
It is necessary to make an Amendments to the Labour Law	6 (16,2%)	23 (62,1%)
It is necessary to adopt new separate Law for protection of mobbing	23 (62,1%)	22 (59,4%)
No changes are necessary	8 (21,6%)	18 (48,6%)

The obtained data shown that more than 62.1 % of the female respondents are willing to adopt a new special law more rigorously sanctioning mobbing, while men are almost equal views on changes to the legislation, a small rebound in group men (62.1 %) who reported that more rigorously mobbing sanction will only be achieved by changing to a member of the Labour Law.

Table 3. The most common reasons for mobbing

The most common reasons	Women	Men
Personal characteristics	2 (18,1%)	7 (29,1%)
National origin	0 (0%)	0 (0%)
Socio - cultural origin	0 (0%)	0 (0%)
The health condition / disa-	3 (27,2%)	3 (12,5%)
Social orientation	2 (18,1%)	6 (25%)
Political orientation	6 (54,5%)	8 (33,3%)

The question, "What is the most common reason to be mobbed and harassed in the workplace longer period of time," the respondents were able to select 6 replies, with a choice of multiple responses. According to the data of Table 3, a total of 11 women mobbed, mostly reported for the last answer, that political affiliation was the most common reason for mobbing. In percentages, this means that over 50 % of women are mobbed in Stip, because of their political affiliation, or otherwise, it means that every second woman is mobbing due to political reason. The same situation is with men. The choices are mostly reported for the last option, that political orientation is the most common cause of mobbing. In percentages, it comes to around 33 %. Also, according to the data obtained, it can be concluded that neither women nor men, cited ethnicity and socio - cultural heritage as the most common reason for mobbing.

Table 4. Forms of mobbing that experienced mobbing victims

Forms of mobbing that ex-	Women	Men
Verbal communication (to	4 (36,3%)	5 (20,8%)
Social isolation (avoidance	1 (9%)	3 (12,5%)
Assault on personal reputation (gossip, doubt, ridicule)	1 (9%)	4 (16,6%)
Attack on the quality of work (control, criticism, ups)	5 (45,4%)	7 (29,1%)
Disorder (threats, attacks,	6 (54,5%)	6 (25%)

The question "What is the form of mobbing that victim personally experienced?" the respondents were able to select 5 answers also with a choice of multiple responses. Over 50 % of the women given the option offered under number 5 (see Table 4), while most of the men, 29.1 % reported that the attack on the quality of work (control, criticism, ups , is the most common form of mobbing that they experienced.

Table 5. Notice of mobbing

Notice of mobbing	Women	Men
Family and friends	9 (81,8%)	9 (37,5%)
Syndicate	4 (36,3%)	7 (29,1%)
Court or Ombudsman	0 (0%)	1 (4,1%)
Other people assumed	4 (36,3%)	8 (33,3%)
Warning of the challenger	1 (9%)	8 (33,3%)
Nobody is informed	0 (0%)	0 (0%)

Quite interesting is the question from whom most of the people have faith when they become victims of mobbing. On this question, the respondents, victims of mobbing, are offered 6 solutions with a choice of multiple

responses. For women of Stip, it's family and friends, 81.8 % For the men of this region however, the situation is almost the same as in women. At first the family and friends who would be entrusted to mobbing, but high 66.6 % of the respondents would have the courage to ask people to superiors and to warn the challenger to the mobbing. At least, no women and one man have trust in court and the Ombudsman. Interesting is the last data (see Table 5), which indicates that women and men will not hide from anyone if become victims of mobbing.

Table 6. Consequences of mobbing

Consequences of mobbing	Women	Men
Constant stress at work	2 (18,1%)	9 (37,5%)
Leaving the work	0 (0%)	1 (4,1%)
More often taking sick leave	8 (72,7%)	2 (8,3%)
Loss of interest and motiva-	9 (81,8%)	11 (45,8%)
Reduction of concentration	5 (45,4%)	14 (58,3%)

The results presented in Table 6, shown that only 57.1 % of all respondents, victims of mobbing, reported constant mobbing contributed to lose interest and motivation to work. This high percentage comes from the high percentage of women (81.8%) , who reported loss of interest and motivation to work, the most common consequences they experience during mobbing. On the other hand, more than half of the men who are victims of mobbing (58.3 %), concluded that the decrease in concentration and work efficiency are the most common consequences of mobbing among them. It is interesting that, although the constant mobbing contributes some changes in the workplace, however, neither men nor women not therefore leave the work (see Table 6) .

3.4. Analysis of the Stip region – results from interviews

The research results from the interviews conducted in the Eastern Macedonia, come to the conclusion that, in the office of the Regional trade union in Stip,

the Federation of trade unions of Macedonia does not have a representative. The implementation of the activities and performance, according to the Statute and Program of the Federation of trade unions, performs representative office of trade union in Probishtip.

In fact, since September 2009, when Amendments of the Labour Law were adopted, no employee addressed the office of the Regional trade union in Stip for any legal aid or the type of protection from harassment in the workplace. This is a devastating fact, if we take the figures that show that in this region, mobbing phenomenon exists (even 35 % of the respondents said they are or have ever been a victim of mobbing), and any employee not approached for help. This can be stated in two ways: either worker because no union office, not asking for helps, or do not know enough about this phenomenon, so I know that union representatives can provide legal assistance if they mobbed the workplace.

In the office of Labor inspectors in Stip, only 2 women, working in education sector, reported mobbing. According to testimony presented to the inspector, labor inspection is not obliged to act in case of mobbing in the workplace and they forwarded reports to the Basic Court in Stip. If you consider the above, where were presented responsibilities of labor inspection and where were expressly stated powers of inspectors, it could reasonably conclude that these data are only dire, speaking on two assumptions: either the investigators do not know their jurisdiction or not sufficiently informed as to the mobbing phenomenon that is regulated in the Labour Law and its occurrence in the workplace, are obliged to check it for any application to proceed.

According to data obtained from interview conducted with the President of the Basic Court in Stip in May 2012, for the period September 2009 - May 2012, was not filed any complaint for violation of Article 9 of the Labor Law. This is a devastating fact, given the high number of detected victims of mobbing, obtained by research.

CONCLUSION

What should initially be stated, and as a result of the research, is the urgent need to work on improvement of the legal framework and collective contracts in the country, in order to better protect workers' rights from mobbing.

Previous studies have indicated the existence of mobbing. The total percentage of victims of mobbing in Eastern Macedonia region is 35 %. On the other hand, data from institutions is striking. For a period of almost three years, only two complaints to the competent court was made , made only two convictions , raised only two returns to labor inspection (both not realized) and none addressed the union for legal help.

The amendments to the Law on amendments to the labor law (with the addition of only one member of mobbing) did not achieve the desired goal. Initial reactions are that, in the country, workers either do not know or do not dare to ask for legal help. But if you need to stay on this statement? Surely not.

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LEGALITY OF THE USE OF **DRONES AND TARGETED KILLINGS PRACTICE DEVELOPMENT IN CONTEXT OF PROTECTION OF THE RIGHT TO LIFE**

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ABSTRACT

Although rarely who believed at the very first moment, world most wanted terrorist Osama Bin Laden was shot deadly in the so called Geronimo operation by the USA special forces. Many legal considerations came out of that situation: although half of the globe was celebrating, another half was shocked by the way the operation was conducted and remarked it as extrajudicial killing. Additionally, that occasion simply woke up the ghosts of Yemen 2001 and the drone attacks that killed 6 people at that time, as much more occasional strikes justified by the "Global war on terror". But, most of European governments cannot agree with such policy of their transatlantic partners. The applicable legal regime for the "Global war on terror" is still debatable, so while USA policy is the usage of the international law of armed conflict, Europeans would preferably use the law enforcement model,that goes with international human rights law instead of law of armed conflict. Choosing the right model in this debate is precondition for debating the use of drones and targeted killings practice.

International legal norms haven't been set yet, so this remains as a grey zone in international law that seeks additional attention and multidimensional approach. Does use of drones directly affects and undermines the right of life, or it is just a necessary tool that satisfies the needs of military targeting doctrine?

Key words: right to life, human rights law, drones, targeted killings

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INTRODUCTION

After the liquidation of Osama Bin Laden, the ghosts of Yemeni attacks in 2001 woke up and toured the world. In the recent years, world newspapers were claiming more and more drone attacks, and the most prominent human rights activist reacted. Still, targetted killing practice remins legaly unclear and without specific legal regime dedicated on the applicability and the legality of such practice. However, the fact of lacking certain legal framework did not prevent states from such practice. The aim of this paper is to examine the legality of targetted killing practice in the context of international law. Authors believe that this is essential not for contribution to the global legal science only, but is also important for the Balkan region, due to the fact that many govements joined their US allies in the so called Global war on terror. None of them has claimed specfic official statemnt on this issue.The aim of this paper is to provide conclusions that can lead to prospective development of discusiion and drowing on startegic framework for this issue, due to the fact that any practice that thretens the right to life will be essentialy dangerous for the whole system of human rights guarantees.

1. BACKGROUND OF THE PROBLEM

The phenomenon of terrorism is probably one of the most changeable, but also one of the most persistent companions of the society over the last few centuries. During the last 50 years, rapid changes occurred in the means of conducting and final objectives to be reached. Certainly, the most dramatic change were the 9/11 attacks on the Twin Towers in New York in 2001. More interesting is that after those attacks, NATO activated article 5 of the Washington Treaty. This was the first time in the history of the Alliance that article 5 was activated in a way that enables acting against none state actor, meaning that the terrorist attacks have been considered as armed attack- in the way UN Charter considers it. Still, this does not mean that the International Law of Armed Conflict will be applicable in any case of dealing with terrorist threats. There are several conventions that define specific manifestations and regulate the manner in which states have to deal with

terrorism, but not a single, comprehensive document. Checking state practice and the way states deal with terrorist activity has shown that the approach and strategy also differs a lot, depending on the context in which the activity took place or it was planned to be carried out. From that aspect, state's approach to terrorism can be considered as dealing with:

1. Criminal act,
2. Internal armed conflict,
3. International armed conflict (equivalent of war).

The way terrorist activity has been approached, defines the type of counter-terrorist operation and the law that will be applicable.

This paper will focus on the challenge of examining legality of targeted killings operations in the case of dealing with modern threats of of asymmetric character. Those activities are mostly conducted with drone strikes. This is new and under-researched topic in the field of international law, which sparked global attention after liquidation of Osama bin Laden. Considering increased usage of drones , we can say that for targeted killings operations for the applicability of international human rights law is not the only challenge. It affects also many ethical and strategic considerations, and opens many dilemmas for the international law in general, such as sovereignty.

However, this paper strives to find a minimum of answers that affect respect of right of life in any constellation of facts in the ground.

2. WHAT IS TARGETED KILLING?

International public law does not recognize the targeted killing as a legal definition. "Targeted killing" is not a term distinctly defined under international law, but gained currency in 2000 after Israel made public a policy of targeting alleged terrorists in the Palestinian territories. Only definition that can be accepted for academic purposes is the one of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston,

which says: "A targeted killing is the intentional, premeditated and deliberate use of lethal force, by States or their agents acting under color of law, or by an organized armed group in armed conflict, against a specific individual who is not in the physical custody of the perpetrator."

Although international law lacks definition, states practice does not lack examples. This especially goes for the USA and Israel, predominantly with the use of drones. Main legal justification that has been given is the so called "Global war on terror", especially for the USA. Just for the purpose of clarification, Obama administration asserts the United States remains in a state of armed conflict with al-Qaeda and associated forces. As the State Department legal adviser says: "The U.S. is in armed conflict with al-Qaida as well as the Taliban and associated forces in response to the horrific acts of 9/11, and may use force consistent with its right to self-defense under international law." This approach is considered as at least debatable by the European allies, and a lot of worldwide recognized academics. Still, USA allies stands for the law of armed conflict and considers suspected terrorist as legitimate military target: Former NSA and CIA director Gen. Michael Hayden addressed allegations that the NSA was involved in assassinations "Assassinations are forbidden by executive order. We do targeted killings against enemy combatants because we believe we're in a state of war."

Targeted killing practice is rapidly increased during recent period, although has been referred as last resort by the officials. Highly appreciated "New York Times" has marked that "Since Mr. Obama took office, the C.I.A. and military have killed about 3,000 people in counterterrorist strikes in Pakistan, Yemen and Somalia, mostly using drones." In the same article, it has been argued that according to counter-terrorist experts , targeted killings practice as counterterrorist practice has been shaped by several factors: "the availability of a weapon that does not risk American casualties; the resistance of the authorities in Pakistan and Yemen to even brief incursions by American troops; and the decreasing urgency of interrogation at a time when the terrorist threat has diminished and the United States has deep intelligence on its enemies."

3. LEGAL AND ETHICAL CONSIDERATIONS FOR THE USE OF DRONES

Drones as unmanned vehicles can be used for surveillance and monitoring purposes, or be weaponed and used as combat air vehicle. Their usage is not permitted per se. Their usage is considered legitimate or not only in given context and defined circumstances. Used as weapons in context where the International Law of Armed Conflict, the legality of their usage has to be considered in association with the four principles of International Humanitarian Law: proportionality, military necessity, humanity and distinction.

States that have shown such practice usually consider drones as a tool with: the most effect, the minimum risk. Additionally, they have been considered as tools with utmost precise. However, this has not shown as such in any case: 19 civilians were killed in only two strikes, and this cannot be justified by military necessity.
Another legal consideration is: who operates with the drones? Recent drone attacks have been conducted under CIA covert operations, and CIA agents cannot be considered as combatants. Ethical considerations are even more worrying than legal: infiltring play station mentality in killings.

Wherever human rights law regime has exclusive application, the usage of unmanned armed vehicles cannot be considered under any circumstances.
Such classification might look quite simple for application, until it comes to terrorism. When it comes to defining the legal regime applicable to dealing with terrorism, neither academics neither governments can agree about single regime.

Main problem is that terrorism comes in many shapes and has different effects. Single definition is lacking. Different forms of terrorism are covered by several international conventions. Consensus is lacking also in the states response. However, the main schism of international law experts comes when

they speak about so called "Global War on Terror"- American response to 9/11 attacks. Although there was huge consensus that considering the effects of the attacks, the USA has a right of self defense in accordance with UN Charter, and UN Security Council confirmed that immediately. Even article 5 of the Washington Treaty was activated, for a first time in the history, for a threat that comes from non state actor. Still, not any war can last forever and the globe cannot be considered as a battlefield. Two main concerns that have arisen from such factual considerations are the use of deadly force (drone strikes as most brutal example) and the status of captured and detained persons, referred by the US government as "illegal combatants".

4. USE OF DEADLY FORCE IN COUNTERTERRORIST OPERATIONS

As mentioned above, state practices recognizes three different approaches in dealing with terrorism. Dealing with terrorism as asymmetric threat with effects war equivalent, led to the latest approach developed by the US Government: the Global War on Terror. However, with no intention to discuss state's policy on dealing with terrorism, the author would simply note that the approach on dealing with terrorism is important for regulation of the use of deadly force and the legal regime that is applicable. Applicability of the legal regime is defined by the facts on the ground and certain operational circumstances. This means that the use of deadly force will be governed by human rights law or the law of armed conflict, or by parallel regimes in certain circumstances (usually occupation or peace operations).

The first challenge for the European states engaged in peace operations that included also dealing with terrorist attacks in Afghanistan and Iraq was the extraterritorial applicability of the European Convention of Human Rights and Fundamental Freedoms. The extraterritorial applicability of human rights was also confirmed by Human Rights Committee. Additional challenge when it comes to use of drones are the issues of sovereignty. Besides that, targeting doctrine can hardly be justified if the globe is considered as battlefield. It simply goes beyond the human rights standards that were so hard to be achieved even nowadays, such as due process of law on a personal level, and

the idea of independent, sovereign states on national level, as well as the idea of collective security and the UN as a global peace keeper.

Use of deadly force for dealing with non state actors and individuals inspired by global ideas, such was Breivik in Norway, or the global jihad of the Taliban, is a grey zone for the international law. Many experts have agreed that was is needed are rules that would deal with the use of force against non state actors, as strong and clear as those for dealing with state actors.

What can be given as an input while clear framework is lacking, is combating terrorism in context that would put counterterrorist operations under the blanket of the legal regime that is applicable in general: human rights law or law of armed conflict. Speaking about applicability of human rights law, two international documents are the most important: The International Covenant on Civil and Political Rights (ICCPR), and the European Convention of Human Rights and Fundamental Freedoms.

ICCPR in article 6 gives narrower definition and instructions, providing prevention of arbitrary killings:

...Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life….
(ICCPR, article 6)

Considering the European Convention, two articles are relevant for the purposes of this topic:

ARTICLE 2

Right to life

1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.

2. Deprivation of life shall not be regarded as inflicted in contravention of this Article when it results from the use of force which is no more than

absolutely necessary:
(a) in defense of any person from unlawful violence;
(b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
(c) in action lawfully taken for the purpose of quelling a riot or insurrection.

ARTICLE 15
Derogation in time of emergency
1. *In time of war or other public emergency threatening the life of the nation any High Contracting Party may take measures derogating from its obligations under this Convention to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under*
international law.
2*.* ***No derogation from Article 2, except in respect of deaths resulting from lawful acts of war,*** *or from Articles 3, 4 (paragraph 1) and 7 shall be made under this provision…*

Additionally, Committee of Ministers of the Council of Europe was one of the pioneer institutions that provided guidelines for respecting human rights in dealing with terrorism, labeled as: Guidelines on human rights and the fight against terrorism, which does not go beyond what is provided by the convention.

Additional document that can be useful for dealing with the issue of deadly force in this context are the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.

When it comes to use of deadly force in the context of international armed conflict, the four principles of International Humanitarian Law have to be considered as equally important: proportionality, distinction, military necessity and humanity. Respect for all those principles should be ensured in order proper targeting doctrine to be developed. What has to be noted is that necessity and proportionality should be transponed in a manner which provides elimination of the further, not only the imminent threat.

Situation of parallel applicable regimes goes mostly on de facto operation and internationally mandated peace operations. For peace operations, the use of deadly force is governed by the mandate of the operation and should be in compliance with the given Rules of engagement. In any situation of de facto occupation, escalation of situation is the precondition for the use of force. Security forces can operate as police or army forces depending on the situation.

5. STATISTICS

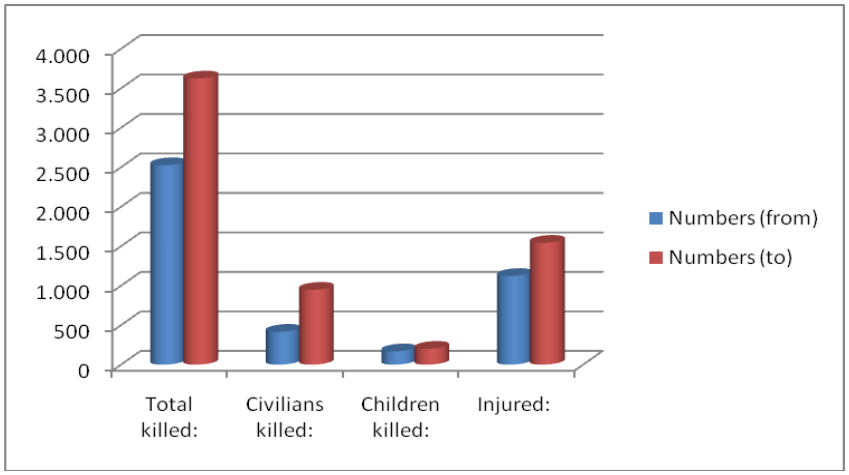
Although one of the main arguments for the use of drones and taregetted killings operations is the precision of conductings, numbers give us something different as a conclusion. For example, only in Pakistan in the period 2004–2013 CIA has conducted 378 drone strikes. The numbers are following:

Table 1: Drone strikes in Pakistan (2004-3013)

Kiled persons	Numbers (from)	Numbers (to)
Total killed:	2.526	3.624
Civilians killed:	416	948
Children killed:	168	200
Injured:	1.123	1.543

Source: The Bureau of Investigative Journalism, 'Drone Warfare'

Figure 1: Drone strikes in Pakistan (2004-3013)



Source: The Bureau of Investigative Journalism, 'Drone Warfare'

There is evidence of a strong negative contemporaneous correlation between drones strikes and various measures of militant violence . All above mentioned speaks enough about the lack of proven efficiency of targeted killings practice as a tool of counterterrorist operations.

6. LEGAL AND PROCEDURAL GUARANETEES

In some of the covert operations that have been conducted, USA citizens also suffered. Special attention by the media was given to al-Awlaki case- a case of father and son that suffered in different drone strikes for a short period. The son was 16 years old. The grandfather asked for court protection of the right to life, legal guarantees and due process of law. A federal district court dismissed the case, holding that the plaintiff, Al-Aulaqi's father, lacked standing to bring suit, and that the request for before-the-fact judicial review raised "political questions" that the court could not decide.

7. HOW MUCH OF THE GLOBAL WAR ON TERROR IS INTERNATIONAL ARMED CONFLICT?

International humanitarian law distinguishes two types of armed conflicts:

- international armed conflicts, opposing two or more States, and
- non-international armed conflicts, between governmental forces and non-governmental armed groups, or between such groups only.

Legally speaking, no other type of armed conflict exists. This is regulated with the Geneva Conventions and additional protocols. Additionaly, the ICTY in its judgment of Tadic case argues that international armed conflict represents escalation of violence between states. Al Quaida and affiliated organisations can not be considered as a state. International law is lacking rules for use of force against non state actors.

8. CONCLUSION:

The legality of targeted killing practice is lacking. Seen in a wider context, many questions arise, such as: who makes the list of targets? How big the collateral damage might be? How can be guaranteed that the potential target got a chance to be arrested before killed in any circumstances where there is possibility for that? At the very end, how can we escape from the notion that making targeted killing legal will differe from playing Playstation? How can be due process of law guaranteed?

Targeted killings arise too many questions due to the intensive practice, which means that, if continues it will seriously undermine the right to life and due process of law guaranteed. It will seriously undermine the whole spectrum and system of human rights norms that has been built up through many clashes in the past decades. Even if we consider the legality of targeted killings practice in the context of International Humanitarian Law, we must note that the provision of this legal branch do not allow arbitrary deprivation of life. Targeted killings can be only considered as "lawful acts of war" in those circumstances in which the preconditions for that are satisfied. This is an additional problem for the counterterrorist operations, due to the fact that there is not commonly accepted definition on considering suspected terrorist as combatants.

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SO CALLED CLASH OF CIVILIZATIONS: IS THE ISLAMIC THREAT REAL?

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ABSTRACT

The exceeding exposure of Islam as a religion represents treating a whole group of a billion and three hundred thousand people and identifying them like fundamentalists without making an analysis of the contemporary socio-political tendencies of the Islam itself. The main thesis of this text will be: Is there any conflict between Islam and the other religions (civilizations), and if so, is there any real threat by the Islamic fundamentalism to the international security?

By the arguments presented in this text, by making an analysis, I will try to prove that: the identification of the religion Islam with various governmental and social movements, associations and groups which identify them with Islam and declare themselves as “Islamists” is a wrong approach made by the socio-political surveys and analyses of the experts after September 11 2001.

Key words: Islam, clash, civilizations, culture, law, politics

1. THE ESSENCE OF DISCORD – POLITICAL VIEW AND HISTORIC IMPACT

The end of the cold war represents a creation of vacuum in the geopolitical status quo, which rises an opportunity for Islam to go out

of the long-lasting captivity and to transform itself in a period of political offensive of international magnitudes. After the fall of the communism, the western world had a need to recognize a new 'ideological danger', and Islam as a religion, doctrine and ideology which is centuries and centuries in a conflict with the Judaism and Christianity, is the best specimen to reach the goal. Thus, Islam transforms itself in the biggest challenge and fear for the new world order. On the other hand, the transnational Islam is permanently seen as the biggest enemy of the western world.

The recognition of a religion in the political and social life, quite often is being characterized as 'Islamic fundamentalism'. At the same time, the Christian interpretation of the term 'fundamentalism' leads us towards a Christian (Protestant) movement from the beginning of the 20th century, which stands for a literal interpretation and understanding of the Holy Bible, as a basis of the Christian life and education. "From this respect, the term 'Islamic fundamentalism' is used incorrectly, characterizing all Muslims (those who recognize and respect the Quran as the word of God and the Sunnah as a way of living) with the term 'fundamentalists', thanks to the grassroots little knowledge of the religious doctrine of Islam, and not wishing to learn the Islam as a religious concept, very similar to Christianity itself" (Said, 1978).

Apart from this, the western thinking and perception about the Muslims is characterized as: political activity, extremism, terrorism, religious fanaticism and anti-Americanism, which leads to a distortion of the perception of the western civilizations about the essence and the idea of the Islamic religion and civilization and its degrading and defamiliarization from the western civilization and Christianity as a religion.

In order to understand the conflict between Christians and Muslims, we need to go back to the history, where we can probably find the answer of the more-than-a-thousand-years intolerance between the two biggest religions in the world. Namely, as Samuel P. Huntington in his article 'The Clash of Civilizations?' tries to explore thoroughly the split of Christians and Muslims: "The first Arabic Islamic conquest from the beginning of the seventh to the middle of the eight century established the Islamic government in North Africa, in the Iberian Peninsula and in North India. The border of Islam and Christianity is stabilized in the next 2 centuries" (1993).

Then, Christianity regained control over the Western Mediterranean, Sicily and Toledo (Iberian Peninsula) by the end of the eleventh century. "In 1095, Christianity starts the Crusades, when the Christian powers unsuccessfully tried to establish a Christian government in the Holy Land, until 1291, when the last Christian resort, Acra, was lost" (Huntington, 1996).

A few centuries after the overthrow of the Christian Latin states in the Middle East by the Arabic Caliphate, the Ottoman Empire steps on the world stage. Namely, the Ottoman Empire weaken Eastern Roman Empire first, conquering Constantinople in 1453, and with big war conquest, it gains complete control over the Balkan Peninsula, Hungary (conquering Buda), and in 1529 succeeds to siege Vienna (Lewis, 1993), the seat of the Habsburg Dynasty (in 1529, when Vienna is sieged by the Ottomans, it rules with Spain, Belgium, Burgundy, The Netherlands, Austria, Milan, Bohemia and Moravia and it is the biggest dynastic empire in Europe).

From the period of spreading of the Arabic Caliphate (of Cordoba) in

Europe (Iberian Peninsula), to the siege of Vienna, Europe is under a constant duress of Islam, and spreading of the Islamic civilization in Europe. That kind of danger becomes the basic reason for intolerance between Christians and Muslims, and for a constant feeling of being different and fear from the others.

In order better to explain the conflict and intolerance between the Christian Europe and the Muslim Middle East, we need to go thoroughly to the roots of the conflict itself. Namely, the conflict between the two religious groups, which in their concepts have a creed in the same form of divinity, doesn't come from their differences, but the similarities that connect them.

Both Christianity and Islam are monotheistic religions, which, in the contrast of the ancient polytheistic beliefs cannot and do not have an ideological and doctrinal position to accept other divinities in their ways and forms of belief. The fact that these two religions cannot allow assimilation of other (foreign) divinities creates a big basis for their dualistic perception of the world: 'we and they'. "Besides this, both of them are universalistic and in their basic doctrines they stand for the idea that each of them is a unique true religion in the world, i.e. a religion which at the end of the time will conquer everybody on the planet, and their God will rule the world. Some additional complications are made by the fact that from the very creation of the Islam as a religion, it starts to spread by conquering, occupying and assimilation of many peoples in the world" (Esposito, 1992). On the other hand, Christianity, in any possibility, is spread as a religious doctrine with wars and assimilations of other (Barbaric) civilizations.

A Byzantine chronicler, about the Crusades wrote: "When the first crusaders arrived in Constantinople seemed as the whole West, all

barbaric tribes from behind the Adriatic Sea to the Pillars of Hercules set off on a mass transmigration, appearing in Asia with all of their possessing” (Armstrong, 1991).

2. ISLAMIC REVIVAL VS. MODERNIZATION

In order to understand the process of returning of Islam on the world stage and its larger popularization in the social and political life of the states with a majority of Islamic population, one needs to examine certain terms such as ‘Islamic revival’ and ‘Islamic activism’ which many orientalists use them as euphemism for ‘fundamentalism’ an ‘extremism.’

The Islamic revival is considered as a thread, not only from the world leaders, but from the multinational companies (important factor in the international relations), which have economic interests in the Islamic world. The increased influence of the religion in the private and social life of the Muslims represents a decrease of the opportunities for ‘modernization’ which is considered as a mechanical acceptance of the western achievements and values only. Due to the fact that the Islamic way of living and religion practicing is not in accordance with the contemporary world tendencies for social government and development, it is seen as anti-modern and arrière-garde, and not as an alternative and practical movement and vision for enhancement of the Islamic societies. The narrow-minded and subjective way of considering the ‘Islamic revival’ by the western world represents disrespect of the religious and social structure of the Islamic societies and a basic reason for conflicts and clash between cultures and societies.

The issue of modernization of the Muslim societies is a topic of large

social, political and academic importance, in the Islamic world, and in the western societies as well. The understanding of the western world of the modernization is considered by the concept of complete secularization of the society.

The Muslim understanding of the modernization vary from blind support and admiration of the western culture and achievements in the social and political relations in Europe and USA to the idea of selective synthesis between the western culture and the Islamic traditions, but in the both cases it results in separation of the religion from the social life.

The plans for 'westernization' of the Islamic societies are doomed to failure because of the fact that they are based only on 'façade' change of the western values in the Muslim states.

The secularization of the processes and the institutions cannot transform easily to secularization of the thoughts and culture in the traditional Muslim societies. However, the Islamic activism is based on a new process of modernization, different from the process considered literally by the western countries, i.e. leaving the social modernization and leaning upon the modernization in the field of technology and science. The technological innovation (of the West) are the new weapons for spreading the Islam and its progress, while the secularization is placed as plan B.

The progress of Islam in the Muslim societies reaches its culmination in the seventies and eighties of the twentieth century. Things are speed up by the underestimation of the Arabs in the Arabic-Israeli War in 1967 (the Six-Day War). "The control of Eastern Jerusalem and the Sinai Peninsula by Israel was considered as humiliation of the Arabic

world and culture, their pride and identity (the loss of Jerusalem in not only Palestinian problem, but Arabic and Muslim as well, because Jerusalem is the third sacred city for the Muslims. The return of Jerusalem under Arabic and Muslim Control becomes an ideal and religious reason for the whole Muslim world...” (Armstrong, 1991). As a result of that disastrous moment (the loss of Jerusalem), the new Arabic and Muslim history contains dissatisfaction of the current ways of social government and development of the political, economic, war, and cultural fields in the Muslim societies. After the defeat in 1967, not only the religious groups, but the western elites as well ask the following question: ‘What is the purpose of the modernization of the Arabic and Muslim world when the United States and Europe unconditionally support the imperialist politics of Israel?’ ‘Is it worth scarifying the national and cultural identity for the national interests?’
It is the Six-day War that starts as a new tendency for finding a personal Arabic identity, independent from the West, and a process of turning to its Muslim roots of the Arabic states. Trying to find a renewal of the Arabic and Muslim identity, the leaders of the Muslim world come to the idea that Islam is an alternative, which shall replace the nationalism and the copying of the western values in the Arabic world.

On the other hand, the leading regimes and the opposition in the Muslim countries more and more lean upon the Islamic religion in the fight for power and gaining ‘grassroots’ support. “The use of Islam for the matters of the state, and its misuse by the government was a reality in many secular regimes in the Middle East, as it was the case of Gaddafi in Lybia, Sadat in Egypt, Nimeiry in Sudan, Mohamed Ershad in Bangladesh, as it is the case with the religious leaders, who by the Islam succeed to win the power and establish Rule of the Sharia Law in 20th century, as it was the case of Khomeini in Iran” (Armstrong,

1991).

In the majority of the opposition movements in the Muslim societies, it is the opposition that is the carrier of the Islamic values and supporter of the tradition. Some of those movements develop legitimately political parties and succeed to gain more and more support by the people, as it was the case with the 'Muslim brotherhood', 'Takfir wal-Hijra', 'Jihad', and 'Islamic Jihad'. All of these movements which were successfully transformed into political parties, they stand today for extremism and violence in their tendency to change the existing political reality (situation).

The orientalist and knower of the Islam, John Esposito, classifies these ideological movements of the Islamic revival like this: "The core of the revival view of peace claims that the Islamic world is in a state of decrease. The reason for that is screwing from the right track of Islam. The method of curing is the return of Islam in the personal and social life of each Muslim, which will lead to revival of the Islamic identity, its values and power" (Esposito, 1992)

The national awakening of the Muslim peoples has not weakened through the history. The differences in the ways of conducting the awakening in the Muslim countries lead to enhancement of the positions of the movements and the parties which declare themselves as Islamic. The influence of the revivalism can be considered by the fact how much Islam as a religion is present in the social and cultural life by the Muslims. Islam has never stopped playing an important role in the social life of the Muslim countries, as Christianity was separated and brought to private life during renaissance. These differences of the Christian and Muslim societies lead to the fact that Christians see the Muslims as religious fanatics, i.e. people that are not able to privatize their religion and not to mix it with state issues.

IS THE ISLAMIC THREAT REAL?

Islam in the last few decades is defined by some governing western elitists as a threat for the governments of the western world. This interpretation is mainly derived from the period of Iranian revolution and the ways on which its conductors want to export it in the rest of the Islamic world. Many of the western analysts warned that the Iranian scenario (revolution) would be repeated in the rest of the Islamic states, and the spreading of that revolution would represent a thread of the democratic and liberal secular system of the Western countries. However, such a thing did not happen. The revolution of the Iranian Ayatollahs was not spread in the other Muslim countries, and it did not lead to some drastic changes in the world order, i.e. the projected breakdown of the established equilibrium in the international relations did not happen.

As the Islamic revolution in Iran did not spread in the rest of the Islamic world, the analysts gradually stopped mentioning the thread of Islam to the international security and the international order, i.e. there are less and less people who believe the Islam as a religion can bring to destruction of the western order.

On the other hand, as the idea for a global world destruction by Islamic powers disappeared in the western world, in the Islamic countries there were more and more conditions in favor of activation and revitalization of the Islamic revivalism. The fact the Iranian revolution did not spread in other countries did not mean that the period of revivalism in the Muslim countries is over.

In many Muslim societies religion is present in the social life so much, that the power of the religious leaders and their ideas is connected to

the cultural, social and economic development of the state. Thus, the Islamic revivalism becomes a thread for the West, because it is against the ultralibertarian secularism that is present there.

The focusing of the West to the so called 'Islamic fundamentalism' as a global threat lead to the creation of the current situation in the international relations, where the violence and terrorism are equaled with Islam. Many of the current analysts and experts are not in condition to differentiate the legitimate right of use of power (for self-defense or protection of the social order) with the terrorism. Even more important is the fact that the illegitimate use of power and the use and abuse of the religion by certain individuals creates identification of all of the members of that religious group with the use of those methods. It is not correct to equal Islam as a religion with the Islamic 'radicalism' and 'fundamentalism'. The fear of the fundamentalism that is more and more present on the world stage leads to creation of bad multicultural and multiethnic relations that are reflected directly in the relations between the states and misbalance the order in the international law. That same attitude creates a climate in which all Muslims and Muslim organizations and associations are characterized as 'guilty' unless the contrary is proven.

Almost all of the Islamic movements have a similar or same corpus of ideas, where the basic doctrine in their political and ideological vision is based on the claim that: Islam and the Western world are locked in a closed battle that has started in the early stages of the creation of Islam and it reached its culmination during the Crusades, and it continued in the period of the colonization of the Islamic territories by the western countries, and today it represents a product of the Judeo-Christian conspiracy against Islam. The radical Islam defines the West (UK, France, USA…) as its biggest enemy because it gave support to

nonislamic regimes in countries with majority of Muslim population (Egypt, Lebanon, Iran during the time of the empire…) as well as for the partiality of the western forces to the Israeli state and its politics of 'Exodus of the Palestinian' Arabic and Muslim population from their homeland. The violence of those regimes and their diplomatic missions and the multinational companies according to the radical Muslims is the right of each Muslim. With this radical attitude, Islam becomes not only an ideological alternative, but a political and theological imperative as well.

For the conservative social circles of the Muslim societies the answer for the foreign domination should not be supported by the religion itself, and keeping strictly to the 'Holy Book', they find the answer in the Prophet Muhammad himself who said that against foreign pressures and attacks there were only two ways to answer; first was leaving the territories that the enemies managed to conquer – Hijra (and practically it is impossible to do) and the second is a Holy War – Jihad. But Jihad itself is not possible in the modern societies because Europe has a much bigger power of any other Islamic country or nation.

At the same time, Islamic activism and radicalism becomes the biggest source of energy for the common Muslims, offering answers to the most sensitive questions related to identity, faith, self-knowing of the Muslims in the world. Thus, the leaders of the Islamic organizations gain the positions of leaders of the Muslim nation and by their ideas for radicalism and Islamism they succeed to trick millions of people in the Muslim countries.

That kind of consideration of the matter by these leaders is the biggest problem for the leaders of the western countries, because of the ideas

for the universalism and unity of the Islamic nation it is very easy to influence on the people who identify themselves as obedient Muslims and fighters for the cause of the unity and superiority of the Muslims through the world.

Many people from the western countries including many well-known politicians, analysts and even university professors and orientalists think that the western world does not have problem with the Islam but that the real problem are the violent Islamic extremists. But those leaders forgot that the western Christian countries have a long history of wars, production and development of various types of weapons for massive destruction, as well as imposing of their imperialist plans, i.e. colonization of all territories that belong geographically to Europe. Also, they represent Islam and Muslim organizations as expansionistic and brutal, forgetting their own history.

But the thousand and four hundred long history shows the opposite. The relations between Islam and Christianity – Protestant and Catholic through the history were always violent – the one were always for those others.

One can freely conclude that the threat that was considered by the leaders of Europe and America to come to the West, from the Leninism, i.e. communism, was a superficial and temporary historical problem between two ideologies that ended by the end of the 20th century.

That same thread (for some of the western leaders) represented a temporary historical phenomenon in comparison to the permanent (a thousand and four hundred years) conflicting and rival relation between Christianity and Islam. Between the two religions, there were

periods of peace sometimes, but at the end they resulted in fierce clashes and longs wars, that went on with cold conflicts even after the wars, growing bigger and bigger each year without any solution – just for one reason: there is no real ideological and religious conflict between the two religions, but a conflict between the states with a majority of the population from the two religious doctrines.

As the well-known orientalist John L. Esposito explains, “these two communities were often in a competition, and sometimes were part of a fierce fight for power, territories and souls” (Huntington, 1996)

On the other hand, seen historically, the social and civilization thread for Europe which stems from Islam and the wars of the Islamic countries led to boosting of the European capacity which, at the end resulted in a process of final unification of Europe.

The Egyptian journalist Mohamed Sid-Ahmed in 1994 writes that “until there is a bigger and bigger clash between the Judeo-Christian ethics and the movements of the Islamic revival, the thread felt by the West will be growing” (Huntington, 1996).

CONCLUSION

The biggest problem of Christianity in the Western societies is not the Islamic fundamentalism, radicalism or the existence of Islam as a religion, ideology, doctrine and civilization; the basic problem of the West is the Islamic revival and the opposing of the Muslim societies to secularize, thus showing proudly their religious and cultural belonging. The existence of Islam as a different unit from the West, as a social community, whose believers are convinced in their superiority, and the righteousness of their religion, it is not the problem that

concerns the West, but the unwillingness of the Islamic nations to modernize and westernize, by which they would be subservient to the West; that problem is characterized by the western governors and leaders as the biggest threat for the existence and the development of the Western civilization, as superior in the relations to the others.

On the other hand, the problem of Islam is neither the values and the enhancement that are demonstrated by the west, nor their military power and technological leadership. The problem of Islam is the cultural and civilization position towards Christianity, its ideals, its universality, as well as the way the Christian societies promote their culture and values in the world as superior over the other civilizations and cultures.

The risk of the modern times is that the radical attitudes of the leaders of the western countries to the rest of the world, can lead to a state of applying double standards in the promotion of the human rights and democracy, thus increasing the gap between the two biggest religions on the Earth.

It can be concluded that, the identification of the religion Islam with various governmental and social movements, associations and groups which identify them as Muslims, and declare themselves as "Islamists" is a wrong approach made by the socio-political surveys and analyses of the experts after September 11 2001.

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UNIVERSALISM VERSUS CULTURAL RELATIVISAM IN THE OBSERVANCE OF HUMAN RIGHTS

Aleksandar Dashtevski[1]

ABSTRACT

In the course of preparing international documents of human rights, such as the United Nations Charter, and in particular Universal Declaration of Human rights, was taken into account, especially on cultural and religious traditions as an integral part in respecting that rights. Without these traditions would not have been possible for them to be implemented. During the preparation of the Universal Declaration, Member-States have agreed that it has no binding character, so it would be generally acceptable to all, regardless of cultural differences between them.

In 1993, with the adoption of the Vienna Declaration and Programme of Action of the World Conference on Human Rights was made an integration of culture into universality of Human Rights.

In accordance with Paragraph V, all Human Rights are universal, indivisible, interdependent and interrelated. The International Community must treat Human Rights in a fair and equal manner, on an equal footing and with the same effect. Besides the importance of regional particularities and various historical, cultural and religious characteristics must be taken into account, the obligation of States is regardless of political, economic and cultural systems to promote the protection of all Human Rights and Fundamental Freedoms.

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According to the concept of cultural relativism has no objective basis that any worldview is superior to another. In this sense the cultures can be judged relative compared against one another.

Expressed trough the concept of Human Rights, acceptance of the idea of universality and the goals of diversity, not questioned, applicability and validity of Human rights norms.

INTRODUCTION

In the course of preparing international documents of human rights, such as the United Nations Charter, and in particular Universal Declaration of Human rights, was taken into account, especially on cultural and religious traditions as an integral part in respecting that rights. Without these traditions would not have been possible for them to be implemented. During the preparation of the Universal Declaration, Member- States have agreed that it has no binding character, so it would be generally acceptable to all, regardless of cultural differences between them.

In 1993, with the adoption of the Vienna Declaration and Programme of Action of the World Conference on Human Rights was made an integration of culture into universality of Human Rights. In accordance with Paragraph V, all Human Rights are universal, indivisible, interdependent and interrelated. The International Community must treat Human Rights in a fair and equal manner, on an equal footing and with the same effect. Besides the importance of regional particularities and various historical, cultural and religious characteristics must be taken into account, the obligation of States is regardless of political, economic and cultural systems to promote the protection of all Human Rights and Fundamental Freedoms[2].

[2] *World Conference on Human Rights*, Vienna, 14–25 June 1993, I. 5.

According to the concept of cultural relativism has no objective basis that any worldview is superior to another. In this sense the cultures can be judged relative compared against one another.

Expressed trough the concept of Human Rights, acceptance of the idea of universality and the goals of diversity, are not questioned, applicability and validity of Human rights norms.

1. CULTURE AND CULTURAL RELATIVISM

Taking into consideration the exceptional importance that the culture has, because of the importance of the regional and national features for respecting human rights, its concept should be defined. According to some authors culture means a whole concept of traditional behavior developed by the human race and it is successfully projected to every following generation. The culture can have a meaning of traditional behavior typical for a certain society or group of societies, certain race, area or certain time[3].

In continuity to the previous definitions, the culture can also represent learned, adapted, symbolic behavior based on completely developed language, united with technical inventions as a complex of skills that are important for the capacity for organized exchange of relations among the communities[4].

Assignment of the cultural politics is to define the parameters of the cultural domain. In certain countries the culture is almost a synonym for sum of arts, so the politics aims towards visual and performing arts, literature festivals and similar spheres. Under these conditions the Ministries of Culture can target themselves towards infrastructures, particularly theatres, galleries, museums, historical buildings and et cetera, as well as towards acknowledged artists and

[3] Margaret Mead and Rhoda Metraux, *The Study of Culture at a Distance*, (Chikago- Berghan books, 2000).

[4] Adam Kuper, *Human Nature and Cultural Diversity*, (London,England, Harvard University Press), 1994

artistic companies. Their answers to occasional artistic forms like films, rock music, computer art and comics may vary a lot. On the other side of the specter is the view of cult as all that we are forced to do: culture is comprehended as a particular way of life that differs a German city from a French one, a Swedish community from a Spanish one. According to this notion, art is only one of the many manifestations of one and only cultural identity of a place and its citizens, so the politics should occupy itself with everything from folk dances to local traditions of food or from street life to fashion[5].

The notation culture is directly connected with the cultural relativity which is analyzed in the anthropology. According to today's views it is a discipline that occupies with study of physical, cultural, social and linguistic development of people from prehistoric times to present. It is a relatively new phenomenon from the last third of eighteenth century.

Different cultures, in different time periods are differently understood by different nationalities. Something that is completely accepted by a certain civilization can be unacceptable by another.

Among the moral, philosophic and political consequences, from the appearance of the concept of culture, the development of the concept of cultural relativity is found. Taking into consideration the fact that the culture deeply and profoundly defines our view of the world, it is obvious that there is no objective base to claim that that kind of view of the world is more superior than another one or that the view of the world can be counted as an ell for measuring another view of the world. In that sense, cultures cannot be judged relatively in relation to one another. The meaning of the given belief or behavior has to be recognized relatively in its cultural context. That is the base of cultural relativity.

[5] Francois Matarasso and Charles Landry, "Balancing act: twenty-one strategic dilemmas I cultural policy, Culture as art or Culture as a way of life", (Printed in Belgium- Council of Europe, 1999) , p.11, 12.

The moral dimension of the cultural relativity should be examined. If the way a person views the world is a result of that person's culture it is in fact a sum of his beliefs, values and social norms that delegate his behavior. The behavior which can be pointless, illegal and immoral in one society can be perfectly rational and socially accepted in another. Someone may wish to interfere in someone else's business on the bases of common humanity, because people above all share this planet on equal parts. However, every request of that kind should be with greatest care and eagerness and sincere and real attempt to understand what is the subject of one's own cultural context.

On the other hand, if the cultural sphere is separated and treated only in its own terms, then the cultural identity can never provide adequate leader of living. Everybody has more identities and even if someone accepts that he has primer cultural identity, it may happen that even that someone may not agree with that. That wouldn't be very practical for him. A human operates on the market through himself in combat with the others. If he sees himself as a cultural being then he leaves himself only a small space for maneuvering and that makes him suspicious whether he is in a real world. In that sense is the moral objection to a cultural theory. To take people's mind of what they have in common, instead to encourage them to communicate through the national, ethnic and religious boundaries and to invest in themselves.

2. CULTURAL DIVERSITY

Cultural diversities have serious influence on venerating and accepting different cultures from all over the world.

Because of that, after a long-time work, on 02.10.2001 at the 31st session of the General conference of UNESCO in Paris, a Universal Declaration for Cultural diversity was adopted.

The declaration aims towards maintaining the cultural diversity as a live and renewable treasure that does not have to be counted as indispensable fortune, but as a process that guarantees survival of the human kind in order to prevent segregation and fundamentalism which in the name of cultural differences punishes the differences and in that way opposes to the message of the Universal declaration on human rights. The Universal declaration of human rights clearly states that every individual must admit not only the diversity in all its forms, but also the plurality of his own identity, in societies which are plural. Only in this way the diversity can be kept as a process of adaptation and as a capacity for expression, creation and innovation. A debate between the countries which would like to defend the cultural goods and services, as for example "the holder of the identity, the values and the meanings which do not have to be treated only as goods or commodities for wide expenditure" and those who hope that the promotion of the cultural rights will be outmoded with two approaches put together in the Declaration which point out everyday, connection uniting the two complementary attitudes. One cannot exist without the other. Maybe one day The Declaration for cultural diversity can gain the same strength as The Universal declaration on human Rights.

In the beginning of the introduction, The General Conference obligates on complete implementation of human rights and basic freedoms proclaimed in the Universal Declaration on Human rights and other universally accepted legal instruments, as the two international covenants from 1966 connected with respecting the human and political rights and with economic, social and cultural.
Furthermore, The Declaration emphasizes that the Preamble of the Constitution of UNESCO confirms that the wide distribution of culture and education of the humanity for law, freedom and peace are

necessary for human dignity and represent a commitment that all the nations have to fulfill in the spirit of reciprocal help and care. The introduction continues with defining of all the aims of UNESCO, determining that nothing except the culture is in the centre of interest of the contemporary debate for the identity, social cohesion and development of economy based on knowledge. The declaration should affirm respecting of the diversity in culture, tolerance, dialogue and cooperation, in climate of mutual trust and understanding, which are one of the biggest guaranties for international peace and security.

The principals of the Universal declaration for cultural diversity are: identity, diversity and pluralism; cultural diversity and human rights; cultural diversity and creativity; cultural diversity and international solidarity.

In article 1, cultural diversity is expressed as common heritage of humanity. In the article it is stated that the culture has different form through time and space. That diversity is embodied in the uniqueness and plurality of the groups' identity that compose the humanity. As source of exchange, innovation and creativity, the cultural diversity is necessary for the humanity like the bio-diversity is necessary for the nature. In that sense, it is mutual heritage for the humanity and should be accepted and promoted for the welfare of the present and future generations.

Article 2 refers to cultural diversity with cultural pluralism. According to it, in our societies with mounting differences, it is essential to ensure harmonic interaction between the people and the groups with plural, different and dynamic cultural identities, as well as their readiness to live together. The politics for including and participation of all the people is a guaranty for social cohesion, vitality of civil society and

peace. Defined in this way the cultural pluralism gives politic of expression towards the reality of cultural diversity. Inseparable from the democratic frame, cultural pluralism is practicable for cultural exchange and flourishing of the creative capacities of sustainable public life.

The second principle for cultural diversity and human rights suggests to how connected and dependable between themselves are these two categories. The human rights are a guaranty for cultural diversity. In article 4, the defense of the cultural diversity is ethical imperative, inseparable from respecting of the human dignity. This means dedication to human rights and fundamental freedoms, especially the rights of the members of the minority groups and those of the natives. One can account cultural diversity if that means violation of human rights guaranteed by the international law, or restriction of their range.

In continuity to the Declaration, a Convention for protection and promotion of diversity of cultural expression was adopted, by the General conference of UNESCO, in Paris from 03rd to 21st October 2005, at the meeting of 33rd session

Although based on similar bases as the Declaration, Convention has a legal obligation form for the countries that accepted it. It was adopted because the international community signalized for the emergency of implementation of international law that will acknowledge the characteristic nature of natural resources, services and activities as the moving force of identity, values and meanings, as well as that cultural heritage, services and activities have important economic values. They are not only goods or goods for wide consumption that can be counted as an object of trade.

The biggest contribution for distinguishing and respecting cultural diversities is given by the UNESCO's World report published in 2009, under the title" Investing in cultural diversity and intercultural dialog.

In the focus of the report is the globalization that represents one-dimensional process delegated by the western dominant economies in the global trade economy, with an aim to standardize and direct in ways harmful for cultural diversity. Because of that even the first goal is to eradicate the extreme power and world hunger.

The report shows that the United Nation as a world system focused on the promotion and respecting of the human rights is directly connected to the system of cultural diversities conducted by UNESCO.

It is regarded that respecting the cultural diversity contributes to dignity of the individual, group or community. The rights and freedoms are not realized in vacuum but are implemented in wider social context. All rights and freedoms have cultural dimension that take part in their effective application. That's exactly why that dimension forms the connection between the individual and the community, that is to say the group that sets universal values in certain society. Human rights are universal because they belong to the whole humanity. That is the meaning implemented in the Universal declaration of human rights that admits that every member of the society can savoir all the rights, indispensable for his dignity and free development of his personality. Although sometimes described as social cohesion, cultural diversity on the contrary enables dialogue and mutual enrichment and by that source for economic, social, political and cultural creations. Democratic managing represents forms of governing and ways of making decision that take into account the multicultural structure of contemporary societies and their wide range of beliefs, projects and way of life.

Most directly, the human rights should be a relief for the respecting and protection of the cultural diversity and integrity in establishing human rights, embodied in instruments for the human rights. This includes: International Charter for Rights, Convention for Children's rights, International Convention for elimination of all forms of racial discrimination, Declaration on race and racial prejudices, Declaration on elimination of all forms of intolerance and discrimination based on religion and beliefs, Declaration on Principles of International cultural cooperation, Declaration on rights of people belonging to national or ethnical, religious or language minorities, Declaration on right of development, International convention for protection of the rights of all migrant workers and their families and Convention ILO number 169 for the rights of the natives and tribe people. Further on , human rights that refer to cultural diversity and integrity include wide range of protection including the right of participation in culture, right of enjoying the art, conservation, development and diffusion in culture, protection of cultural heritage, freedom of creative activity, protection of ethnic, religious and language minorities, freedom of gathering and assembling, right of education, freedom of speech, consciousness and religion, freedom of thought and expression, as well as principle of non-discrimination.

3. CULTURAL DIMENSION OF HUMAN RIGHTS AND CULTURAL RIGHTS

The rights and the freedoms universally admitted by the world community in Universal Declaration for Human Rights are for everybody, no matter of the sex, ethnical or social origin, education, obstacles in development or religious beliefs. In that sense, they are nonmaterial. They are also, inalienable, because no one can give up from the rights and freedoms, even if he or she wants to, since it will

endanger the rights and freedoms of all in the basis of human existence. The statement that the cultural diversity represents a heritage for the humanity, as a whole, so it has to be protected, is not the same with the keeping whatever cultural value, tradition and practice as non-material heritage. The cultures have never been fixed. They are in condition of constant change since they communicate with the outside world and are expressed through human creatures that are changeable. The mutual dependency and inseparability of human rights ensure an interesting mutual base for analysis of relations among the human rights: identification of one human right is connected with another because of the cultural dimension of all human rights.

Actually, while the civil and political rights and freedoms are sometimes counted as rights and freedoms that have to be given a meaning, some direct to inseparability of human rights and bigger recognition of the connections among all the categories of rights. While the international standards may seem far from admission of the importance of maintaining the cultural diversity, the improvement of the human rights in the last decades began to narrow the gap between the identity and the values, especially taking into account the principals of nondiscrimination, equality, equality between sexes and intercultural dialogue. This is illustrated in the field of progress of civil and political rights and by those economic and social rights. The civil and political rights are essential for the freedom of thought, religion and association, as well as participation in the process of making decisions that determine the development of one community among the other things. If these rights, that have obvious cultural component, are not guaranteed, there cannot be a political freedom. For example, the right to vote is connected with the right of education, which is a condition on the bases of the language used for writing the ballot

paper and on the political debates. This refers equally to the legal protection, right of information and right of correspondence with competent bodies and institutions. The cultural dimension of civil and political rights can also be recognized in series of other freedoms like freedom of speech, information and communication that are worked out in the Covenant on civil and political rights, article 19. In that connection the rights of a language are especially important because they provide an approach to the basic capacity of other rights. This is clearly stated in the Covenant, where it is said that every individual accused of a crime has to be informed, in a language familiar to him, for the nature and the cause of the accusation against him and has a right of free translator's help if does not understand and speak the language used at the court.

In relation to economic, social and cultural rights, article 12 of the International Covenant on economic, social and cultural rights emphasizes the right of highest life standard, physical and mental health, which also has a cultural dimension.

Defining of the cultural rights is a complex question, since, as it was mentioned, all the rights have cultural dimension. According to the Universal Declaration for Human Rights, all the human beings are born free and equal according to the dignity and rights. Everybody has a right on universal dignity and all the rights and freedoms, no matter of the race, color of the skin , sex, language, religion, political or other opinion, national or social origin, personal assets, birth or any other condition. Everybody has a right to participate freely in the cultural life of the community, to enjoy art and to share the scientific progress and its benefit.

The covenants draw attention to the question of cultural identities and values. In the International Covenant on human and political rights it

is stated that the countries where there are ethnical, religious or language minorities, cannot deny people's rights, in a community with other members of their group, their own cultural life, expressing religious beliefs and usage of their language.

In the International Covenant on Economic, Social and Cultural Rights, the right for participation in the cultural life and the right for education, are proclaimed and will be oriented towards complete development of human personality and feelings of dignity.

Five rights, which are stated in the Universal Declaration and in the covenants, refer to cultural questions. Those are the right of education and the right of participation in the cultural life, contained in the Declaration and the covenants. Furthermore, the right of enjoying the benefits of the scientific progress and its implications, the right of benefit from the protection of moral and material interests that follows from the scientific, literature or art work made by an author and freedom to do scientific research or creative activity.

Some authors think that the special cultural rights are less developed than other human rights. Actually, the term "culture" is unreachable and can hardly be translated in the standards of the human right. When the culture is interpreted narrowly, the cultural rights include the protection of cultural creations like works of art and literature, monuments, access to theatres, museums, libraries and etc. If the culture is understood as a process of artistic and scientific creation, then the cultural rights include the right of freedom of expression, as well as protection of cultural producers, including the copyrights. If the culture is regarded as a relationship among specific way of life, sum of materials of the community and spiritual activities and products, cultural rights from the right of self-determination,

especially in case of community, including the cultural development and rights for maintaining one's own culture.

The cultural diversity does not represent a restriction of the universally proclaimed human rights, but advances their implementation, enforces the social cohesion and secures sources of inspiration for renewing the forms of democratic governing, rights and freedoms that are used in many different cultural surroundings and all have a cultural dimension that should be recognized in order to ensure its effective integration in different cultural context.

4. Universalism or cultural relativism

No one discards the principle of universality of the human rights as generally world applicable and the biggest number explicitly confirms that. In the biggest number of cases universality is regarded in correlation with the International Declaration of Rights. Accepting the principle of universality in any case goes together with the rigorous striving for respecting the diversity. All of the explored goals, first of all, slot in that frame: respecting diversity means taking into consideration the specifics from the context and the circumstances. The statements from government circles mean that the context and the circumstances refer to every country separately. When non-governmental organizations give the same argument, they also report on other entities like the ethnic groups in one country.

Expressed through the concept in terms of human rights, the acceptance of the idea of universality and the goals of diversity, does not question the applicability and validity of the human rights' norms. This refers to identification of the priorities in the protection of human rights or among human rights and other values or interests, like the requests for interpretation of human rights' norms and kinds of

implementation of those norms.

At first, the argument for the cultural relativism was essential corrective for the western natural universalism for civil and political rights based on law. The intellectual thought is a result from the dialectics between the theory and the social reality during all historic periods. The theory is a tool that explains, justifies and criticizes the social reality from time to time. In the process of creating a theory, especially in conditions of social changes, the presence of selective occurrences facilitate the creation of ideology and its normative feeling. The liberal philosophy with its doctrine of inalienable civil and political rights including the right of ownership emerges from the natural law and manifests itself in the socio-economic transformations in the eighteenth and nineteenth century, appearance of industrialism and capitalism. In any case, the modernization ranges over bigger part of the world that tries to keep its culture based on communities. Some countries are selective in their adoption of the elements of modernization as the economic development, industrialization and nationalism, sometimes refusing the implementation of western values. In some regions they are implemented in practice while in others they are adjusted to different religious and philosophical systems.

CONCLUSION

The concept of universal human rights is dominant and deeply implemented in the biggest number of the countries in the world. Since its implementation in the political systems of the countries in Western Europe and USA, through the theory of natural human rights that developed in the time of enlightenment, it has developed as a widespread frame for all the societies and political systems.

The cultural diversities of all the nations should be respected so

the survival of the identities of every nation separately and the identities of different ethnical groups within a nation does not come into question.

The theory agrees more and more that the acceptance of the idea of universality and the goals of diversity does not bring into question the applicability and validity of human rights' norms.

However, the cultural relativity leads to different characteristics in executing the concept of respecting the human rights for all the countries separately. It is so strong in certain regions that this concept is not implemented at all despite the efforts for its implementation.

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THE US FEDERALIST PAPERS ESSENTIALS: THE CHALLENGES OF THE INDIVIDUAL LIBERTY AS A HUMAN RIGHT

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ABSTRACT

This paper is qualitative research, based on the content analysis method, aimed to investigate the US Federalist papers essentials, while stressing the significance of the individual liberty as a human right, and its significance for the achievement of the US people well – being. The main intention of this paper is to locate and to define the current state of the individual liberty in the US, taking into account the US political authorities' attitude. This research derives from the following research topic: What are the challenges of the individual liberty in the US as a human right taking into account the US Federalist papers? In that sense, this paper, firstly defines the individual liberty as a human right, its "ideology" and its place within the US political system. Therefore, the US Federalist papers are treated as a "Constitution" of the individual liberty, and its driving force. Besides the right to life, this human right emerges as the second but not less significant that the latter. The individual liberty confirms the right to life and the right to live in a free, prosperous and democratic society, where the state power is limited by the human rights, and thus, guaranteeing the well – being of the people. The individual liberty as a basic human right, especially recognizable for the US, remains as a main pillar of the US democratic political system, historically established by the Founding

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fathers. In order to locate the individual liberty relation to the political authority embodied in the state, this paper investigates the current events, as follows: Edward Snowden vs. the State, based on the Fourth Amendment of the US Constitution, the saga of Julian Assange, or the contentious activities of the President Obama's NSA. This investigation is directed towards the revealing of the "missing link" between the individual liberty and the state, in particular the US. At the end, we conclude that the individual liberty is taken, not given by the state, and thus, it must be improved and preserved, as a bulwark against the destructive forces of the state and its repressive apparatus.

Key words: Individual liberty, US Federalist papers, US Constitution.

INTRODUCTION

In the paper bellow, we will try to present the individual liberty, as a human right deeply embedded in the United States of America (US) political system. Also, this paper tend to reveal the essence of the oldest federation in the worlds – the US - whose Founding fathers created numerous documents and papers, through which they have presented the benefits of the American people unity under one constitutional treaty based on the individual liberty as a human right. Those moments before creating of the US Constitution are actually even more important since the ratification of the Constitution, because that is where we can see the struggle, the idea and the foundation of the political system. It is a synthesis of ideational directions in the name of liberty, independence,

justice, success, prosperity, pursuit of happiness, peace and welfare. All successful and unsuccessful attempts to create a constitutional treaty of the US federation are equally important because through this we can clearly see what is accepted and what is rejected for the people of the United States in efforts to form a common Constitution. One of the most important elements that really helped people to accept the draft US Constitution is that its creators directed their activities allowing the individual liberty to flourish, while the US Government to act with increased attention in order to protect such freedom and individual liberties of the US citizens. The main intention of this paper is derived from J. J. Rousseau stance about the freedom and liberty noted in the "Social Contract: Or principles of political right": "Man is born free; and everywhere he is in chains. One man thinks himself the master of others, but remains more of a slay than they are. How did this change come about? I do not know. What can make it legitimate? That question I think I can answer." (Rousseau, 1762: 2)

DEFINING THE INDIVIDUAL LIBERTY

"*Vigor of government is essential to the security of liberty*"
— Alexander Hamilton, *The Federalist Papers*

Individualism can be explained as a "political and social philosophy that emphasizes the moral worth of the individual" (Lukes, 2013), as an opposite idea of the collectivism and statism as such, closely related to the anarchism and libertarianism, where individual sovereignty is a crucial premise for achievement of the individual liberty and freedom as a basic human right. The definition of individual liberty often contains the idea of autonomy and independence from other social values like justice, peace and

equality. Everything is what it is "liberty is liberty, not equality or fairness or justice or culture, or human happiness or a quiet conscience. If the liberty of myself or my class or nation depends on the misery of a number of other human beings, the system which promotes this is unjust and immoral" (Berlin, 1958: 5). Individual liberty in itself involves providing opportunities for human rational ideas, while "the rejection of the possibility of individual self-determination destroys any chance of achieving human freedom; freedom depends upon the individual, not only to provide the impetus for social change but also as the subject in which [individual] freedom resides. A group cannot be liberated - it cannot, as a group, exercise freedom - only individuals can be free [in and out of a group]. To deny or reject the importance of human individuals is to deny the possibility of human freedom" (Brown, 1959: 22). Therefore, "individual liberty is not to be understood as exercising free will (…) the question is whether others can impose their will on me, not whether I can follow my own will" (Miller, 2010: 40). In this sense, theorist Friedrich A. Hayek stated: "one's freedom never requires that other human beings act in certain ways but only that they do not act in certain ways; that is, that my freedom entails prohibitions on others rather than positive commands" (Hamowy, 1978: 287). One of the most prominent philosophers of individualism, Ayn Rand, defines the concept of individual liberty with the following words:

> regards man - every man - as an independent, sovereign entity who possesses an inalienable right to his own life, a right derived from his nature as a rational being. Individualism holds that a civilized society, or any form of association, cooperation or peaceful coexistence among men, can be achieved only on the basis of the recognition of individual rights - and that a group, as such, has no rights other than the

individual rights of its members (Rand, 1961: 122).

Ayn Rand added a special attention to the individualism as a concept of a “man as a heroic being, with his own happiness as the moral purpose of his life, with productive achievement as his noblest activity, and reason as his only absolute” (Rand, 1957). In this direction I would mention and John S. Mill, who talks about the free discussion of critical approach rather than blind acceptance of things in his book “On Liberty”. Only through debate and rational and objective judgment, one individual should build their own position, but he cannot consider it like eternal absolute truth because someone else can find the shortcomings of such an attitude and oppose to it.

Individual liberty meant freedom of the individual to fulfill its free will. However, it is constantly mentioned that such liberty should be protected, not oppressed. The authority that is upon, after all it has a minimum role in order to protect it, but cannot control at the same time. While the individual sovereignty means a lack of authority over the individual, or “merely the refusal to be dominated by others, regardless of whether such domination derives only from the arbitrariness of persons or from allegedly existing ‘higher’ beings, commands and ‘duties’ - whose real existence is unprovable” (Solneman, 1977: 29). The sovereignty of the individual denies the existence of any authority over it, and thus, the individual is treated as an (ultimate) authority on itself elevated above all other controllers in its will and an absolute master of his own free will. Therefore, “[t]he sovereignty or the individual will be found on trial to be indispensable to harmony in *every step* of social reorganization, and when this is violated or infringed, then that harmony will be sure, to be disturbed” (Warren, 1852: 26). This involves placing sovereignty of the individual over the state and its institutions, over bureaucratic apparatus, over "gods" and religion, over the nation and above the king. In this sense, the theorist Solneman stated: “If the people were

actually sovereign, then there would be neither a government nor governed any longer, at least not in today's sense. Only voluntary members of autonomous protective and social communities or non-members of such communities would remain" (Solneman, 1977: 190). In this sense, we conclude that the individual liberty as a human right involves creativity by the people / individuals, who seeks to control their lives according to their individual principles, while respecting the US constitutive acts and the Federalist papers as an emanation of their strive for creation of a "Heaven on earth" – the Heaven of freedom. This human right, unlike the other human rights and freedoms, requires high awareness of the individuals in relation to the US political system. The aim of this human right is to enable a creation of political system where no individual will be ruled by another against his will. This type of political system, envisioned by the US Founding fathers, is based on a free will, the property rights (the private property in particular) and the peaceful and voluntary activity of each individual within the American union, as a community of free individuals, liberated from the control and oppression of the central government. In this sense, the US central government, only need to preserve the free will of the people, in order to encourage the ability for improvement of property, societal and cultural needs of the US citizens, while living in a peaceful and prosperous social environment / community.

THE INDIVIDUAL LIBERTY IN THE US CONSTITUTIVE ACTS

Alexander Hamilton, one of the US Founding fathers, seeks the weaknesses of confederate government. The main objective of Hamilton was to establish a federal political system with a strong

central government. In this regard, the term "central" does not mean "centralized" government, but on the contrary, Hamilton wanted to indicate the only supranational authority that will have a greater power than the power of the US Member States – shared powers and shared *sovereignty*. Those limitations as minimal and protective functions of the central US Government are constitutionally defined and guaranteed by the concept of individual liberty. Therefore, "federalism serves the dual purposes of allowing the range or scope for central Government activity to be curtailed and, at the same time, limiting the potential for citizen exploitation by state-provincial units" (Buchanan, 1995: 2). The advantage of this kind of (federal) political organization based on the system of devolution, the central Government allows the creation of autonomous regions within the states, using the power that has been delegated to the states of sub-national level. The autonomous status of self-governing regions exists by the sufferance of the central Government and it is often created through a process of devolution, because:

> a voice is more effective in small than in large political units. One vote is more likely to be decisive in an electorate of 100 than in an electorate of 1,000 or 1 million. Also, it is easier for one person or small group to organize a potentially winning political coalition in the localized community than in a large and complex polity (Buchanan, 1995: 3).

Despite that, the *private property* is frequently used term. This type of property was especially emphasized by distinguished political philosopher Murray Rothbard, defined as "natural property" (Rothbard, 1998). Private property or property rights are one of the many rights that allow individuals to make full use of their assets and properties, which are part of their personal rights, without they are considered state-owned, or Government. The protection of

such rights from interference, misuse or revocation of their owners, the Government actually protects the owner, protecting their individual liberty to dispose of what they acquired as personal property. At that time, the private rights (individual rights) are derived from the collective. However, it is a misconception, because the existence of the collective rights, at first, should be an individual right. The respect for private property / property rights and its protection is actually protecting the individual right to property as a natural right of man, which in turn is one of the rights that are attributed to individual liberty of individuals. The private property belongs to the individual that further is confirmed by the US Constitutional Acts. Because, "one cannot talk about the protection of property rights in the United States without first placing that subject within the larger context of American Constitutionalism" (Pilon, 2008: 1). Given that much of its legitimacy, the US Constitutional acts, we draw from natural law and the influence of the theories of John Locke, where logical conclusion is that the natural rights such as the right to private property have a priority over other rights. First, it is going through the provisions of the US Declaration of Independence, and eleven years later, through the provisions of the US Constitution. James Madison's idea as an unofficial author of the US Constitution was being constructed such US Constitution, will give power to the US political authorities in order to protect the rights of the people, and thus, the right of property. Therefore, the US Constitution creates a Government characterized by delegated, and limited powers and "it is no accident that a nation conceived in liberty and dedicated to justice for all protects property rights. Property is the foundation of every right we have, including the right to be free" (Pilon, 2009: 346). With a limitation of the Government interference in what constitutes holiness of personal rights - ownership, entitles citizens to be free to use their

right without fear that there is some power over them that they lurking and waiting for the right moment to take away what their right is.

Moreover, Alexander Hamilton wrote the Federalist paper No. 9. As a Republican who favors a "tougher" system of regulation, Hamilton often mentions people's freedom or more precisely the freedom in decision-making of the individuals rather than one of the Government and the nation, because his ideas are based on the principle of local self-government. In this part of the Federalist, Hamilton harshly criticized the idea of confederation of states due to the reason that this kind of political organization disables the communication of the individuals with the ruling elite. Hamilton ruthlessly attacked this form of Government. This is precisely one of the reasons why Hamilton denied the confederation principles in favor of the federal ones.

In the Federalist No. 10, James Madison explained that it is a difficult to maintain the balance and continuity of the welfare and at the same time to protect private, personal rights, and it goes in the direction of a good society, the common good. In this sense, Madison stated that protecting the individual rights could not be detrimental to the public good or to other individuals. In this sense, James Madison appears as the first US Founding Father who mentioned the significance of the protection of individual rights and the individual liberty.

Namely, James Madison stands firmly behind the Republican views, addressing criticism to the democratic order: “the democracies have ever been spectacles of turbulence and contention; have ever been found incompatible with personal security or the rights of property” (Hamilton, Jay, Madison, 1788: 44). Between republicanism and democracy, Madison finds two differences. The first one is delegation of the management of a small number of citizens elected by

the rest, and the second one is delegating of a greater number of citizens. What we refer herein is the protection of the political faction thought that would lead to the danger of establishment of the common Constitution. Therefore, Madison has been an advocate of it to be politicized (pluralized) - there shouldn't be multiple authorities, because their interests might conflict with each other and this would lead to a schism between the countries and communities in the United States. According to him, the damages of faction cannot be removed in two ways: by removing the causes of faction and by controlling its effects. The first, destroying liberty, because:

> Liberty is to faction what air is to fire, but it is impossible to perform because liberty is essential to political life. After all, Americans fought for it during the American Revolution. The other option, creating a society homogeneous in opinions and interests, is impracticable. The diversity of the people's ability is what makes them succeed more or less, and inequality of property is a right that the Government should protect (Hamilton, Jay, Madison, 1788: 42).

Madison specifically states that due to the economic stratification, people cannot share the same opinion, i.e. they cannot establish collectivistic concord. That these efforts to protect the rights of economic inequality clearly states that his idea is not to establish a Union which will be built on economic equality, injustice or political oppression, but a community of free citizens where their rights will be on the pedestal of constitutional protection. Madison is aware that if they want to implement some conservative and Republican icon of political thought, it can do very simply by lifting the individual liberty, nationalization of property and enforcement of blind obedience and

patriarchy. However, such a Union would be good only for the implementation of the political programs of the Government and not in the interest of the US citizens. The people are still under the impressions and the heat of the American Revolution, will not sit quietly and see how to implement the new slavery over the freedom for which they fought and what would expect politicians implementing such a system would be new revolution and the complete destruction of the idea for American federation.

Madison aware of that fact and the incontestable possibility of faction believes that the best it could be decided if they are given a freedom of choice on citizens and if there is any faction, controlling its effects. His genuinely liberal stance (for that time), aiming to achieve a balance between the Government control and the individual liberty, considering that unfettered individual liberty can turn into civil arbitrariness which is dangerous for the political order and on the other side, excessive control and limitation of freedom can lead to absolutism by the Government.

Furthermore, in the Federalist No. 39, whose title referred to republican principles, Madison makes a distinction between the two major elements – the national and federal – as a rival to the nation - state concept, clearly outlined in the following paragraph:

> On one hand, the Constitution is to be founded on the assent and ratification of the people of America, given by deputies elected for the special purpose; but, on the other, this assent and ratification is to be given by the people, not as individuals composing one entire nation, but as composing the distinct and independent States to which they respectively belong. (…) The act, therefore, establishing the Constitution, will not be a *national*, but a *federal* act. (Hamilton, Jay, Madison, 1788: 171)

Accordingly, Madison advocates the nation in which the citizens will elect their representatives in a representative homes of "democratic way". Other than his fear of democracy, he is more "scared" of the nation. The nation, which is an artificial creation of national and discriminatory policy, is consciously avoided as a concept and in its place instantly puts federation of states or respect towards ethnicities. Madison believes in the existence of a natural form of sovereignty that the states have, and therefore, there is confidence that gives voice and power of individuals or the people in those countries. But Madison fails to mention the lack of a state or nation in the whole federation but rather mentions that the ratification of the Constitution should be given by the people of these independent states. Valuing the state sovereignty means respecting the sovereignty of the citizens of the state, and thus their interests. However, human nature is such that it requires ever more power for them. The man is greedy, he is not satisfied with what he gets, and this is his only motive to proceed. The great philosopher Friedrich Nietzsche stated: "wherever I found a living thing, there found I will to power; and even in the will of the servant found I the will to be master" (Nietzsche, 1999: 108). Therefore, a society cannot be left to be driven by human ambition and desire for power over others.

The Federalist No. 52 stressed that core function of the Government (as a main reason for its existence) is the fact that regulatory, balancing power that they have in themselves. So, "what is Government itself, but the greatest of all reflections on human nature? If men were angels, no Government would be necessary. If angels were to govern men, neither external nor internal controls on Government would be necessary" (Hamilton, Jay, Madison, 1788: 232). Therefore, "it is of great importance in a republic not only to guard the

society against the oppression of its rulers, but to guard one part of the society against the injustice of the other part” (Hamilton, Jay, Madison, 1788: 246).

This type of political system, envisioned in the Federalist No. 62, encompasses the division of powers into legislative, executive and judicial branch, and thus, its purpose is to thwart the unjustified expansion of the political power on the expense of the freedom of the US people. Tyranny “may be usually described as the concentration of all these powers in one set of hands one Administration. The Administration, be it remembered, is the organized human group of officials who hold and operate the great powers of the State residing in the Government” (Flynn, 2007: 23). Power sharing will also prevent oppression of political minority and the expense of political stability would show high results. Furthermore, Madison speaks about Government activism known as "mutable policy" - a variable policy, believing that it would prevent with the new Constitution to establish a consistent, stable framework of laws, necessary to promote prosperity. Through this, Madison clearly meets the individual liberty, by allowing citizens unchangeable, functional and clear legislation that will regulate their relations who enter at will. Or as Madison noted:

> The internal effects of a mutable policy are still more calamitous. It poisons the blessing of liberty itself. It will be of little avail to the people, that the laws are made by men of their own choice, if the laws be so voluminous that they cannot be read, or so incoherent that they cannot be understood; if they be repealed or revised before they are promulgated, or undergo such incessant changes that no man, who knows what the law is today, can guess what it will be tomorrow. Law is defined to be a rule of action; but how can that be a rule, which is little known, and less fixed? (Hamilton,

Jay, Madison, 1788: 279).

THE INDIVIDUAL LIBERTY TODAY

We can conclude that the US Founding fathers created a pillar consisted of rights and freedoms that not only limit the arbitrariness of power, but it sets the "must act" framework for the Government. That framework is actually a protection of rights and freedoms and undertakes activities that improve the welfare of human welfare. If Hamilton and Madison wrote that the role of central Government is to regulate where it is requested, rather than to control, then looking through the current policies of the US Government, it is obvious that such boundaries were crossed long ago and the individual liberty of citizens is rigidly violated.

From the recent history, the memories of the violation of individual rights and liberties and the property rights are still fresh. The Watergate affair is quite representative phenomenon where for breaking into Democratic national committee, the US President - Richard Nixon - was faced with impeachment and the possibility of condemnation by the US Senate. In this case openly and publicly displayed image of the American executive power that taking this position, used illegal means to achieve a specific political goal. Suspected in this case was sixty-nine, where forty-eight of them were charged with "conspiracy, burglary, and violation of federal wiretapping laws" as well, "perjury, obstruction of justice, illegal campaigning" (Sirica, 1979). However, what caused more reaction and affects not only the US citizens, but and the global public opinion also.

Whereas, Julian Assange, the founder and editor-in-chief of *WikiLeaks* in 2010 has revealed numerous US Government programs through the publication of a "material documenting extrajudicial

killings in Kenya, a report of toxic waste dumping on the coast of Côte d'Ivoire, Church of Scientology manuals, Guantanamo Bay detention camp procedures, the 12 July 2007 Baghdad airstrike video, and material involving large banks such as Kaupthing and Julius Baer among other documents" (Ackland, 2009). This showed another face of the American politics. Suspicious way on that how the US leads the Global war on terrorism, the notorious prison Guantanamo etc. are major examples of that the ideas stipulated in the US Constitutive acts are not in a first place. However, the saga of Assange is just a significant beginning of what follows the next. After three years, while case *WikiLeaks* and the extradition of Assange are still present in the media, young Edward Snowden, published information about the National Security Agency (NSA) activities. The reason why we analyze this case is because here can be seen the conflict between the individual liberty proclaimed in the US Constitution and how it is severely violated today. In this sense, the problem appeared because NSA "is searching the content of virtually every email that comes into or goes out of the United States without a warrant"(Abdo, Toomey, 2013). It also "details the internet protocol addresses (IP) used by people inside the United States when sending emails - information which can reflect their physical location. In this context, Julian Sanchez of the Cato Institute, emphasized:

> The calls you make can reveal a lot, but now that so much of our lives are mediated by the internet, your IP [internet protocol] logs are really a real-time map of your brain: what are you reading about, what are you curious about, what personal ad are you responding to (with a dedicated email linked to that specific ad), what online discussions are you participating in, and how often? (Greenwald, Ackerman, 2013).

In this case, the opinions are divided. The proponents of the US President Barak H. Obama accused Snowden for the nation treason. In this sense, Barak H. Obama stressed that: "our intelligence is focused above all on finding the information that's necessary to protect our people, and in many cases protect our allies; (…) America is not interested in spying on ordinary people" (Sky, 2013), and thus, Edward Snowden "is not a patriot for revealing details of secret US surveillance programs" (Sky, 2013). According to Robert Hager analysis, this activity is a violation of The Fourth Amendment of the Constitution, which prohibits "unreasonable searches and seizures" (Bill of rights, IV Amendment). This amendment involves:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized (Bill of rights, IV Amendment).

Considering this amendment, it can be seen that this "crime" is significantly less than what actually did the US Government with such programs and activities. If citizens are wiretapped and recorded in their private conversations "the right of the people to be secure in their persons, houses, papers" (Bill of rights, IV Amendment) is directly threatened. Under the precedent of the US Supreme Court, in the case *California v. Avecedo, 500 US 565*, we conclude that it is not really a valid reason, in the context of the following statement: "it remains a cardinal principle that searches conducted outside the judicial process,

without prior approval by judge or magistrate, are *per se* unreasonable under the Fourth Amendment" (Hagan, 2013). The "seizure - the taking of private information - is what the Government has now been forced to admit in its decision to prosecute Snowden for telling the truth about their secret seizures" (Hagan, 2013).

Moreover, the individual rights and privacy, ownership and freedom, continue to be oppressed by the US Government. There are numerous examples of how the US Government manipulates the trust of the people working under suspicious circumstances what lead to the question of the stability of one of the oldest liberal Constitutions (and the first federal constitution as well) in the modern political era – the US Constitution. In his second term, the US President Barak H. Obama has proposed several nebulous laws (Affordable Care Act, Gun Control proposal, Unborn Child Protection Act etc.) that cause a reaction among the population, and whose content is contrary to the corpus of individual liberty and private property rights. Considering this, The Director of the Constitutional Rights and Remedies Program at the University of Denver Law School, Mark Kamin, stressed: "(…) if there is a valid federal law, the federal Government can enforce it in any state. What it cannot do is force state officers to enforce federal law" (Walshe, 2013).

Some US Member States explicitly opposed the adoption of such a law. Mississippi Gov. Phil Bryant along with House Speaker Phil Gunn stands up for what is stipulated in the Constitutive acts. In this sense Phil Gunn emphasized: "[t]hese are dangerous times, and people have a Constitutional right to protect themselves and their property" (Walshe, 2013). While Bryant, supporting this view adds "we are going to continue to fight for their Second Amendment rights to bear arms" (...) "President's Executive Order infringes our Constitutional right to keep and bear arms as never before in American history" (Walshe, 2013). In this direction also is the stance of

the state of Texas. Steve Toth stands in defense of the Second Amendment, adding that: "We can no longer depend on the Federal Government and this Administration to uphold a Constitution that they no longer believe in (...) The liberties of the People of Texas and the sovereignty of our State are too important to just let the Federal Government take them away" (Walshe, 2013). No different opinion has the State Senator Brian Munzlinger, emphasizing that: "We cannot let the total disregard of our Constitutional rights continue" (Walshe, 2013).

In response to this, Constitutional law professor at the University of Pennsylvania Law School, Theodore Ruger, emphasized: "the federal laws and treaties are the supreme law of the land and that has been interpreted to mean in case there is any conflict when Congress or the president speaks clearly and with valid authority on a topic, states cannot thwart the application of the law within its borders" (Walshe, 2013). While the political analyst Duke Chen, refers to the effects that would cause the law to favor and encourage gun trafficking: "President Obama is proposing a law prohibiting straw purchasing for guns, which occurs when people who would not pass a background check get someone else to buy the gun for them" (Chen, 2013).

What Constitutional acts established two centuries ago, today is obviously edited. Since then, America has been a symbol of freedom and democracy exporter in the world, the present US policy dramatically changed a picture that had created front of the eyes of the world. While the private property, individual liberty and free market, obviously are not popular anymore. According to the *Index of Economic Freedom* which measure the degree of economic freedom in the world's nations, by *The Heritage Foundation and The wall street journal*, in 2012 and 2013, the United States falls into the category of "mostly free" and is located on the 10th place after Hong Kong, Canada, Australia. Chile,

New Zealand etc. According to *Freedom in the World 2013*, Freedom House's annual report on the state of global freedom recorded: “North America continues to grapple with the impact of the financial crisis” (Puddington, 2013). According to the latest report from the *Fraser Institute, Economic Freedom of the World: 2013 Annual Report* (Vasquez, 2013), noted that the US is actually a country which was not only the founder of the liberal ideas of freedom, especially economic, it is a country that is already spleen few steps below (Chart 1). While “from 1980 to 2000, the United States was generally rated the third freest economy in the world, ranking behind only Hong Kong and Singapore” (Vasquez, 2013). Over a such ruined freedom, President Obama received his mandate relying on “disappointing economy, persistent unemployment, and a massive budget deficit (...) higher taxes for the rich and the protection of social programs, among other policies, garnered strong support from the country's growing ethnic minority populations (Puddington, 2013). With this attitude, President Obama shows that the values set by the US Founding fathers previously, today are seriously distorted.

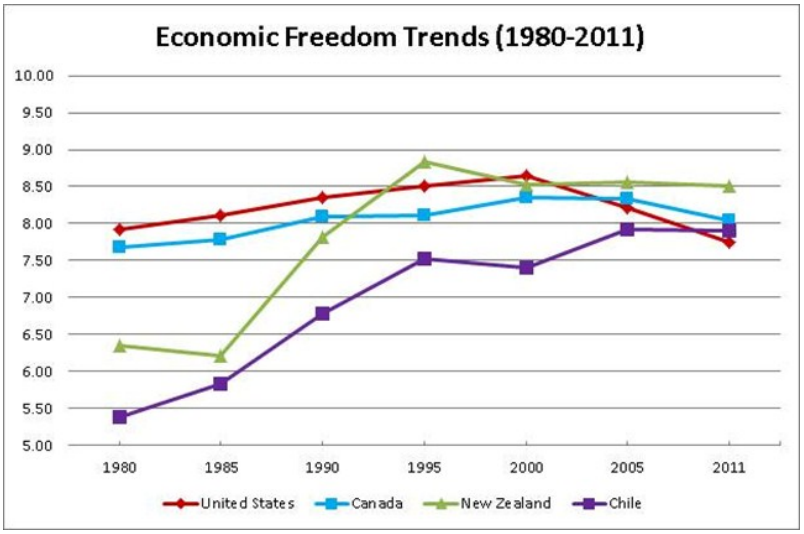

Chart 1. Economic Freedom of the World: 2013 Annual Report.

Source: Vasquez I. (2013) The Continuing US Decline in Economic Freedom in the World Index, http://www.cato.org/blog/continuing-us-decline-economic-freedom-world-index

CONCLUSION

The individual liberty as one of the fundamental human rights could be treated as an execution of the free will of the individuals, without damaging the liberty of the others. Whereas the individual liberty deeply in itself incorporates the right of free speech, free press, private property etc., as a premises embedded in the US Federalist papers, The US Declaration of Independence and above all, the US Constitution. In the past, the US Founding fathers promoted their federal and libertarian ideas to the American people emphasizing that they articulate the principles of liberty, independence and self-government - motivation that led through the liberation struggle against the British Crown. Laying in the first plan civic values such as individual liberty, private property, self-government through devolution of the power and the central government with limited powers, the people were ready to ratify the US Constitution after a dozen years after these ideas were presented. Nevertheless, today start a new era for the individual liberty, not just in the US, but also in the whole (western) democratic world. The political authorities, both in the US and the democratic world, continuously started to oppress the individual liberty as a human right as a compensation for the security of the people. The US example is terrifying, while taking into account the importance of the US in the world system as a super-power that started to oppress the individual liberty as a human right. That is evident with numerous US Government activities, such as Edward Snowden case, the saga of Julian Assange, the NSA activities and scandalous spying of the politicians across the globe. At the end, we can conclude that the US Founding fathers succeed to create and to

implement the US Federalist papers, they succeed to create the first federation in the world based on the premises of individual liberty and succeed to raise the individual liberty as an essential, democratic human right of the US citizens, but today political authorities of the US obviously do not realize the importance of this human right, and therefore they continue to oppress it. This negative trend stimulate weakening of the US global authority, weakening of the internal political system of the US and its institutions legitimacy, while causing adverse trends of the premises set by the US Founding fathers. Moreover that the latest report from the *Fraser Institute, Economic Freedom of the World: 2013 Annual Report* (Vasquez, 2013), noted that the US is actually a country which was not only the founder of the liberal ideas of freedom, especially economic, it is a country that is already spleen few steps below. Considering the research question: What are the challenges of the individual liberty in the US as a human right taking into account the US Federalist papers?, we can conclude that time has come the US citizens to regain their freedom and to defend their individual liberty. Because, the individual liberty is not only a human right, but also it is a mirror of the political system and its democratic legitimacy, established to defend and to preserve the citizens' rights and freedoms, not to control or to oppress them.

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HUMAN RIGHTS IN PUBLIC ORGANIZATIONS

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ABSTRACT

In modern organizations, employees enjoy a variety of rights, which allow efficient and effective work. Basic human rights are workers' rights in organizations. Workers' rights in organizations commonly addressed through laws enacted in states in which people are protected during daily operations. Laws in organizations implement managers managing employees.

Key words: organization, labor rights, manager, employees

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INTRODUCTION

The success of any organization consists in a well organized working. All activities in the organization should be entrusted to experts-managers who will perform all activities of the organization, whereby the successful execution of the activities will contribute towards the objectives of the organization.

ORGANIZATION AND ORGANIZATIONAL BEHAVIOR

The organization is a group of people, which it creates not only to satisfy the need for work and livelihoods of employees, but also to meet the needs of

both consumers and society. Organizing system is complex and consists of several parts and competencies.

The structure of the organization follows its goals, which were derived from the strategy of the organization. The structure should ensure efficiency and effectiveness in operations. Efficiency refers to the timely execution of tasks, and the effectiveness of successfully meeting the objectives of the organization that had been planned.

Organizational behavior is a discipline that addresses the individual as well as group behavior, interpersonal relationships and organizational dynamics in order to improve the efficiency and effectiveness of the organization as well as people who work in it[1].

It is a set of tools that every manager needs to know to effectively carry out their tasks[2].

1. MANAGEMENT

Management is managing of certain functions in an organization, that they are responsible for defining the organization's goals and striving to meet them. Management is the process of dealing with controlling things or people. Management is often included as a factor of production along with machines, materials and money. According to Peter Drucker, the essential task of management involves both marketing and innovation. The practice of modern management originates from the 16th century through the study of low- efficiency and failures of certain enterprises, conducted by the English statesman Sir Thomas More. The management consists of interlocking functions of creating corporate policy and organizing, planning, directing and controlling the resources of the organization in order to achieve the objectives of this policy. Managers use the basic management functions to achieve the set goals of the organization, with proper and effective use of available resources. Basic management functions are: planning, organizing, coordinating, motivating and controlling[3].

1.1. Motivation

The motivation comes from the Latin word "moves", "movere" which means "move". Briefly, the motivation is like driving forces which satisfy one's need and fulfill a purpose.

It is composed of commitment and desire to work. Motivation with ability (aptitude , training and resources for work) consists performance[4] .

[1] *Schermerhorn R.J., Hunt G.J., Osborn N.R., Uhl-Bien M., "Organizational Behavior", John Wiley & Sons Inc., 2010, p. 4*

[2] *George M.J., Jones R.G., "Understanding and Managing Organizational Behavior", Prentice Hall, London 2011, p.13*

[3] *Шуклев Б., „Менаџмент„ Економски факултет-Скопје, 2011, стр. 9*

[4] Whetten A.D., Cameron S.K., " Developing Management Skills", Prentice Hall, Ney Jersey, 2002, p.305

In the modern world , with all the changes that have occurred in every field , related to the development of technique and technology play a key role in organizations that employees should have a high level of motivation to be able to work effectively and efficiently.

Motivation should answer the questions : why the individual concerns and can help to direct behavior in a positive direction , that would be better not only for him but also for the organization itself . In addition to developing skills for good performance , need to find ways these skills can be targeted to induce genuine desire to fulfill their tasks . One of those ways is the motivation of employees , which plays a huge role in the management of human capital, and effective leadership.

2. MANAGING HUMAN CAPITAL ACCORDING TO INTERNATIONAL DOCUMENTS ON HUMAN RIGHTS AND FREEDOMS

„ You can dream, create, created and build the best place in the world, but what really turns dreams into reality is the people. “

Walt Disney[5]

Human capital includes the whole experience, skills, assessments, skills, knowledge, creativity, motivation, contacts, undertaken risks, and wisdom of the individuals associated with an organization. It would be a complete physical and intellectual energy that the organization can use to accomplish its goals, and development operations.

Managers whose job is to look after the work of the organization and for its promotion have responsibility for their staff. They need to provide valuable people, to motivate, encourage them for further education, specialization, or the acquisition of new knowledge, would contribute to achieving organizational goals.

Respect and protection of human rights is one of the primary goals of the international community after the Second World War. The largest contribution in this regard has the United Nations that its Charter, has set the legal and conceptual foundations of international human rights[6]. A key role is the Universal Declaration of Human Rights, which in 1948, was adopted by the General Assembly of the United Nation. It was declared a common standard in the struggle for a normal life, but is not legally binding. Through its implementing international agreements, it becomes binding on states that have accepted.

International law of human rights, especially protection of human

[5] *Masic B., “Menadzment: principi, koncepti i procesi”, Univerzitet, Singidunum, 2010, str.247*

[6] *Henkin L. “International Law: Politics, Values and Functions”, vol. IV, 1989, 215 цитирано во Фрчкоски, Д. Љ. “Меѓународно право за правата на човекот“, Магор, Скопје, 2005, 97*

rights has made its adoption due to the implementation of these rights in the countries that have accepted it, organizations, and individuals themselves who enjoy those rights. These entities are a key factor in the application of human rights and their promotion for which people become satisfied. International human rights that are accepted by the States must be respected and applied.

In article 23 from Universal declaration of human right in written:

"1. Everyone has the right to work, to free choice of employment, to just and favorable conditions of work and to protection against unemployment.

2. Everyone, without any discrimination, has the right to equal pay for equal work.

3. Everyone who works has the right to just and favorable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.

4. Everyone has the right to form and to join trade unions for the protection of his interests."

Universal declaration of human right in article 26 says that:

"1. Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.

2. Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.

3. Parents have a prior right to choose the kind of education that shall be given to their children."

The Code of Ethics for Public Officials[7] contained several principles that employees should be conducted while working. These are: "... impartiality in the work, autonomy in handling, care about the reputation of the institution, equal treatment of the parties, and professional atti-

[7.] *Етички кодекс на јавни службеници, Службен весник на РМ, бр. 133 од 30.09.2011*

tude towards clients [8]..."

Regarding employment of public officials by the same law, article 14, paragraph 1 says that: ” job vacancy in a public office shall be filled in several ways with the publication of job advertisements, publication of internal job advertisements; deployment on public official in the same institution to another place and taking public servant from one institution to another.“

This procedure applies to employment on human resources in all public organizations, except for civil servants who are the Law on Civil Servants. According to the Law on Public Servants employed in organizations have rights and responsibilities that each of them should be respected. Among these rights in Article 28 of the same law clearly states that every public official has the right and obligation to upgrade the position they perform tasks and duties in specified organizational form in that institution.

The VI - th of the Law on Public Servants, regarding the evaluation of public servants from Article 60 to Article 63, is governed monitoring of public servants thereby assessed. Assessment should be carried out every six months, without absence for any reason. Public servants directly evaluate their superiors or other authorized person in that institution. The evaluation of public servants in a special form , as previously defined , and it is written descriptive assessment of the ultimate public servant , that is, "excellent " , "satisfactory " , "satisfactory " and "unsatisfactory ."

The provision of Article 64 of the law determinates the conditions under which it may be imposed termination of employment of a public officer or by agreement, upon request by law in other cases determinates by the law.

CONCLUSION

Proper human resources management can contribute to increased utilization of human capital development in the public sector and this can impact on managers in policy and management staff . But the realization of this conclusion requires employees and managers are motivated to get feedback from superiors performed tasks and work in an environment that will be free and open to be able to present their ideas in order to improve work in the organization.

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PRESSING SOCIAL NEEDS' REQUIREMENT WITH RESPECT TO ARTICLE 11 OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS

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ABSTRACT

This article examines how the case law of the European Court of Human Rights (Court) has shaped the implementation of Article 11 of the European Convention on Human Rights (Convention), which guarantees freedom of assembly and freedom of association. More specifically, it examines the development of case law with respect to standards governing legitimate dissolution of political parties. The article is divided into three chapters. The first chapter outlines general issues pertinent to freedom of association. The second chapter discusses legitimate grounds for interference with freedom of association. The third chapter deals with the development of "pressing social needs' requirement in case law involving dissolution of political parties. In the concluding remarks the authors point to the need for this requirement to be further honed in order to ensure its consistent and coherent application.

Key words: freedom of association; pressing social needs, political parties, European Convention on Human Rights; European Court of Human Rights.

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1. INTRODUCTION

Freedom of peaceful assembly and freedom of association are proclaimed basic human rights and enshrined in a number of

international instruments designed to ensure their protection, including the *Universal Declaration of Human Rights*, adopted by the General Assembly of the United Nations in 1948[3], the *European Convention on Human Rights*[4] and the *International Covenant on Civil and Political Rights*,[5] which came into force in 1953 and 1976 respectively. For the member states of the Council of Europe (CoE), the European Convention on Human Rights (formerly known as the European Convention for the Protection of Human Rights and Fundamental Freedoms, hereinafter: 'The Convention') bears particular significance, not least because the Statute of the CoE bounds member states to: 'accept the principles of the rule of law and of the enjoyment by all persons within its jurisdiction of human rights and fundamental freedoms'[6].

The Convention – which was closely patterned to the Universal Declaration of Human Rights – is the first comprehensive international treaty in the field of human rights, and was the first to establish an international court, the European Court of Human Rights (hereinafter 'The Court'). The Court decides on violations of the rights guaranteed by the Convention which are alleged to have been committed by the Contracting States[7]. It has developed extensive jurisprudence, which has played a critical role in shaping the concept of human rights not only in Europe, but also in the rest of the world[8].

Article 11 of the Convention (freedom of assembly and association) reads as follows:

'1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.

2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic

[3] *Article 20 of the Declaration (http://www.ohchr.org/en/udhr/pages/introduction.aspx). The first chapter of this article is to a large extent replicated from Dragan Golubović, Freedom of association in the case law of the European Court of Human Rights, which will appear in the forthcoming issue of the International Journal of Human Rights.*

[4] *Text of the Convention as amended by its Protocol No. 14 (CETS No. 194), which came into force on 1 June 2010 (http://conventions.coe.int/Treaty/en/Treaties/Html/005.htm).*

[5] *Article 22 of the Covenant (www.treaties.un.org/doc/Publication. Freedom of peaceful assembly and association is also guaranteed in the American Convention on Human Rights of the Organization of American States, which came into force in 1978 (http://www.oas.org/dil/treaties_B-32_American_Convention_on_Human_Rights.htm), * and the African Charter on Human and Peoples' Rights of the African States Members of the Organization of African Unity*

society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State '[9].

Freedom of association belongs to the group of the so called 'qualified rights' for which the Convention envisages legitimate derogations (*infra*, Chapter 2.)[10]. It enables individuals to get together and form an association – or for that matter join the one already formed – in order to pursue common goals for mutual or public benefit, which otherwise they could not achieve as individuals. As such, associations serve an important role in a society, since they enable individuals (and other private actors) to participate more effectively in social and political life[11].

2. LEGITIMATE RESTRICTIONS WITH RESPECT TO FREEDOM OF ASSOCIATION

As already noted, freedom of association belongs to the group of the so called qualified rights, – along with the right to privacy (Article 8), freedom of thought, conscience and religion (Article 9), and freedom of expression (Article 10) – for which the Convention envisages legitimate grounds for interference. In assessing weather the interference in question is deemed legitimate, the Court has developed a particular analytical framework. It was first introduced in *Handyside v. United Kingdom*[12], a case involving violation of Article 10 (freedom of expression) of the Convention, but it equally pertains to the other qualified rights in the Convention. Accordingly, any interference with freedom of association: (i) must be prescribed by law; (ii) must serve legitimate aim; and (iii) must be necessary in a democratic society[13].

(Banjul Charter), which came into force in 1981 (http://www.unhcr.org/refworld/pdfid/3ae6b3630.pdf). The language of the Charter is somewhat ambiguous, though. Article 10(1) of the Charter provides that: 'Every individual shall have the right to free association provided that he abides by the law' (emphasis ours).

6. *Article 3 of the Statute, ETS No. 001 (http://conventions.coe.int/Treaty/en/Treaties/Html/001.htm).*

7. *Clare Ovey, Robin White, 'The European Convention on Human Rights', Oxford University Press, third edition, pp. 1-4. On the admissibility and other issues pertinent to the proceedings before the Court and its organization see Chapter II, Articles 19-51, of the European Convention, as amended by Protocol No. 14.*

8. *See Vincent Berger, 'Case Law 9of the European Court of Human Rights', Round Hall Press, 1989. Ed Bates, 'The Evolution of the European Convention on Human Rights:*

Prescribed by law. The expression "prescribed by law" requires that the impugned measure have a basis in domestic law. In addition, it also refers to the quality of the law in question, and requires that it must be both accessible to the persons concerned and formulated with *sufficient precision* so that a common person, if need be with appropriate advice, can reasonably foresee the consequence of a particular action. Because it is impossible to attain an absolute precision in the drafting process, a law which confirms some degree of discretion on the side of public authorities is not itself inconsistent with this requirement, insofar as the scope of the discretion and the manner of its exercises are formulated with sufficient clarity. The Court acknowledged that a degree of precision required for the law in question may depend on a number of factors, including the content of the instrument in question; the field it seeks to cover; and the status of those to whom it is addressed[14]. This is also in keeping with the subsidiary role of the Court in the protection of the rights guaranteed by the Convention: it is primarily for national authorities to interpret and apply domestic law. However, this cannot serve as a pretext for a State to avoid obligations arising from the Convention[15].

The subsidiary role of the Court in the overall scheme of human rights protection by no means implies that it may not proceed with its own independent analyses of the contested legislation, decisions and case law of domestic authorities. Indeed, the Court has set out high standards in applying the 'prescribed by law' requirement. In *Maestri v. Italy,* a case involving a justice who was reprimanded by the supervisory authority for violation of regulations prohibiting judges from membership of the Freemasons, the Court ruled violation of Article 11 because the contested regulations did not meet the 'prescribed by law' standard. The Court found regulations not foreseeable—i.e. written with necessary quality which would have

From Its Inception to the Creation of a Permanent Court of Human Rights', Oxford University Press, 2010.

9. The term 'administration of the State' in Article 11(2) of the Convention is understood not to include teachers and professors, even if they are on the government's payroll. See Vogt v. Germany, Application no. 1785/91, judgment of 26 September 1999.

10. Ovey, White, pp 4-5.

11. Jeremy McBride, 'International Law and Jurisprudence in Support of Civil Society', Enabling Civil Society, Public Institute Law Initiative (PILI), p. 22. Donna Gomien, 'Short Guide to the European Convention on Human Rights', Council of Europe Publishing, third edition, p. 117. Dragan Golubović, 'An Enabling Framework for Citizen Participation in Public Policy: An Outline of Some of the Major Issues Involved', The International Journal of Not-for-Profit Law, Vol. 12, No. 4, November 2010, pp. 38-39 (http://www.icnl.org/research/journal/vol12iss4/ijnl_vol12iss4.pdf).

allowed for their unambiguous interpretation, even though the applicant was a well informed person (justice). The Court noted that the expressions "prescribed by law" and "in accordance with the law" in Articles 8 to 11 of the Convention not only require that the impugned measure have some basis in domestic law, but that law is written with *certain quality*. The Court further noted:

> "For domestic law to meet these requirements, it must afford a measure of legal protection against arbitrary interferences by public authorities with the rights guaranteed by the Convention. In matters affecting fundamental rights it would be contrary to the rule of law, one of the basic principles of democratic society enshrined in the Convention, for a legal discretion granted to the executive to be expressed in terms of an unfettered power. Consequently, the law must indicate with sufficient clarity the scope of any such discretion and the manner of its exercise"[16].

Legitimate aims. Any derogation from the aforementioned rights must serve "legitimate aim". The grounds for legitimate derogation set out in Article 11 par. 2 of the Convention are exhaustive *i.e. numerus clausus*, and therefore derogation (interference) may not serve any other goals (*supra*, chapter 1). The Court acknowledged that a State have some margin of appreciation with respect to the manner and scope by which those legitimate derogations are applied. However, it goes hand in hand with rigorous European supervision. In *Sidiropulos and Others v. Greece*, a case involving violation of Article 11 of the Convention, the Court noted:

> "Consequently, the exceptions set out in Article 11 are to be construed strictly; only convincing and compelling reasons can justify restrictions on freedom of association. In determining whether a necessity within the meaning of Article 11 § 2 exists, the States have only a limited margin of appreciation, which

[12] *Application no. 5493/72, judgment of 7 December 1976.*

[13] *Ovey, White, pp. 199-216.*

[14] *See Maestri v. Italy, Application no. 39748/98, Grand chamber judgment of 17 February 2004, par. 30. Koretskyy and others v. Ukraine, application no. 40269/02, judgment of April 2008, par. 47.*

[15] *See Refah Partisi and Others v Turkey, Applications nos. 41340/98, 41342/98, 41343/98, 41344/98, Grand chamber judgment of 13 February 2003, par. 57.*

[16] *Par. 30. of the judgment, supra note 12. See also Sunday Times v. the United Kingdom (no. 1), Application no. 6538/74, judgment of 26 April 1979, par. 49. Hasan and Chaush v. Bulgaria [GC], application, no. 30985/96, Grand chamber judgment of 26 October, 2000, par. 84.*

goes hand in hand with rigorous European supervision embracing both the law and the decisions applying it, including those given by independent courts'.[17]

Necessary in a democratic society. The Court has repeatedly noted that democracy is a fundamental feature of the European public order and the only regime compatible with the Convention.[18] Therefore, it is incumbent on a State to prove that interference with the Article 11 is not only prescribed by law and serves legitimate aim, but is also in response to '*pressing social needs*'.[19] In *Refah Partisi (the Welfare Party) and Others v. Turkey* the Court stated:

"Articles 8, 9, 10 and 11 of the Convention require that interference with the exercise of the rights they enshrine must be assessed by the yardstick of what is 'necessary in a democratic society'. The only type of necessity capable of justifying an interference with any of those rights is, therefore, one which may claim to spring from 'democratic society'. Democracy thus appears to be the only political model contemplated by the Convention and, accordingly, the only one compatible with it".[20]

Furthermore, it is incumbent on a State to prove that the interference in question is not only necessary in a democratic society' i.e. serves *pressing social needs*, but is also *proportional* to the needs it purports to serve: a State must prove that the interference in question is the *minimum level of interference* necessary to attain legitimate goals. As the Court stated in *Tebieti Mühafize Cemiyyeti and Israfilov v. Azerbaijan*:

"When the Court carries out its scrutiny, its task is not to substitute its own view for that of the relevant national authorities but rather to review the decisions they delivered in the exercise of their discretion. This does not mean that it has to confine itself to ascertaining whether the respondent State

[17] *Application no. 57/1997/841/1047, judgment of 10 July 1998, par. 40. See also Stankov and the United Macedonian Organization Ilinden v. Bulgaria, Applications nos. 29221/95 and 29225/95, judgment of 2 October 2001.* ***Gorzelik and Others v. Poland,*** *Application no. 44158/98, Grand Chamber judgment of 17 February 2004.* ***Emin and Others v. Greece,*** *Application no. 34144/05, Chamber judgment of 27 March 2008.* ***Tourkiki Enosi Xanthis and Others v. Greece****, Application no. 26698/05, Chamber judgment of 27 March 2008.*

[18] *See e.g. United Communist Party of Turkey and Others v. Turkey, Application no. 19392/92, judgment of 30 January 1998 par. 45.*

[19] *Handyside v. United Kingdom, par. 48., supra, note 10.*

[20] *Par. 86. of the judgment, supra, note 13.*

> exercised its discretion reasonably, carefully and in good faith; it must look at the interference complained of in the light of the case as a whole and determine whether it was "proportionate to the legitimate aim pursued" and whether the reasons adduced by the national authorities to justify it are "relevant and sufficient"."[21]

Proportionality therefore requires striking a fair balance between the general interest and the requirements of the protection of fundamental rights, which is inherent in the whole of the Convention. In a significant number of cases involving violation of Article 8-11 of the Convention the Court found that interference served a legitimate aim, however, the respondent failed to meet the proportionality test.[22]

3. 'PRESSING SOCIAL NEEDS' AS A GROUND FOR DISSOLUTION OF A POLITICAL PARTY

In a number of cases involving dissolution of political parties, the Court has endeavoured to further clarify legitimate grounds for interference with freedom of association, and in particular the 'pressing social needs' requirement. In this respect, the Court has repeatedly acknowledged the role of political parties in democracy and a close link between freedom of expression and freedom of association, which it holds as the one between *lex generalis* and *lex specialis*.[23] The Court has come to develop particular sensitivity in cases involving a state ban of political parties, which have often been based on public speeches and other exercises of freedom of expression by the leaders and members of the party (books, editorials, conferences, etc). It has consistently held that even political programmes and calls for radical social change may not constitute a legitimate basis to justify a ban on political parties, as long as they stay within the parameters of democratic debate i.e. advocate for peaceful changes and do not call

[21] *Application no. 37083/03, judgment of 8 October 2009, par. 68.*

[22] *See e. g. Campbell v. the United Kingdom, application no. 1359/88, judgment of 25 March 1994 (violation of Article 8). Handyside v. the United Kingdom, supra, note 16. Sunday Times v. the United Kingdom (No. 1), Application no. 6538/74, judgment of 26 April 1979 (violation of Article 10).* ***Yeşilgöz v. Turkey,*** *Application no. 45454/99, judgment of 20 December 2005. Kjeldsen, Busk, Madsen and Pederson v. Denmark, Application no. 5095/71, 5920/72, 5926/72, judgment of 7 December 1976. Loizidou v. Turkey, Application no. 15318/89, judgment of 23 March 1995. Tebieti Mühafize Cemiyyeti and Israfilov v. Azerbaijan, supra, note 19* (violation of Article 11). See also Compilation of Venice Commission opinions concerning freedom of association, Strasbourg, 16 July, 2013, CDL(2013) 035 pp. 9-12.

for or engage in violence against those who do not subscribe to their views and values.[24] In *United Communist Party of Turkey and Others v. Turkey*[25], the Court found violation of Article 11 because the party had been dissolved even before it had been able to start its activities, solely on the basis of its by-laws and programme (and in part, on its inclusion of the term "communist" in its name) – although there was not *prima facie* evidence that the party sought to engage in illegal activities.[26] The Court stated:

> 'The Court considers one of the principal characteristics of democracy to be the possibility it offers of resolving a country's problems through dialogue, without recourse to violence, even when they are irksome. Democracy thrives on freedom of expression. From that point of view, there can be no justification for hindering a political group solely because it seeks to debate in public the situation of part of the State's population and to take part in the nation's political life in order to find, according to democratic rules, solutions capable of satisfying everyone concerned.
>
> Admittedly, it cannot be ruled out that a party's political programme may conceal objectives and intentions different from the ones it proclaims. To verify that it does not, the content of the programme must be compared with the party's actions and the positions it defends'. [27]

Therefore, it is incumbent upon a State, in the absence of *prima facie* evidence suggesting otherwise, to give a political party – or for that matter any other association – the benefit of the doubt and restrain from interference with freedom of association i.e. allow it to be entered into the registry and to engage in activities, before taking on any restrictive measures.

However, as already noted, peaceful agitation for social changes is not

23. *Ezelin v. France, Application no. 11800/85, judgment of 26 April 1991.*

24. *Gomien, p. 121.*

25. *Supra, note 16.*

26. *See also Tsonev v. Bulgaria, Application no. 33726/03, judgment of 1 October 2009, where the Court found a violation of Article 11 in a decision of the Bulgarian court to reject the application for registration of the Communist Party of Bulgaria, inter alia because the bylaws of the Party called for the revolutionary accomplishments of the communist ideals. The Court ruled that the wording of bylaws ("revolutionary accomplishments") did not amount to sufficient prima facie evidence for the legitimate interference with freedom of association. See also* ***Partidul Comunistilor (Nepeceristi) and Ungureanu v. Romania****, Application no. 46626/99, judgment of 3 February 2005;* ***Parti Nationaliste Basque - Organisation Régionale D'Iparralde v. France****, Application no. 71251/01, Chamber judgment of 7.6.2007.*

the only threshold a political party (or for that matter other associations) must meet in other for its activities to be considered legitimate ones. The *nature* of those changes also matters: they must be compatible with *democratic* values, which the Court proclaimed 'a fundamental feature of the European public order'.[28] In *Refah Partisi (the Welfare Party) and Others v. Turkey*[29] the Court found no violation of Article 11 in the Turkey authority's action to ban the Partisi party, because the Sharia law it sought to impose on Turkey departs from the values enshrined in the Convention, in particular with respect to the secular nature of a democratic state, the criminal law proceedings, and the legal status of women. The Court also noted that the imposition of Sharia law, would prevent the respondent (Turkey) from playing a neutral role in securing religious freedoms of non-Muslim citizens, and striking a balance between democratic society and individual rights, which is inherent in the Convention system.[30] The Court furthermore pointed to the fact that actions of party leaders were incoherent with the party's proclaimed program, and stated:

> 'The Court further considers that the constitution and programme of a political party cannot be taken into account as the sole criterion for determining its objectives and intentions. The political experience of the Contracting States has shown that in the past political parties with aims contrary to the fundamental principles of democracy have not revealed such aims in their official publications until after taking power. That is why the Court has always pointed out that a party's political programme may conceal objectives and intentions different from the ones it proclaims. To verify that it does not, the content of the programme must be compared with the actions of the party's leaders and the positions they defend. Taken together, these acts and stances may be relevant in proceedings

*The same test pertains with respect to dissolution of other associations. Thus in **Zhechev v. Bulgaria,** Application no. 57045/00, Chamber judgment of 21 June 2007, the Court ruled that the refusal to register the association: 'Civil Society for Bulgarian Interests, National Dignity, Union and Integration–for Bulgaria', which inter alia sought to repeal the Bulgarian Constitution of 1991, restore the monarchy and open the border between 'the former Yugoslav Republic of Macedonia' and Bulgaria, amounted to violation of Article 11. The Court found that the goals of the organization as such, coupled with a lack of prima facie evidence that the association would restore to violence to accomplish its goals, fulfill the requirement of a democratic change. See also **Linkov v. the Czech Republic**, Application no. 10504/03, judgment of 7 December 2006; **Ismayilov v. Azerbaijan**, Application no. 4439/04, Chamber judgment of 17 January 2008' 'Association of Citizens Radko" & Paunkovski' v. 'the former Yugoslav Republic of Macedonia', Application no. 74651/01, judgment of 15 January 2009.*

for the dissolution of a political party, provided that as a whole they disclose its aims and intentions..' [31]

The Court also considered the appropriate timing for dissolution of the party, and noted:

'In addition, the Court considers that a State cannot be required to wait, before intervening, until a political party has seized power and begun to take concrete steps to implement a policy incompatible with the standards of the Convention and democracy, even though the danger of that policy for democracy is sufficiently established and imminent. The Court accepts that where the presence of such a danger has been established by the national courts, after detailed scrutiny subjected to rigorous European supervision, a State may "reasonably forestall the execution of such a policy, which is incompatible with the Convention's provisions, before an attempt is made to implement it through concrete steps that might prejudice civil peace and the country's democratic regime'.[32]

Finally the Court also dealt with the issue as to weather the risk for democracy was *sufficiently immanent* to justify the dissolution of the party. The Court came to a positive conclusion in this respect, based on the following reasoning: The Party, which was established in 1983, won approximately 22% of the votes in the 1995 general election, which gave it 158 seats in the Grand National Assembly (out of a total of 450 at the material time). After sharing power in a coalition government, Refah obtained about 35% of the votes in the local elections of November 1996. According to an opinion poll carried out in January 1997, if a general election had been held at that time Refah would have received 38% of the votes. According to the forecasts of the same opinion poll, Refah could have obtained 67% of the votes in the general election likely to be held about *four years'* later. It noted that

27. *Paras. 57-58 of the judgment. In this particular case the Court also took into consideration the outcome of related criminal cases (Yazar and Others v. Turkey, Application nos. 22723/93, 22724/93, 22725/93, judgment of 9 April 2002), in which no party leaders had been convicted of any offences that were cited as grounds for dissolving a political party. See also Socialist Party and Others v. Turkey, Application no. 21237/93, judgment of 27 January 1997.*

28. *United Communist Party of Turkey and Others v. Turkey, supra, note 16, paragraph 45.*

29. *Supra, note 13.*

30. *Ibid, paras 90-99. of the judgment.*

31. *Ibid, par. 101. of the judgment.*

32. *Ibid., par. 102. of the judgment.*

'notwithstanding the uncertain nature of some opinion polls, those figures bear witness to a considerable rise in Refah's influence as a political party and its chances of coming to power alone'[33], and concluded that at the time of its dissolution 'Refah had the real potential to seize political power without being restricted by the compromises inherent in a coalition. If Refah had proposed a programme contrary to democratic principles, its monopoly of political power would have enabled it to establish the model of society envisaged in that programme'. [34]

4. CONCLUDING REMARKS

In the cases discussed above the Court has developed the following cumulative yardsticks to assess weather dissolution of a political party serves "pressing social needs". Accordingly, 1) there must be plausible evidence that the proven risk for democracy is *sufficiently immanent*; 2) the acts and speeches of the leaders and members of the party concerned must be *imputable* to the party as a whole; and 3) the acts and speeches imputable to the party combined give a clear picture of the model of a society the party is advocating, which is incompatible with a *democratic society*.

However, at least two of the foregoing requirements are likely to benefit from further clarifications. For one there seems to be a room for the Court to further hone the concept of legitimate goals of political parties in light of their compatibility with democratic values. While in some instances a distinction between democratic and non-democratic values might be rather obvious (such was the case in *Refah Partisi*, *supra*, Chapter 3.), one can envisage circumstances in which such a distinction seems more blurred. The same pertains to the immanent danger requirement, which thus far has not necessarily provided a clear-cut answer as to under which circumstances a State pre-emptive action resulting in dissolution of a political party would be compatible

33. *Ibid., par. 107. of the judgment.*

34. *Ibid., par. 108. of the judgment.*

with Article 11 of the Convention. In the *Refah Partisi* case the Court implied that a pool which suggested that Refah party would have won 67% of the votes in the general election likely to be held about *four years'* later was a major contributing factor in legitimate dissolution of the party. However, a question may be raised as to weather such an analyses gives an overly broad discretionary power of a Contracting State, or a more conservative approach in this respect is needed.

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PROTECTION OF CONSUMER RIGHTS - A CHALLENGE FOR MODERN STATES: THE CASE OF THE REPUBLIC OF MACEDONIA

"Consumer is the sole end and purpose of all production;
and the interest of the producer ought to be attended to
only so far as it may be necessary for promoting
that of the consumer."
Adam Smith

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ABSTRACT

The emergence of consumer society has served as a basis for the occurrence and development of consumer law as a distinct segment of the law. At times when consumption is becoming an important part of citizens' everyday life, the need for legal norms which will protect those who spend and consume becomes an imperative. This need is especially pronounced today, when the Internet being a ubiquitous medium exceeds the traditional method of consumption and presents a real challenge to the legal regulation concerning the modes of contemporary consumption. Moreover, the globalization of the market has changed the processes of production and consumption. Consequently, the new "global citizen" nowadays, is practically, at the same time, the new "global consumer".

Consumer rights are part of the right to human development, which was recognized as a human right in the early 70's of the last century by the adoption of the UN Declaration of the Right to Development. In line with this trend, states began to incorporate consumer rights in their national legislation in a constitutional or legal form. In addition, regional and international initiatives have also increased their intensity in that direction.

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Consumer protection, especially in countries and economies undergoing transition, is a contemporary issue which requires special consideration. In that regard, this paper primarily offers a normative analysis of both substantive and collision law protection of consumers in the Republic of Macedonia. The authors also present a brief overview of the European Union law on consumer protection.

The aim of this paper is to present the concept of consumer rights protection in the Republic of Macedonia and in the EU, as well as the level of compliance of the Macedonian legislation with the EU law as far as this particular legal segment is concerned.

Keywords: consumer, consumer rights, consumer protection.

INTRODUCTION

The comprehensive rules that protect consumers are relatively new, but their roots derived long time ago. Roman law contained provisions to protect the buyer from hidden defects of the sold product, while Magna Carta Libertatum, despite well known provisions for limiting the absolute power of the ruler, also contained provisions for uniform measures for wine, beer, corn and cloth.[3]

Philosophy named as consumerism occurs in the sixties of the last century, first in the United States. Political support consumerism (as the third wave of consumers' movement) had received in 1962, when U.S. President John Kennedy told the famous sentence: "Consumers, by definition, include us all".[4]

Today, consumer protection is a complex concept that can be observed from two points of view: as a branch of law and as a human right.

Consumer law, as a legal branch is "work in progress". The answer of the question whether consumer law contains autonomous legal norms for

[3]. *Stanivukovic Maja, Ugovori sa potrosacima sa inostranim elementom- merodavno pravo i nadleznost, , Zbornik radova „Dvadeset godina Zakona o međunarodnom privatnom pravu" (urednik Prof. dr Mirko Živković) Pravni fakultet Niš, 2004. Godine, s. 251.*

[4]. *http:/ www. Consumersinternational.org/who-we-are/consumer-rights#.Ui8QXeUcS1U*

consumers, mostly depends of the way of which the particular legal doctrine defines the field of consumer law.

In his doctoral dissertation, Bourgoigne, in 1988 argued that consumer law and policy create separate, specific categories that promote single purpose which is protection of consumers and only consumer is in its focus.[5] Ten years later, in his doctoral dissertation, Straetmans deny that consumer law should be a separate branch of law.[6] His claim, which is based on the analysis of the Belgian consumer rules, was in respect of fact that consumer protection is not so special to be justified its autonomy. Also, he suggested a market-oriented approach to be applied, rather than paternalistic approach, proposed by Bourgoigne.

It is clear that consumer law is not closed legal area, compared to other legal areas. We agree with the conclusion that consumer rules are dispersed in different law branches, but in the same time, we consider that the existence of consumer law, as an independent legal branch, should not be denied. Hence, it is acceptable the claim according of which the private consumer law is a part of the civil law system and public consumer law is a part of the public law. This perception is justified, especially given the fact that the consumer, while exercising its consumer rights, also uses institutes from other branches of law, despite Institutes of consumer law. [7]

A consumer right as a human right also sets certain dilemmas in legal theory. Certain authors consider consumer right as a human right[8], while others do not support this claim.[9] In our view, a consumer right is a human right that primarily protects the human dignity of consumers from major business organizations, monopolies, cartels and multinational corporations. In this respect, we agree with Deutch, according to which, well-established human rights doctrines for individual prosperity, honor and dignity in the same time can serve as a basis for accepting a consumer right as a human right.

Consumer rights are individual rights, not collective rights, which protect consumers. And consumers are not distinct group of people, but each

[5]. *Cseres Judit Katalin, Competition Law And Consumer Protection, Kluwer Law International, The Netherlands, The Hague, 2005, p.157.*

[6]. *Ibidem.*

[7]. *Tonner Klaus, Die Rolle des Verbraucherrechts bei der Entwicklung eines europäischen Zivilrechts, Juristen Zeitung, 11/1996, p. 535*

[8]. *Deutch Sinai, Are consumer rights human rights?, Osgoode Hall Law Journal, Vol.32, N.3, 1944, p.551-564.*

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individual also is a consumer. Consequently, a consumer right is a human right, especially if we consider the fact that human rights are always based on human needs. And the need for protection of consumers is more than obvious.

2. CONSUMER PROTECTION IN THE REPUBLIC OF MACEDONIA

The legal and institutional protection of consumers is very important component for economic development of each country. The Macedonian Consumer Law is based on the courses of European Consumer Law. With signing the Stabilization and Association Agreement, Macedonia opted for European path and European standards for consumer protection.

Since 2000, when creation on the legal framework for consumer protection began in Macedonia, until now, it was accomplished a lot. It was adopted a modern legislative framework for consumer protection, established state and non-governmental bodies responsible for protecting the rights of consumers, defined strategy and a national program for the protection of consumers and so on. In a word, it was created a comprehensive legal infrastructure necessary to protect consumers, according to the EU legislation. Still, the process of creating rules and norms on consumer protection is not finished yet. It is needed to act continuously in respect to promote and create enhanced consumer protection. In this process, the experience of other transition countries would be very useful for Macedonia.

2.1. Substantive Legal Protection of Consumers in the Republic of Macedonia

Macedonian substantive protection of consumers was a very unsatisfactory until some time ago. The consumer was protected only by a small number of provisions spread in different regulations.

On April 9, 2001 Macedonia signed Stabilization and Association Agreement with the European Community and its Member States, according to which

Macedonia, among others, has an obligation to comply its legislation with EU legislation. Article 97 of the SAA[10] is particularly important for the consumer protection:

"The Parties will cooperate in order to align the standards of consumer protection in the Republic of Macedonia on those of the Community. Effective consumer protection is necessary in order to ensure that the market economy works properly, and this protection will depend on the development of an administrative infrastructure in order to ensure market surveillance and law enforcement in this field.

To that end, and in view of their common interests, the Parties will encourage and ensure:

- the harmonization of legislation and the alignment of consumer protection in the Republic of Macedonia on that in force in the Community;

-a policy of active consumer protection, including the increase of information and development of independent organizations,

-effective legal protection for consumers in order to improve the quality of consumer goods and maintain appropriate safety standards."

The Macedonian lawmakers have had two options to harmonize the Macedonian Law on Consumer Protection with European standards: either to modify existing regulations that contained provisions for consumers, or to enact special law which will cover all important provisions on consumer's rights and obligations. Second model had been applied. Macedonian consumer protection is based on a numerous legal acts and norms.

Constitutional foundation for consumer protection in Macedonia are articles 39 and 43 of the Constitution, which note that every citizen has right and duty to protect and promote their own health and the health of others and that everyone has the right to a healthy environment and everyone is obliged, within its powers and activity, to pay attention to the environment and nature.[11]

When it comes to the legislation level, primarily must be mention the Consumer Protection Act from 2004, as a fundamental rule that governs the

[10]. *Stabilization and Association Agreement between the European Union and their Member States, of one part, and the Republic of Macedonia, of the other part, Official Journal of EU, L84/13, 20.03.2004.*

[11]. *Constitution of the Republic of Macedonia, Official Gazette no.52/1991.*

matter of consumer protection. The existing law is the second Macedonian law that regulates the protection of consumers. The previous law was enacted in 2000 and it was, for the first time in Macedonia, lex specialis regulation in this field.

The new Consumer Protection Act entered into force on 25.06.2004.[12] This Act has been amended three times until now.[13]

Compare with the previous Act, the new Act made improvements from nomo - technical character and, in the same time, a partial harmonization with the EU acquis consumer has been made. However, given the broad scope of the field of consumer protection, this regulation should be observed as a general rule in the area of consumer protection which determines the framework of their protection.

The main objective of the Consumer Protection Act is to protect the economic interests of consumer, as well as, its life, health and property. This law is of great importance, primarily due to the fact that consumer rules are placed in one Act, which allows better information for consumer rights and obligations.

Specific questions about consumer protection are regulated by other legislation: Law on Obligations, Law on Product Safety, Law on Standardization, Accreditation Law, Law on market surveillance, Law for consumer protection in contracts for consumer loans, Law on food safety, Law on Tourism, Catering Industry Law, Law on Housing, Law for the Protection of Patients' Rights, Energy Law, Law on local self-government and so on.[14]

The Bylaws that consist consumer protection regulations in Macedonia are follow: Rulebook on the manner of keeping records of purchases and sales of goods and services in the wholesale and retail[15], Rulebook for minimum technical requirements for premises and trade places[16], Rulebook on minimum technical requirements in place where alcoholic beverages are selling, the form and the content and form of the license and the form and

[12]. *Official Gazette of the RM no. 38/2004.*

[13]. *Official Gazette of the RM no. 77/2007, 103/2008 u 24/2011.*

[14]. *Program for Consumer Protection for the period 2013 -2014, Official Gazette of the RM no. 7, January 9, 2013*

[15]. *Official Gazette of RM n.51/05 and 89/04*

content and manner of keeping the register of issued and revoked licenses[17], Rulebook on content and form of application to meet minimum technical conditions for trade and commencement of operations of the sales facility or other business facility[18], Rulebook for personal protective equipment at the market[19], Rulebook for energy efficiency requirements of household refrigerators, freezers and combinations thereof[20] and others.[21]

2.1.1. Institutional Protection of Consumers

Institutional consumer protection in Macedonia is divided in two sectors: the state administration and other bodies of the public sector and the non-governmental organizations whose activities are directly or indirectly focused on different aspects of consumer protection (see Figure 1).

When it comes to the first sector, there are different kinds of state administration bodies and the public bodies that have a direct and/or indirect authority in this area, established by the laws: Government the Republic of Macedonia, which creates consumer policy, Council for Consumer Protection[22], Council for Consumer Protection at the Local Government , Ministry of Economy (State Market Inspectorate), Ministry of Health (State Sanitary and Health Inspectorate and Drug Bureau), Ministry of Environment and Physical Planning (State Environmental Inspectorate), Ministry of Transport and Communications (Agency for Electronic Communications), Ministry of Education and Science (Bureau of Education Development), Ministry of Finance, Food and Veterinary Agency, Post Office Agency, Data Protection Agency, Energy Regulatory Commission, Commission for Protection of Competition, the Ombudsman, the Broadcasting Council, Standardization Institute, Institute for accreditation, economic chambers and courts, where proceedings are initiated by consumers for their rights and interests protection.[23]

The second institutional sector engaged in the field of consumer protection is consists by NGOs, whose activities are focused, directly or indirectly on

[16]. *Official Gazette of RM n. 21/04. 54/04, 79/07 and 93/08*

[17]. *Official Gazette of RM n. 93/08*

[18]. *Official Gazette of RM n. 21/04 and 86/05*

[19]. *Official Gazette of RM n. 13/07*

[20]. *Official Gazette of RM n. 13/07*

[21]. *For additional information see: http://www.dpi.gov.mk/index.php?otion=com_content&view=article&id=113%3Apodzakonski-akti&catid=43&Itemid=167*

[22]. *Council proposes measures and activities, monitors the implementation of the Program for Consumer Protection and etc.*

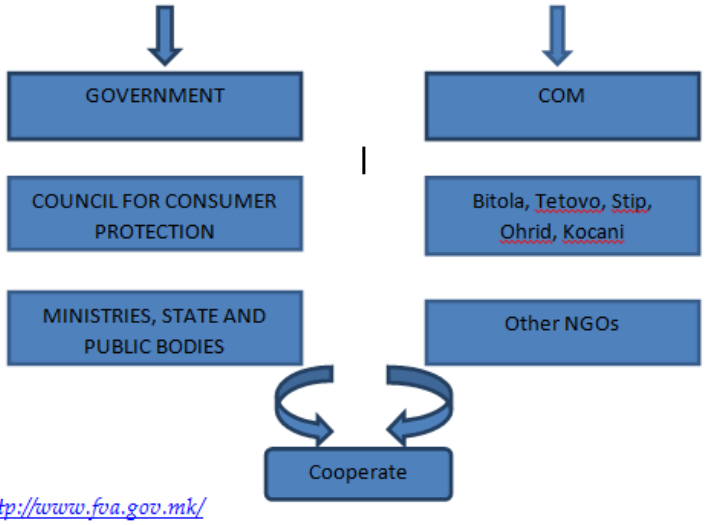
[23]. *See article 31-h of the Act amending the Act on Consumer Protection (Official*

different aspects of consumer protection. In Macedonia an active non-governmental organization is the Consumers Organization of Macedonia (COM)[24] from Skopje, which is internationally recognized as a full member of the world consumer organization - Consumer International and a member of BEUC - the European Consumers Organization.

Figure 1: Institutional protection of consumers in RM

GOVERNMENTAL SECTOR NGO SECTOR

4. COLLISION LAW PROTECTION OF CONSUMERS IN THE REPUBLIC OF MACEDONIA



Source: http://www.fva.gov.mk/

The Article 25 of the International Private Law Act enforces the consumer's protection in Macedonia:

According the Act, the consumer's contract is the one that enables supply of mobile goods or some rights to the consumer as well as the contract for providing some services for the benefit of the consumer.
According this Act, the consumer is every natural person that buys goods or uses services for direct personal consummation, for purposes which are not intended or related to his professional role or to some other trade activities.
This Article shall not apply to:
1) a contract of carriage;
b) a contract for the supply of services where the services are to be supplied to the consumer exclusively in a country other than that in which he has his habitual residence.
Notwithstanding other provisions of this Act, the law of the country in which the

[24]. *Consumers Organization of Macedonia acts through advisory bureaus for consumers in Skopje. There are brunches for consumer protection in Bitola, Tetovo, Ohrid, Stip and Kocani which are independent NGOs and in the same time collective members of COM.*

consumer has his habitual residence is applied for the consumer contracts agreement:
1) if in that country the conclusion of the contract was preceded by a specific invitation addressed to him or by advertising, and he had taken in that country all the steps necessary on his part for the conclusion of the contract, or
2) if the other party or his agent received the consumer's order in that country, or
3) if the contract is for the sale of goods and the consumer travelled from that country to another country and there gave his order, provided that the consumer's journey was arranged by the seller for the purpose of inducing the consumer to buy.
In the cases of the paragraph (4) of this Article, a choice of law made by the parties shall not have the result of depriving the consumer of the protection afforded to him by the mandatory rules of the law of the country in which he has his habitual residence.

The first and the second paragraph of this Article are the autonomous definitions for the notions of consumer contract and consumer. The fourth paragraph for the applicable law in the consumer contracts with foreign element determines the law of the state in which the consumer has his habitual residence, assuming the points 1-3. In reality, this provision is a reflection of the principle for limitation of the lex autonomiae in the consumer contracts with foreign elements, with the sole purpose – the protection of the consumer as a weaker party in the consumer transaction. The provision five also contributes to enforced protection of the consumers, according to which the mandatory rules for the consumer protection implemented in the law of the country in which the consumers has his habitual residence, cannot be ignored at none instance.

The Article 25 of the Macedonian International Private Law Act mostly corresponds to Article 5 from the Rome Convention[25], because the Rome I Regulation[26] was not enacted at the time of its preparation.[27]

3. PROTECTION OF CONSUMERS IN THE EUROPEAN UNION: BRIEF REVIEW

The area of the consumer protection is considered as one of the priority areas of interest and regulation in EU, because it is a necessary pre-condition for the normal Internal market functioning.

The intensive regulation of this area in the form of creation and shaping of the legal consumer protection as an independent and rounded legal unit has started many years ago.

[25]. *1980 Rome Convention on the law applicable to contractual obligations (consolidated version) Official Journal C 027 , 26/01/1998 P. 0034 – 0046.*

[26]. *Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations*

[27]. *Meksic Zlatan, Private International Law in Consumer Contracts, Collection of Studies and Analyzes, Vol. III, Beograd, 2010, p. 563-565).*

The consumer protection, as a separate policy in European Community, is introduced for the first time in the Treaty of Maastricht from 1993, in the Article 153.[28] Namely, according to this Article, the main purpose of the consumer protection is the protection of their health and safety, as well as the protection of the economic interests of consumers, including the right to be properly informed and educated as a consumer, and the right to organize, with the final goal to protect the common interests.

The consumer protection in EU is carried out in accordance with the principles of subsidiarity, horizontal approach and the minimum harmonization.
In the substantive legal level, the consumer protection in EU is regulated by the Directives. Their main purpose is to harmonize the legislations of the different Member States in a way that will enable at least minimal protection for the consumers. The main idea is to achieve the goal of the harmonization, while the Member States retain the freedom to choose the actual methods and the forms of directives implementation. In order for the directives to become an integral part of the positive legislation, the Member States must incorporate the directives' provisions in their domestic legislation.

In principal, the Consumer Directives empower the minimal compliance principle and with respect to the goods and the interests which they are protecting, they are categorized in four main categories: Directives for consumer health and safety; Directives for the protection of the economic interests of the consumers; Directives for regulating the compensation for damage of the goods with flaws; and, Directives for better informing of the consumers. In reality, the Member States can establish regulation that is even more strict and severe than the one provided in the Directives; hence, there persist huge difference among the Member States with respect to the shape and the place in which the issues related to the consumer protection are addressed. Due to the differences, the tendency for codification of the legislation of the consumer protection emerges, which should enable compliance of the various terminologies, as well as should increase the level of consumer protection and should fill the gaps formed by the inequalities.

[28]. Treaty establishing the European Community- (consolidated text) O.J. C 325 od 24 December 2002.

In general, the EU has defined eight main consumer rights: The right for basic needs satisfaction, the right for safe goods and services, the right to be properly informed, The right for free choice, The right to be heard and considered as a consumer, The right to be compensated, The right to be properly educated as a consumer, and the right for the healthy living environment. Valuing these rights in the national policies creation is the imperative not only for the EU member states, but also for the candidate status states.

The collision-law consumer protection in the EU is based on Article 6 from the Rome I Regulation, the Articles 15-17 from Brussels I Regulation[29] and the collision norms incorporated in the new generation of the Consumer Directives. [30]

In similar vein, it should be emphasized that the collision norms from the Directives have the priority over the provisions from Rome I, based on the Article 23 from Rome I Regulation.

CONCLUSION

An effective consumer protection is a fundamental value of every human civil society that provides quality of life and maintains a balance in the market between the interests of economic entities on the one hand and consumers on the other. Consumer protection also is a benchmark for a market economy and for an efficient functioning of the established institutional - administrative infrastructure.

The adoption of the new Consumer Protection Act in 2004 was especially progressive step in this area in Macedonia. But this fact does not mean that the area of consumer protection is a closed issue in Macedonia because multidisciplinary character of this area requires continuously adjustment on legal solutions with new trends in International Law and particular in the EU Law.

[29]. *Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, OJ L 12, 16.1.2001, p. 1–23.*

[30]. *Article 6(2) of the Directive 93/13/EEZ; Article 12 (2) of the Directive 97/7/EZ; Article 7(2) of the Directive 1994/44/ EZ, etc.*

The consumption philosophy in the EU is constantly developing and changing. From today's point of view it can be notice that consumer and civil rights rhetoric is getting closer to the internal market. Furthermore, the consumer is no longer seen as the "weaker party" to whom needs protection in the market, but as an active partner who should be encouraged to use the increased opportunities, particularly on cross-border shopping.

From the contents of this paper, we can conclude that there are laws and regulations and also, appropriate institutional framework for the protection of consumers in our state. Pro future, it would be necessary the consistent application of legislation and increased efficiency of government agencies, directorates, inspectorates and courts, as well as, a mutual cooperation between them, for achieving a higher level of protection for consumers who buy products and receive services in Macedonia

Consequently, keeping in mind the interest of the Republic of Macedonia for EU integration, Macedonia has an obligation to strengthening protection of domestic and foreign consumers constantly.

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THE RIGHT OF ACCESS TO INFORMATION IN COMPETITION LAW: CONFLICT BETWEEN PRIVATE RIGHTS AND THE NEED FOR EFFECTIVE PUBLIC ENFORCEMENT

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Petrina Broka[2]

“A little sunshine is the best disinfectant”

Justice Louis Brandies,

US Supreme Court (1856 - 1941)

ABSTRACT

Access to information is essential to people in a democratic country in order to participate effectively in the policymaking and implementation of measures that affect their daily life. It is considered as fundamental right as well as an important tool for the safeguard of other rights. This right has been recognized by important international documents. Apart for the importance that it has for the general public and Associations, the right of access to information is of utmost importance for persons or entities that have a direct interest on the information that is held by the public administration. This paper will be focused on the right of access to files in competition law cases. This right is very important for the parties in the proceeding. It is important also for victims of potential anti-competitive practices in order to start civil proceedings for the compensation of the damages suffered as a result of an anti-competitive behavior. But sometimes this right can conflict with the need for optimal administrative enforcement of competition law especially in regard with leniency and settlement proceedings. The situation in the EU will be discussed in the light of recent case law of the European courts. The importance of this paper is very important for the integration of our country in the European Union having in mind the importance of

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effective implementation of competition law and policy in this process.

Keywords: *Right of Access to information, Competition law, Leniency, private enforcement, ECJ.*

1. THE IMPORTANCE OF THE RIGHT TO ACCESS OF INFORMATION

Access to information is essential to people in a democratic country in order to participate effectively in the policymaking and implementation of measures that affect their daily life. It is considered as fundamental right as well as an important tool for the safeguard of other rights. This right has been recognized by important international documents such as the 1946 UN General Assembly Resolution 59(1) on Freedom of Information which states:

⇒ "Freedom of Information is a fundamental right and is the touchstone of all the freedoms to which the United Nations is consecrated. Freedom of Information implies the right to gather, transmit and publish news anywhere and everywhere without fetters. As such, it is an essential factor in any serious effort to promote the peace and progress of the word."

⇒ The Right of access to documents is also enshrined in Article 42 of the Fundamental Charter of the European Union as well as in the Albanian Constitution Article 22. There has been a long debate if this right is also enshrined in the European Convention of Human Rights in Article 10.[3] However the position of the European Court of Human Rights has evolved in its decisions in the direction of the recognition of this right. In an internet portal set up by one of the most important NGO's working on the access to information Access Info Europe, http://www.legalleaks.info it is stated that:

  ⇒ "In 2009 the European Court of Human Rights also recognized that there is a fundamental right of access to information held by public bodies protected by Article 10 of the Convention. ….The Court said that the right to information is especially protected when these bodies are the only ones who hold this information (an "information monopoly") and when the information is needed by media or by civil society organizations

[3] *See for example in general (Hins & Voorhoof, 2007)*

who are using the information to facilitate public debate and to hold governments accountable".

Apart for the importance that it has for the general public and Associations, the right of access to information is of utmost importance for persons or entities that have a direct interest on the information that is held by the public administration. This paper will be focused on the right of access to files in competition law cases. This right is very important for the parties in the proceeding. It is important also for victims of potential anti-competitive practices in order to start civil proceedings for the compensation of the damages suffered as a result of an anti-competitive behavior. But sometimes this right can conflict with the need for optimal administrative enforcement of competition law especially in regard with leniency and settlement proceedings. In this paper the situation in the EU will be discussed in the light of recent case law of the European courts and legislative proposals. This question is important because of the EU integration process that the countries of the Western Balkans are facing.

2. COMPETITION LAW AND ACCESS TO INFORMATION

Competition law, known in the United States as antitrust law, is law that promotes or maintains market competition by regulating anti-competitive conduct by companies. The main anticompetitive practices are:

- Prohibited agreements, such as cartels, bid rigging etc.
- Abuse of dominant position.

2.1. Anti – competitive agreements

Anti – competitive agreements or cartels are traditionally considered as the most serious threat to competition in the markets. Through an agreement, instead of competing between each other, undertakings act as a single entity, living little room for the freedom of choice of the consumers. These undertakings by increasing prices, limiting production, etc. exploit consumers and can heavily damage their competitors. One of the reasons that cartels are seen as

being so damaging is that there is very little economic justification for their existence; they are always detrimental and offer little or no redeeming benefit.[4]

2.2. Abuse of dominant position.

The abuse with the dominant position is considered as a major threat to competition in the markets. An undertaking with dominant position, can affect competition in that market by damaging consumers, or competitors in several ways. But on the other hand its behavior in the market can be normal and not damaging to the consumers and competitors. That is why the EU competition law as well as other legislations around the world, does not prohibit market dominance or even monopolies but only the abuse with such dominance. An undertaking is considered to have a dominant position if it is able to act without taking into account the reaction of its customers or competitors.

2.3. The enforcement of competition law

Competition law is enforced in different ways. The first and most popular way in Europe is the administrative enforcement. Usually there is an administrative body in charge of the application of the competition law with powers to investigate the anticompetitive practices and impose fines on the wrongdoers. Two important tools for the administrative enforcement of competition law are leniency and settlements. According to the European Union[5]:

> "By their very nature, secret cartels are often difficult to detect and investigate without the cooperation of undertakings or individuals implicated in them. Therefore, the Commission considers that it is in the Community interest to reward undertakings involved in this type of illegal practices which are willing to put an end to their participation and co-operate in the Commission's investigation, independently of the rest of the undertakings involved in the cartel. The interests of consumers and citizens in ensuring that secret cartels are detected and pun-

4. *See (MacCulloch & Rodger, 2008) page 241.*

5. *See Commission Notice on Immunity from fines and reduction of fines in cartel cases (Text with EEA relevance)*
Official Journal C 298 , 08/12/2006 P. 0017 - 0022

ished outweigh the interest in fining those undertakings that enable the Commission to detect and prohibit such practices."

Therefore the EU commission, US and many other countries have put in place a leniency program to offer immunity from the fines for the undertakings that cooperate with the body in charge for the enforcement of competition law by offering evidence for the anti-competitive agreements.

A different approach is done in the case of settlement procedures. In this case Parties to a proceeding, that has already started, may be prepared to acknowledge their participation in a cartel and their liability in respect of such participation. A settlement procedure should therefore be established in order to enable the Commission to handle faster and more efficiently cartel cases. Parties in a settelment proceeding will get a 10% reduction of the fine.

Another form of the enforcement of competition law is the private enforcement. A party that has been affected from an anticompetitive behavior starts an action in court asking for ceasing the anticompetitive behavior and/or the compensation of damages suffered. This way of enforcement is the most popular in the US. In the EU there is an increase of the private enforcement especially after the decisions of the European Court of Justice in the *Courage* and *Manfreddi* cases that established that the full effectiveness of Article 101 TFEU of the Treaty would be put at risk if it were not open to any individual to claim damages for loss caused to him by an anticompetitive practice.

Access to evidence is of utmost importance for a successful action for damages. Usually such evidence is in the possession of the party that has allegedly committed the anti-competitive practice or in the possession of the competition authorities that are investigating the case or have already concluded such investigation. If the evidence has been

obtained through the leniency or settlement procedures the competition authorities have no interest to disclose such information to parties interested to start an action for damages as it will deter companies to apply for leniency or seek a settlement. By admitting their responsibility they might be offered exemption from the fines, but they are not immune from the actions of private parties seeking compensation for the damages.

Furthermore, under tort rules, it is possible for the damaged party to request the whole award of the damage from the party that has already admitted their responsibility. Later on, contribution can be asked from the other cartelists but the process can last for several years.

Another way of the enforcement of the competition law is the criminal enforcement. It means that the law enforcement institutions such as the police and the prosecution are in charge for the enforcement of the competition law. This way is especially important in order to have a better deterrence but also to have more investigation tools in the disposal of the officials in charge. Usually only severe antitrust practices such as cartels and bid rigging are dealt with through criminal enforcement. The number of countries that have forms of criminal enforcement is increasing in Europe and in other parts of the world.

3. ACCESS TO FILES IN THE CASE LAW OF THE EUROPEAN COURT OF JUSTICE

3.1. The Pfleiderer Case

3.1.1 The facts

In 2008 the German competition authority, (Bundeskartellamt), conducted an investigation that was concluded with the fining of several manufacturers of

raw materials for laminate flooring for taking part in a cartel. Pfleiderer, a producer of laminate flooring that has purchased raw materials from the cartel members, submitted a request to the Bundeskartellamt, asking for access to all the material in the file, including the leniency applications, with a view to preparing a civil action for damages. The Bundeskartellamt denied this request. After this denial Pfleiderer started an action on the Bonn Local Court, (Amtsgericht Bonn) asking for the access to the files of the German competition authority. The Bonn court, accepted the action recognizing the role of Pfleiderer as an interested party. But it stayed the proceedings and referred the case for a preliminary ruling to the European Court of justice. The question for the ECJ was that whether damage claimants should be granted access to leniency applications held by a competition authority.

3.1.2 The decision

According to the Court[6] leniency programs are useful tools if efforts to uncover and bring to an end infringements of competition rules are to be effective and serve, therefore, the objective of effective application of Articles 101 TFEU and 102 TFEU. The effectiveness of those programs could, however, be compromised if documents relating to a leniency procedure were disclosed to persons wishing to bring an action for damages, even if the national competition authorities were to grant to the applicant for leniency exemption, in whole or in part, from the fine which they could have imposed.

The Court stated that it is reasonable to believe that a person involved in an infringement of competition law, faced with the possibility of such disclosure, would be deterred from taking the opportunity offered by such leniency programs in a Community level or an a member states level. But the decision stresses that nevertheless, it is settled case-law that any individual has the right to claim damages for loss caused to him by conduct which is liable to restrict or distort competition.[7] This right on one hand strengthens the working of the Community competition rules and on the other hand discourages anticompetitive practices.

6. *See paragraph 25 – 33 of the decision available at http://curia.europa.eu/juris/document/document.jsf?text=&docid=85144&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=949320*

7. *See Case C-453/99 Courage and Crehan [2001] ECR I-6297, paragraphs 24 and 26, and Joined Cases C-295/04 to C-298/04 Manfredi and Others [2006] ECR I-6619, paragraphs 59 and 61).*

In this way according to the Court:

> "in the consideration of an application for access to documents relating to a leniency program submitted by a person who is seeking to obtain damages from another person who has taken advantage of such a leniency program, it is necessary to ensure that the applicable national rules are not less favorable than those governing similar domestic claims and that they do not operate in such a way as to make it practically impossible or excessively difficult to obtain such compensation and to weigh the respective interests in favor of disclosure of the information and in favor of the protection of that information provided voluntarily by the applicant for leniency."[8]

The court is of the opinion that this "weighing exercise" can be conducted by the national courts and tribunals only on a case-by-case basis, according to national law, and taking into account all the relevant factors in the case. Therefore the answer to the question of the Bonn Court was that EU law does not preclude a person who has been adversely affected by an infringement of European Union competition law and is seeking to obtain damages from being granted access to documents relating to a leniency procedure involving the perpetrator of that infringement.

It is, however, for the courts and tribunals of the Member States, on the basis of their national law, to determine the conditions under which such access must be permitted or refused by weighing the interests protected by European Union law.

This decision has to be praised for the recognition of the importance of private enforcement of competition law. But on the other hand in balancing private and administrative enforcement the court could have been clearer on what factors should the case by case analysis focus. As we will see in this paper this was done somehow in the *Donau Chemie* Case.

3.1.3 End of the "Pfleiderer saga"

Followin the ECJ decision, the Bonn Local Court (Amtsgericht Bonn) in the

8. *Para. 31 of the decision in Pfleiderer.*

beginning of the year 2012, handed down a judgment refusing full access to the files of the German Bundenscartelamt refereeing to the leniency documents. The Bonn Local Court decided to protect the confidentiality of information supplied by the leniency applicants rather than to reveal it to damage claimants. After having considered the legal and practical implications of Pfleiderer's application, the Bonn Local Court has ruled that the effective application of leniency program should prevail over the interests of damage claimants. It therefore dismissed Pfleiderer's request for access to the leniency applications.[9]

3.2 The Donau Chemie Case[10]

3.2.1 The facts of the case

Donau Chemie AG, was involved in a cartel In breach of article 101, of the TFEU being investigated from the Austrian authority in charge for the protection of competition, Bundeswettbewerbsbehörde (BWB). The proceedings were started by the BWB after a leniency application. The case rose after a request of a trade association Verband Druck & Medientechnik for access to the file relating to judicial proceedings between the BWB and the cartel members. This trade association was interested to access this files in order evaluate the potential loss of its members form the cartel activity.

This request was consistent with previous rulings of the Court of Justice in Pfleiderer as well as in Courage & Manfreddi. According to this jurisprudence, all the interests must be weighed on a case–by-case basis, when a third party alleging harm resulting from breach of Article 101 TFEU seeks access to a file gathered in public law proceedings, even when the contained information has been collected in the context of leniency regime.[11]

According to the Austrian legislation the access to files is guaranteed in a court proceeding only when all the parties agree on such thing.[12] In this case only the BWB, agreed to grant access to this kind of information. A preliminary ruling, based on Art. 267 of the TFEU, was asked from the ECJ on the compatibility of the Austrian law with the EU, by the Austrian competent

9. *See for example in general Caroline Cauffman Working Paper No. 2012/3 "Access to Leniency Related Documents After Pfleiderer", M-Epli Maastricht European Private Law Institute.*

10. *Case C-536/11 – Bundeswettbewerbsbehörde v Donau Chemie AG and others*

11. *See Emanuela Matei, The ECJ AG Jääskinen concludes that the Austrian consent rule impedes access to justice by damages claimants and it is precluded by Union law (Donau Chemie), 7 February 2013, e-Competitions Bulletin February 2013, Art. N° 51003*

12. *See the Austrian Law on Cartels (Kartellgesetz 2005) para 39.*

court, the Austrian Cartel Court. Basically the core of the question was to weight up the interests of a national competition authority to receive information for breaches of competition law, through leniency applications and the interests of third parties to have access to the files in order to facilitate private enforcement.

The questions referred to the Court of Justice were:

(1) Does Union law, especially in the light of the judgment in Case C 360/09 Pfleiderer, preclude a provision of national antitrust law which, i.e. in proceedings involving the application of Article 101 or Article 102 TFEU in conjunction with Regulation No 1/2003, makes the grant of access to documents before the cartel court to third persons who are not parties to the proceedings, so as to enable them to prepare actions for damages against cartel participants, subject, without exception, to the condition that all the parties to the proceedings must give their consent, and which does not allow the court to weigh on a case-by-case basis the interests protected by Union law with a view to determining the conditions under which access to the file is to be permitted or refused? If the answer to Question 1 is in the negative:

(2) Does Union law preclude such a national provision where, although the latter applies in the same way to purely national antitrust proceedings and, moreover, does not contain any special rules in respect of documents made available by applications for leniency, comparable national provisions applicable to other types of proceedings, in particular contentious and non-contentious civil and criminal proceedings, allow access to documents before the court even without the consent of the parties, provided that the third person who is not party to the proceedings adduces prima facie evidence to show that he has a legal interest in obtaining access to the file and that such access is not precluded in the case in question by the overriding interest of another person or overriding public interest?

3.2.2 The AG Jääskinen position

The Avocat General Jääskinen issued his opinion on the Donau

Chemie case on 7 February 2013. Basically according to AG Jääskinen[13] the main issue to take into consideration was: Does the Austrian restriction, as described by the Cartel Court, mean that it is not open to the Association or its member undertakings to claim damages for the loss caused to them by an unlawful cartel, in the sense that the Austrian ban renders it impossible in practice or excessively difficult?

The AG, then went on the discussion of the applicability of the principle of equivalence and of effectiveness in EU law and their applications on the case.[14] Finally his opinion was that the Court should answer Question 1 to the effect that the principle of effective judicial protection, precludes a provision of national competition law like Paragraph 39(2) of the Austrian Competition law (KartG) which prohibits access to the files of the Cartel Court to third parties wishing to bring civil damages claims against the cartel participants, absent the consent of the latter.[15]

As a Conclusion he proposed that the answers to the questions referred by the Cartel Court should be as follows:

"(1) The principle of effectiveness under European Union law, as applied in the light of Article 19(1) TEU, precludes a provision of national competition law which makes the grant of access to documents of a national court, gathered within competition law proceedings involving the application of European Union competition law, to third persons who are not parties to those competition law proceedings, but who wish to prepare actions for damages against participants in an agreement that has been the object of the competition law proceedings, subject to the condition that all parties to the competition law proceedings provide their consent thereto. The answer will only be different if national law provides such alternative avenues for securing proof of breach European Union competition law and the determination of damage that supply effective legal protection for the right to claim civil damages for breach of those provisions and comply with Article 47 of the Charter of Fundamental Rights of the European Union.

14. *See para 46 of the Oppinionof the AG Jaaskinen available at http://curia.europa.eu/juris/document/document.jsf?text=&docid=133643&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=94722*

15. *The discussion of these principles goes beyond the scope of this paper. See for example in general about this principles Paul Craig & Graine De Búrca: EU Law: Text, Cases, and Materials 5edition, Oxford University press.*

(2) The principle of equivalence under European Union law does not preclude a national provision that makes grant of access to documents before a national court, and which have been gathered within competition law proceedings involving the application of European Union competition law to third persons who are not parties to those competition law proceedings, subject, without exception, to the condition that all the parties to the competition law proceedings must give their consent thereto, when the rule applies in the same way to purely national competition law proceedings but differs from national provisions applicable to third party access to judicial documents in the context of other types of proceedings, in particular contentious and non-contentious civil proceedings and criminal proceedings."

3.2.3 The Courts decision on Donau Chemie

The Court of Justice of the European Union ("ECJ") handed down it judgment on 6 June 2013 (Case C-536/11 – *Bundeswettbewerbsbehörde v Donau Chemie AG* and others).

As a follow up of AG Jääskinen's opinion, the Court considered the question of whether the principle of effectiveness under EU law precludes a national law provision that makes access by third parties to the documents forming part of the file in national proceedings concerning the application of Article 101 TFEU subject to the consent of all the parties to those proceedings, without leaving any possibility for the national courts to weigh up the interests involved.[16]

The court clarified that the national courts, when they need to apply national rules on the right of access to documents, must weigh up the respective interests in favor of disclosure of the information and in favor of the protection of that information provided voluntarily by a leniency applicant. The rigid application of such a rule regarding access may undermine the effective application of Article 101 TFEU and the rights that this Article confers on individuals to seek damages if they have suffered any harm from the breach of competition rules.

16. *See the ECJ decision available at http://curia.europa.eu/juris/document/document.jsf?text=&docid=140263&pageIndex=0&doclang=EN&mode=req&dir=&occ=first&part=1&cid=906030*

Following the decision in *Pfleiderer,* the Court stated that these interests must be balanced only on a case-by-case basis, according to national law, and taking into consideration all the relevant factors of the case. In this case, access is granted only if none of the parties to the proceedings object. Therefore, the Austrian court does not have the opportunity to weigh up the interests protected by EU law. Furthermore the parties may not allow the access to the file without giving any reasons or explanations. It means that in such cases they can deny access also for the documents that might constitute evidence to support a follow on compensation claim that most probably cannot be obtained in any other way. Therefore this rule may prevent or make excessively difficult, the right to compensation for damages caused by the infringement of competition rules.

But on the other side the Court stated that Member States should not be asked to apply the rules on access to files in a way that it might damage the public interests, in this case the effective application of public rules for the enforcement of competition laws. Such an example is the effectiveness of leniency programs. In practice no party would approach the competition authorities to cooperate providing evidence that can be used against them in order to get compensation for the damages from the anticompetitive practice.

The court stated that such circumstances can make a refusal to grant access to the files justifiable. This must be assessed on a case-by-case basis, considering all the factors. According to the court a particular factor to consider is the possibility of the parties to get the information in other ways. Another factor to consider is the harm that access to files can cause to the legitimate interest of other parties and to the public interest.

As a conclusion the court stated that the principle of effectiveness under EU law does preclude a national rule such as the Austrian one prevents the national court from weighing up the interests involved. But anyway the court has confirmed its position in Pfleiderer stating that national courts must decide based on a case by case analysis regarding the access to the leniency

documents by taking in the consideration the balance between the effectiveness of leniency program on the one hand and the right to get compensation for damages suffered from an anticompetitive practice.

4. THE DRAFT DIRECTIVE APPROACH TO ACCESS TO FILES

Shortly after the *Donau Chemie* decision, in 11 June 2013 the European Commission has launched a legislative proposal in order to facilitate and encourage the private enforcement of competition law across the EU. Having In mind the integration process of countries like Albania and other Balkan Countries this initiative when approve, will be particularly relevant and will have to be incorporated in the local legislation before joining the European Union.[17]

This legislative initiative is based mainly in the proposal for a draft directive "on certain rules governing actions for damages under national law for infringements of the competition law provisions of the Member States and of the European Union". This proposal has two main objectives: (i) optimising the interaction between the public and private enforcement of competition law; and (ii) ensuring that victims of infringements of the EU competition rules can obtain full compensation for the harm they suffered.

Having in mind the first objective the draft-directive has proposed that the leniency corporate statements and the settlements submission shall not be disclosed in any case.

This is stipulated in the Article 6 of the draft directive that is stated:

Article 6 - Limits on the disclosure of evidence from the file of a competition authority

1. Member States shall ensure that, for the purpose of actions for damages, national

courts cannot at any time order a party or a third party to disclose any of the

following categories of evidence:

(a) leniency corporate statements; and

[17] *For the importance of the implementation of competition law for the EU integration see Petrina Broka, Amarildo Laci "development of competition law and policy and its implementation as a challenge for the EU integration", conference proceedings of International Conference "Challenges of the Albania's integration in the EU", organized from the University of Tirana, University "La Sapienzza", Rome, and Universitas Fabrefacta Optime.*

(b) settlement submissions. …

The draft – directive also limits the use of evidence obtained through the access to the file of a competition authority:

Article 7 - Limits on the use of evidence obtained solely through access to the file of a competition authority

1. Member States shall ensure that evidence falling into one of the categories listed in

Article 6(1) which is obtained by a natural or legal person solely through access to

the file of a competition authority in exercise of his rights of defence under Article

27 of Regulation No 1/2003 or corresponding provisions of national law is not

admissible in actions for damages.

……

Therefore this draft – directive basically it is almost in contradiction with the decision of the ECJ in the *Donau Chemie* case only after five days after the delivery of this decision. It is not yet clear when this draft – directive will be officially approved or it will be somehow amended to allow more room for a case by case analysis of the right to access the files.

CONCLUSIONS

Access to information is one of the most important tools, to ensure the respect of human rights, the accountability of the government and the participation of the citizens in the society. This right is also very important for persons that have a direct interest in the government held information and it can be vital for them to ensure that their interest protected by law are implemented in practice. One such case is the access to the files of competition authorities by victims of anticompetitive practices such as cartels and abuse of dominance. But this right can conflict with the right of undertakings that have cooperated with competition authorities providing evidence for anticompetitive behaviors or acknowledging their responsibility and making the procedures more efficient. Limiting the access of third parties in such cases is consistent with

the need for efficient public enforcement. But it can result very detrimental to the interest of parties that want to start an action for damages, if there are no other ways of obtaining the evidence. Therefore the best approach is to make a case by case analysis considering several factors when deciding on the granting or denying the access to the files in competition cases.

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FREEDOM OF CONSCIENCE AND RELIGION IN THE REPUBLIC OF MACEDONIA

Sasha Dukoski[1]

ABSTRACT

Religious beliefs have been present for millenniums and their beginnings are in the very essence of both humans and communities, and even countries. The Republic of Macedonia along with all other states which were once part of the common Yugoslav federation has two periods of treatment of the issue of religious freedom, i.e. the freedom of conscience and religion.

The well-known concept of separation of religious feelings from the state-legal system was practiced in the former common federation. Relying on that concept and upon gaining independence, the Republic of Macedonia has developed a different, primarily symbiotic blend of the state with its two biggest religious communities, thus attempting to deal with this extremely sensitive issue, more or less successfully, which is actually the basic principle of human freedoms.

To foster a climate of religious tolerance, political and religious leaders should take a human rights-based approach and clearly affirm the importance of the right to freedom of religion or belief in all its dimensions.

Guarantee of freedom of conscience and religion and its regulation with international and regional legal instruments is undoubtedly the foundation of every modern democracy.

Key words: ***religion, Freedom of conscience, Constitution, Law, church, religious community.***

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1. NATIONAL DOCUMENTS AND REGULATIONS OF FREEDOM OF CONSCIENCE AND RELIGION

Various documents regulate human rights. According to numerous legal theoreticians, the right to freedom of religion or belief is perhaps the most essential one, underpinning individual as well as collective philosophy of life.

The contents of the Right to freedom of religion or religious belief are regulated with a large number of covenants, resolutions, protocols, and agreements. The most important of all is the United Nations Universal Declaration of Human Rights, which was adopted in 1948. The International Covenant on Civil and Political Rights, adopted in 1966 and the European Convention for the Protection of Human Rights and Fundamental Freedoms are also extremely relevant for this issue.

However, the initial defining of the framework parameters of national jurisdiction elaborates on freedom of religion or belief in the following most important international instruments for regulating human rights, in particular:

Articles 18 and 29 from the Universal Declaration of Human Rights[2];

Articles 4, 18 and 27 from the International Covenant on Civil and Political Rights[3];

Article 1 from the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief[4]

Article 9 of the European Convention for Protection of Human Rights and Basic Liberties[5];

All these covenants and declarations as well a great number of other similar documents have been ratified by the Parliament of the Republic Macedonia, thus forming an integral part of the national legislation.

The relations between the state and its religious communities and the work of religious communities, i.e. freedom and rights of religion in the Republic of Macedonia have always been an issue of versatile perception, both during the period of the common Yugoslav state and in the period after gaining its independence.

2. *UN Universal Declaration of Human Rights*

3. *International Covenant on Civil and Political Rights (ICCPR) GA UN*

4. *UN Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief 1981 (UN 1981 Dec.)*

5. *European Convention for the Protection of Human Rights and Fundamental Freedoms*

Guarantee of freedom of conscience and religion and its regulation with international and regional legal instruments is undoubtedly the foundation of every modern democracy.

Immediately after the end of World War II, i.e. in 1946, a Law on prohibition of incitement to and spreading national, racial and religious hatred and contention was adopted. Apart from the national, this law provides religious equality as well, which includes equality of religious communities.

This was followed by the Law on the Legal Position of Religious Communities adopted in 1953, the Act from 1961 for establishing certain regulations from the Law on the Legal Position of Religious Communities, which were in a way the basis for further legal regulation or more precisely, additional clarification of certain states through law decisions in 1977, 1997 and 2007.

All these laws consider the freedom of conscience and religion as a private human matter, putting an emphasis on the concept of separation of religious communities from the state and providing freedom of performing religious rituals and religious rites. Law norms have introduced prohibition of misuse of religion for political reasons, but they have also been quite liberal in providing the possibility for religious communities to be able to acquire and own property as well as to set up religious schools for educating priests.

However, from a normative perspective, the relations between religious communities and religious groups and the state in the Republic of Macedonia are regulated by the Constitution of the Republic of Macedonia, the Law on state authorities and Law on churches, religious communities and religious groups.

Generally, the freedom of religion in the Republic of Macedonia after it became legally independent from the former Yugoslav federation with the Constitution of the Republic of Macedonia, is guaranteed, in particular in Article 19, which has been supplemented with Amendment 7 from the Constitution of the Republic of Macedonia, where it is precisely stated that:
Freedom of religion is guaranteed.

Free and public, individually or in a community with others, expression of religion is guaranteed.

Macedonian Orthodox church, other religious communities and religious groups are separated from the state and stand equal before the law.[6]

Macedonian Orthodox church, other religious communities and religious groups are free to establish religious schools and social institutions and charities in accordance with a procedure foreseen by the law.

However, this article has undergone certain redefining with the Constitution Amendment VII, which was adopted after the events in 2001. It stipulates the following:

1. Macedonian Orthodox church as well as the Islamic religious community in the Republic of Macedonia, the Catholic church, the Evangelist-Methodist church, the Jewish community and other religious communities and religious groups are separated from the state and stand equal before the law.

2. Macedonian Orthodox church as well as the Islamic religious community in the Republic of Macedonia, the Catholic church, the Evangelist-Methodist church, the Jewish community and other religious communities and religious groups are free to establish religious schools and social institutions and charities in accordance with a procedure foreseen by the law.

3. Point 1 from this amendment replaces paragraph 3 from Article 19, whereas point 2 replaces paragraph 4 from Article 19 of the Constitution of the Republic of Macedonia.[7]

Due to such changes in the Constitution, the law that was in force at the time had to be changed, and that was the Law on regulating the right of religious communities in the Republic of Macedonia. Therefore, the Law on legal position of church, religious communities and religious groups was adopted in 2007. [8]

This law, or more precisely, the Article 2, states the following: "A church, a religious community and a religious group, according to this law, is a voluntary community of physical entities who with their religious belief and sources of their doctrine practice the freedom of religion united by faith and identity expressed through equal performance of religious service, prayers, rites and other religious expres-

6. *Устав на Република Македонија, Службен весник на РМ. 52/91*

7. *Амандмани на Уставот на Република Македо- нија, Службен весник на РМ.91/01*

8. *Закон за правната положба на црква, верска заедница и религиозна група, Службен весник на РМ. 113/07*

sions“.
Article 4 in the existing law stipulates that: “Religious discrimination is not allowed“.

Religious belief does not exemplary the citizen from the obligations he has as a citizen according to the Constitution, the laws and other regulations, unless otherwise specified by the law or some other regulation.

In a procedure after a submitted initiative, the Constitutional court of the Republic of Macedonia abolished articles 27, 28 and 29 from the existing Law with a Decision, which contained an elaborated section on religious education i.e. the opportunity to organize religious education within educational institutions as an optional subject in accordance with the law.[9]

What is extremely important for the defining of legal regulation on a norm about the right to freedom of religion is the Law on organization and work of government authorities which was used for the establishment of a Commission for Relations with Religious Communities and Religious Groups as a separate organ of the government authorities, with the status of a legal entity.

Article 29 from the Law on organization and work of government authorities stipulates the following:

(1) The Commission for Relations with Religious Communities and Religious Groups performs all activities related to legal position of religious communities and religious groups, as well as matters referring to relations between the state, religious communities and religious groups.

(2) The Commission for Relations with Religious Communities and Religious Groups has the status of a legal entity.[10]

Accordingly, this Commission ensures the legal position of religious communities and religious groups and relations between the state, religious communities and religious groups.

What is interesting is that this kind of work has been practiced throughout the whole period of the existence of the Republic of Macedonia, i.e. both when it was in the common Yugoslav state and after gaining its independence.

9. *Решение на Уставен суд на Република Македонија, У.бр.104/2009 од 22 септември 2010, Службен весник на РМ. 132/10*

10. *Закон за организација и работа на органите на државната управа, Службен весник на РМ. 58/00,*

As an institution established for religious affairs, the Commission appeared for the first time in the period from 1944 to 1945 as a Religious Council. Later on, from 1945 until 1951, this organ was part of the Secretariat for Internal Affairs. The Commission was later transformed into an independent organ, which changed in a different way in different periods, although it has retained the same role. Thus, from 1951 to 1962, it existed as a Commission for Religious Matters, from 1963 to 1976 as a Republic Commission for Religious Matters, from 1977 to 2000 as a Republic Commission for Relations with Religious Communities, and from 2000 onwards as a Commission for Relations with Religious Communities and Religious Groups.[11]

The Commission has a Sector for affairs concerning relations with religious communities and religious groups with two departments:

- Department for determining legal position of religious communities and religious groups;
- Department for determining relations between the state, religious communities and religious groups;

As a sort of proclaimed principle of religious freedom, another matter to be elaborated on is observing religious holidays, part of which are public holidays, and the rest are holidays of the Republic of Macedonia. Another category that should also be mentioned here are the so called "Non-working days for believers".

Public holidays in the Republic of Macedonia, which have explicit national as well as religious nature include: May 24, "Ss. Cyril and Methodius" –Slavic Educators Day; December 8 - "St. Kliment Ohridski Day".
The group of holidays of the Republic of Macedonia include: Christmas, First day of Christmas, January 7 according to the Orthodox calendar; Easter, the second day of Easter according to the Orthodox calendar; Ramazan Bayrami, the first day of Ramazan Bayrami."

There is another, much larger group of so called: Non-working days for believers, and they include: the non-working days for Orthodox Christians: Christmas Eve, a day before Christmas; January 19, Theophany (Twelfth night); Good Friday, Friday before Easter, August 28,

11. *http//www.kovz.gov.mk*

The Assumption of the Blessed Virgin Mary (Great Virgin Mary) and Pentecost, the Friday before Pentecost.
For Muslims, a non-working day is: Kurban Bayram, the first day of Kurban Bayram; Yom Kippur, the first day of Yom Kippur is a non-working day for members of the Jewish community;

Christmas Day, the second day of Easter and All Saints' day according to the Gregorian calendar are non-working days for the Catholics; January 27, St. Sava is a non- working day for members of the Serbian community.[12]

The government of Republic of Macedonia has a primary obligation to protect individuals from acts of religious intolerance and discrimination. An informed public opinion needs to be created through monitoring as well as advocacy of human rights. Civil society can also contribute to create awareness on human rights issues, including those concerning freedom of religion or belief. Legislation alone cannot create an atmosphere of social harmony and mutual trust. On the contrary, hasty legislation on matters of freedom of religion or belief may even lead to polarizing society along religious lines.

In addition to legislation, States have several tools at their disposal to counter religious intolerance, for example by giving space for dialogue, encouraging public figures to make statements denouncing acts of intolerance and providing quality education. These approaches need to be inclusive also in terms of the religions or beliefs covered. Above all, the rule of law and the functioning of democratic institutions are prerequisites for the effectiveness of these strategies, which seek to encourage real dialogue and understanding.

2. REGISTERED RELIGIOUS COMMUNITIES AND RELIGIOUS GROUPS IN THE REPUBLIC OF MACEDONIA

The well-known concept of separation of religious feelings from the state-legal system was practiced in the former common federation. Relying on that concept and upon gaining independence, the Republic of Macedonia has developed a different, primarily symbiotic blend of the state with its two biggest religious communities, thus attempting to deal with this extremely sensitive issue, more or less successfully, which is actually the basic principle of human freedoms.

12. *Закон за празниците на Република Македонија, Службен весник на РМ.21/98 и Закон за изменување на Законот за празниците на Република Македонија, Службен весник на РМ, 18/07,*

There is an assumed connection between nationality and religion in the Republic of Macedonia. Namely, the majority of Orthodox believers are ethnic Macedonians, whereas the majority of the Muslims are ethnic Albanians. If you consider this from a constitutional perspective, dominant Orthodox apart from Macedonians are most Serbians and Vlachs who live in the Republic of Macedonia. On the other hand, Muslims are usually Albanians who live in the Republic of Macedonia, as well as the Turkish, Roma and Bosnian people. According to certain census statistics, atheists make up less than 1 % of the population.

In terms of religious demography, the official census from 2002 shows that the Macedonian Orthodox Church has approximately 1,300,000 believers, which is 65 % of the country's population. Less than 2 % from the entire population belongs to other Christian communities, including the Catholic Church (about 7,000 believers), United Methodist Church (about 1,300 believers) and the Seventh - day Adventist church (about 500 believers).

The second biggest community is the Islamic religious community of the Republic of Macedonia with about 674,000 believers, which means that Muslims make approximately one third of the entire population.[13]

In the register run by the Commission for Relations with Religious Communities and Religious Groups such as Churches in the Republic of Macedonia, the following churches have been registered: Macedonian Orthodox church – Ohrid Archiepiscopy; Catholic church in the Republic of Macedonia; Evangelist-Methodist church in the Republic of Macedonia; Christian Adventist church- Seventh Day Adventist Church in the Republic of Macedonia; Christian Adventist church in the Republic of Macedonia; Christian Baptist church „Joyful tidings"; Evangelist-Congressional church; New Apostolic Church in the Republic of Macedonia; Evangelical church in the Republic of Macedonia; Christian center in the Republic of Macedonia; the Church of God in the Republic of Macedonia; God's voice Christian church; Christian church of Good Tidings in the Republic of Macedonia; Apostolic Reformed Church in the Republic of Macedonia; Church of Jesus Christ of Latter-Day Saints in Macedonia;

Religious communities that have been registered in the Register are: Islamic religious community in the Republic of Macedonia; Jewish

13. *United Nations A/ HRC/13/40/Add.2, Report of the Special Rapporteur on freedom of religion or belief, Asma Jahangir, t.18-19.*

community in the Republic of Macedonia; Jehovah's witnesses – a Christian religious community; Holy chair and crown –of the Islam Erenler Tarikat religious community in Macedonia; Sathya Sai center – Skopje; Vaishnava religious community 'Iskon' –Macedonia; Great ancient Christian community- Universal life.

There are seven religious groups registered in the Republic of Macedonia: Christian church Book of hope; Seventh-Day Adventist Reform Movement; Christian movement New hope; Kaderic religious group-Jennet; Free evangelical church – Good tidings; Ehlibejt Bektashi religious group in Macedonia; Christian church – Oasis in RM; Ehli Sunnet Vel Dzemat.[14]

The 2000 Law on Denationalization defines the terms and procedures for the return or compensation for property that was confiscated after 2 August 1944 for the benefit of the State. Return or compensation may be granted to physical persons or for religious temples (churches, mosques and synagogues), monasteries and religious *vakav* (inalienable property intended for religious and human goals). Also subject to denationalization are the properties of "Jews from Macedonia" who left their properties following the forceful deportation to fascist camps and who have not survived the pogrom and do not have successors. Such property is compensated or returned to the Fund of Holocaust of Macedonian Jews, which is managed by an equal number of representatives appointed respectively by the Government and the Jewish Community pursuant to articles 66 to 69 of the 2000 Law on Denationalization.

3. INTERNATIONAL DOCUMENTS OF FREEDOM OF CONSCIENCE AND RELIGION IN THE REPUBLIC OF MACEDONIA

The contents of the Right to freedom of conscience and religion belief are regulated with a large number of covenants, resolutions, protocols, and agreements. The most important of all is the United Nations Universal Declaration of Human Rights, which was adopted in 1948. The International Covenant on Civil and Political Rights, adopted in 1966 and the European Convention for the Protection of Human Rights and Fundamental Freedoms are also extremely relevant for this issue.

Freedom of religion or Freedom of belief is a principle that supports

[14] *http//www.kovz.gov.mk*

the freedom of an individual or community, in public or private, to manifest religion orbelief in teaching, practice, worship, and observance; the concept is generally recognized also to include the freedom to change religion or not to follow any religion. The freedom to *leave* or discontinue membership in a religion or religious group — in religious terms called "apostasy" — is also a fundamental part of religious freedom, covered by Article 18 of the Universal Declaration of Human Rights.

Freedom of religion is considered by many people and nations to be a fundamental human right.[15] In a country with a state religion, freedom of religion is generally considered to mean that the government permits religious practices of other sects besides the state religion, and does not persecute believers in other faiths.

Guarantee of freedom of conscience of religion and its regulation with international and regional legal instruments is undoubtedly the foundation of every modern democracy.

The right to freedom of religion or belief is enshrined in various international human rights instruments.2 These include articles 2, 18-20 and 26-27 of the International Covenant on Civil and Political Rights; article 13 of the International Covenant on Economic, Social and Cultural Rights; article 2 of the Convention on the Elimination of All Forms of Discrimination against Women; article 5 of the International Convention on the Elimination of All Forms of Racial Discrimination; articles 2, 14 and 30 of the Convention on the Rights of the Child; and article 12 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. Apart from the latter convention, Republic of Macedonia has ratified all of the other abovementioned human rights treaties.

The overview of the international human rights standards, domestic legal framework on freedom of religion or belief and religious demography in the Republic of Macedonia is best given in the Report of the Special Rapporteur on freedom of religion or belief, Asma Jahangir, at the Human Rights Council Thirteenth session, Agenda item 3. Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development .[16]

In the present report, the Special Rapporteur on freedom of religion or belief gives an overview of her mandate activities with regard to com-

15. *Davis, Derek H. "The Evolution of Religious Liberty as a Universal Human Right". Archived from the original on 1 February 2008. Retrieved 5 December 2006. (archived fromthe original on 1 February 2008)*

16. *United Nations A/HRC/13/40, General Assembly 21 December 2009*

munications sent to States concerning individual cases, her participation in recent conferences and meetings, country visits undertaken by the Special Rapporteur and further follow-up activities of the mandate.

In addition, the Special Rapporteur discusses early warning signs of discrimination and violence on the grounds or in the name of religion or belief. These early warning signs relate to action, or inaction, by State actors, non-State actors and international or external factors.

There are 31 missions mentioned in the report and they took place from October 1987 to November 2009. Among them was the monitoring mission to the former Yugoslav Republic of Macedonia, which was conducted in April 2009, Report No: A/HRC/13/40/Add.2.[17]

The 52nd and 53rd point of the same report state the following regarding the role of the State:

States have the main responsibility for implementing international human rights standards, including the promotion and protection of freedom of religion or belief. On the one hand, States must refrain from violating freedom of religion or belief and, on the other hand, they also have the obligation to protect persons under their jurisdiction from violations of their rights, including abuses committed by non-State actors. Measures should not only consist in prosecuting the perpetrators of such acts and providing compensation to the victims, but also in devising specific preventive action in order to prevent the recurrence of such acts in future.

The legislative and executive branches should adopt non-discriminatory laws and policies which aim at achieving equality. Domestic legislation must also be in conformity with article 20, paragraph 2, of the International Covenant on Civil and Political Rights. Indeed, incitement to religious hatred can be an indicator of emerging tensions and the relevant authorities should find the most effective ways to protect individuals against advocacy of hatred and violence by others. In this regard, an independent and impartial judiciary, which examines each case on its own merits, is vital to ensuring that neither religious freedom nor freedom of expression is unduly restricted. Part of the international documents related to legal regulation of freedom of

[17] *United Nations GE.09-17648 , pg.7*

religion is certainly the Report of the Special Rapporteur on freedom of religion or belief, Asma Jahangir, presented at the 13th meeting of the UN's Human Rights Council on December 28, 2009, submitted to the General Assembly.

Although freedom of religion was generally positively assessed, in the part of the Report on Conclusions and Recommendations, particularly in point 58, it is precisely put: "In terms of inter-religious tensions, both within the Orthodox Church and within the Islamic community, the Special Repporteur would like to remind the Government of its obligations to remain neutral and non-discriminatory, especially regarding registration procedure".

CONCLUSION

The Republic of Macedonia is a multi - ethnic, multicultural and multi-religious country which, from a normative-legal aspect, respects religious differences and freedom of religion i.e. belief.

Guarantee of freedom of conscience of religion and its regulation with international and regional legal instruments is undoubtedly the foundation of every modern democracy.

According to their capacity and influence, the members of the Orthodox religion, personified through the Macedonian Orthodox church – Ohrid Archiepiscopy and the Islamic religious community are dominant both in the field of religious doctrines and the social life in general. However, there are additional 14 churches, 6 religious communities and 7 religious groups in the country, which function more or less successfully and without any obstacles.

The well-known concept of separation of religious feelings from the state-legal system was practiced in the former common federation. Relying on that concept and upon gaining independence, the Republic of Macedonia has developed a different, primarily symbiotic blend of the state with its two biggest religious communities, thus attempting to deal with this extremely sensitive issue, more or less successfully, which is actually the basic principle of human freedoms.

To foster a climate of religious tolerance, political and religious leaders should take a human rights-based approach and clearly affirm the importance of the right to freedom of religion or belief in all its dimensions.

Freedom of freedom of conscience and religion is currently and is likely to be in the future basically in correlation with the entire relation of the community, in particular the interaction of the relation people-people, Christianity-Islam.

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EU INTEGRATION OF WESTERN BALKANS – IMPACT FOR ITS COMMON SECURITY AND DEFENCE POLICY

Natalia Rencic,[1]

'As human beings, we cannot be neutral, or at least have no right to be, when other human beings are suffering. Each of us...must do what he or she can to help those in need, even though it would be much safer and more comfortable to do nothing.'

Kofi Annan, former UN Secretary General

European Union as a Union of the 27 European states, additionally Croatia from July 1, 2013 has its own Common Security and Defense Policy (CSDP), a part of a Common Foreign and Security Policy (CFSP). As any formal body or institution, even this Union has its own security 'structure' in order to protect its citizens, property and the territory within its borders. It's a policy which deals with defense and military missions, civilian peace-keeping actions, as well the post-conflict or disaster management. It's known the role of the CSDP within the wars in the Balkan states, in the early 1990s, which was at that time the European Community Monitoring Mission (ECMM), established in order to promote a peace in a fragile society, as also to enforce the rule of law within the borders of the former Yugoslavia. That was not an easy task at that time as the European Community (in the 1990 EU was still a group of the European Economic Community, until the 1993) and its member states had different views on violent dissolution of Yugoslavia and the international recognition of the self-proclaimed independence of most of the Yugoslav states. Beside the UN and the NATO, EU was invited to give its contribution to the peace-building and peace-keeping. Maybe with a stance of some longer time, history could be the best judge, as in the previous wars, at which level and how successfully this aim was achieved. Still nowadays, more than a decade after the last Balkan war, one in Kosovo, EU security missions are still

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present in the Balkans, as the EULEX - The European Union Rule of Law Mission in Kosovo, or the EUFOR-European Union Force in Bosnia and Herzegovina, military mission deployed in order „to develop the capacities of the Bosnia and Herzegovina Armed Forces and ensure a safe and secure environment".[2] European Union also supports transitional justice within the former Yugoslav states, which is a first step towards the peace. Secure and safe environment is necessary for the sustainable development of any state; therefore a base for anything else should be peace, stability, rule of law enforcement, and the basic structural support in any area. According its principles of supsidiarity and solidarity, and as a parts of the EU values and the constitutional treaties, have been provisions of a mutual help and the common strategies in order to sustain mutual prosperity and peace. Wealth of the Western European states was a consequence of a collaborative and comprehensive approach of the member states, as well of sharing the same values, as they differed significantly during the two World Wars. The main triggers for today's united Europe were two world wars and their sustainable overcoming, as well prevention of similar happenings in order to protect people, property and territory. Therefore, a 'heart' of the EU today should be mutual solidarity, stability, security and peace, as a driving force for everything else. There is a famous quote of the German Chancellor Konrad Adenauer saying that 'security isn't all, but without security everything else it's not so important'. As the EU neighborhood is still 'shaky' at the moments, and none less while looking at few years long war in Syria which is still ongoing or many other parts of the globe where 'frozen' or potential conflicts are going on, this paper wants' to present the important role of the European Union integration strategy and the peace as an inherent value of the united Europe, especially related to the so-called Western Balkan region, which refers to Albania, Republic of Macedonia, Serbia, Montenegro, Croatia, Kosovo[3] and Bosnia and Herzegovina. These countries were parts of the former Yugoslavia, without Slovenia, it's most western part of the country, but including Albania, which was not a part of the former Yugoslavia.

The European Union as known today have been under some changes during

2. *European Union in Bosnia and Herzegovina - offitial website, www.eubih.org, 13 September 2013*

3. *Under the UN SC Res.1244/1999*

the recent decades, especially from its very first creation as the European Coal and Steel Community, through the European Community until the last Union, which was also reflecting within the security and defense area and policies. Dramatic, but not so far away European history, in the last century started with the First World War, tremendous disaster in every sense, with millions of deaths, wounded and displaced people, as the generations of traumatized people, and less underlined today, with its significant and prevailing consequences for the beginning of the Second World War, and somehow influencing our reality till nowadays especially concerning the current geopolitics, international relations and diplomacy.

There are even numerous jokes or parts of daily language and culture related to the conflict history, as the 'army arsenals' of weapon sometimes hidden within the basements of the former war countries and its owners, still expecting some former 'enemies'. Well known are the one about the unpredictable future with the Russians, for example, often quoted as 'there is no grass any more where the Russian boot steps'. In this case example is made with the Russians, but it can be applicable according to the local enemy, historical circumstances or daily politics, especially in the countries with the weak of fragile governance. Interesting enough, there are few words about the 'invading' enemies in the countries with a strong structural support and well organized social care, like the Scandinavian states, but where the non wishful situations may arose as well, like the recent case of the terrorist attack of the Anders Behring Breivik[4] in Norway in July 2011. while taking into consideration different methods, structure, aim, targets and the means of attack, there is no anymore predictable threats and enemies or common war doctrines, like during the Cold War where the 'other side' was more or less known as its strengths and weaknesses. Non less important, today we live in much faster, global and interrelated world, where almost all the information are easily accessible, and where the fluctuation is very fast. Therefore, European Union member states should make a consensus and strengthen its mutual cooperation in order to prevent possible threats and insecurities, as to provide the secure environment for its citizens and become known for answering with 'one common voice',[5] which was often referred during the Arab spring crisis,

4. *„On July 22, 2011, 33-year-old Anders Behring Breivik killed a total of 77 people in Oslo and on the island of Utoya, at the time hosting a camp for youth members of a Norwegian political party, whilemany of them children as well.“ http://www.cbsnews.com/8301-202_162-57569935/a-look-back-at-the-norway-massacre, CBS News/ February 18, 2013, reviewed August 16, 2013*

5. *Eva Berckmans, Gard Follerås, Petra Jirečková and Ilan Sarfati, Policy brief: The EU's response towards the Arab Spring, part of the spring term 2011 MA course 'Europe in the World', 2011, www.uia.no, August 18, 2013*

and related to the EU response or lack of the proper response towards that crisis.

People born in the former Yugoslavia know what that means in practice. War after the war. In that sense, a valuable contribution can come from the former Yugoslav states, currently at different levels in their integration to the European Union and acquiring the common *aquis comunitaire*, but all of them motivated in achieving long-lasting peace and prosperity for the future generations. As a new generation of the European youth, belonging culturally and mentally in Europe, but some of which experienced in a life during the war conditions as in the peace, we can and should promote these, often forgotten, basic EU values and principles, of solidarity, trust, tolerance, protection of human rights, democracy and peace. For us, these words aren't just a theoretical idea, but the life experience already gotten. Therefore, the new EU member states should be a future peace-makers and peace-builders with an overview of the constructive European spirit and able to mediate among 'mentally different European generations, those EU 'optimists' and the EU 'skeptics', as between the states or people involved in the conflicts and the war zones. We have a moral duty to do so.

MISFIT BETWEEN EU CONDITIONS AND DOMESTIC STRUCTURES IN COUNTRIES OF WESTERN BALKAN

ABSTRACT

EU seeks to transform the domestic structures of the Western Balkan countries in order to foster peace, stability and prosperity in the region ridden by war and ethnic conflict. Can Europeanization approaches account for the differential impact of the EU in the Western Balkans? The paper argues that problems of limited statehood have seriously curbed the transformative power of the EU in the Western Balkans - despite their membership perspective. Not only has the EU exerted less pressure for adaptation on Western Balkan governments. Weak state capacities and ethnic conflicts have reduced both their willingness and capacity to implement the acquis communautaire. Given its lack of experience in state building, the EU is ill-equipped to address these problems. This results in a serious dilemma. On the one hand, the EU has offered the Western Balkans a membership perspective to stabilize the region and overcome problems caused by weak and contested statehood. On the other hand, it is the limited statehood of Western Balkan countries, which undermines their compliance with EU norms and rules.

Key words: EU condition, rule of law, Western Balkans

INTRODUCTION

The EU seeks to transform the domestic structures of the Western Balkan countries in order to foster peace, stability and prosperity in the region ridden by war and ethnic conflict. In the states of western Balkan limited statehood and weak state capacities and ethnic conflicts have reduced both their willingness and capacity to implement the *acquis communaire* or Europeanization have seriously curbed the transformative power of the EU in the Western Balkans, despite their membership perspective. Europeanization is formal and informal rules, procedures, policy paradigms, styles, 'ways of doing things', and shared beliefs and norms, which are first defined and consolidated in the making of EU public policy and politics ... in the logic of domestic discourse, identities, political structures, and public policies.

Limited statehood is the main obstacle for the Western Balkans on their road to Brussels because undermines capacity and the willingness of countries to conform to the EU's expectations for domestic change. All countries of Western Balkans have suffered from problems of limited statehood, although in different ways. Given its lack of experience in state building, the EU is ill-equipped to address these problems. This results in a serious dilemma. On the one hand, the EU has offered the Western Balkans a membership perspective to stabilize the region and overcome problems caused by weak and contested statehood. On the other hand, it is the limited statehood of Western Balkan countries, which undermines their compliance with EU norms and rules.

1. *THE DOMESTIC IMPACT OF EUROPE ON THE WESTERN BALKANS*

EU has sought to expand the reach of its transformative power to the new neighbors and the Western Balkans remain "borderline cases of transition" (Elbasani 2012c) Secessionist movements, unsettled borders, ethnic tensions, deficient state capacity and/or strong clientelistic networks severely mitigated the transformative power of the EU.

After having miserably failed to promote and protect, human rights, rule of law and democracy in the Western Balkans, EU offered the war-torn countries a membership perspective. With this prospective reward for compliance with the Copenhagen Criteria, the EU has hoped to tip the balance in favor of domestic reforms and further democratization. Not surprisingly, the EU Western Balkan policy is very similar in design and content of its Eastern enlargement framework. With some exceptions, the Stabilization and Association Process represents "little more than a repacking of the forms of cooperation pursued by the EU with the CEE countries" (Friis/Murphy 2000).

The EU's domestic impact is focused on the *costs of adaptation* or *compliance* as a function of the misfit between EU requirements and domestic conditions, on the one hand, and the *external push* of the EU to comply with its requirements, mostly based on the consistent application of conditionality, on the other. Misfit and external push combine with the *pressure for adaptation* the EU exerts on a country. Its impact is mediated by domestic factors such as veto players, norm entrepreneurs and formal or informal institutions (Börzel/Risse 2003).

The legitimacy of the EU generated sufficient diffuse support through the identification with Europe that often trumped cost/benefit calculations in the adoption of and adaptation to the *acquis communautaire* and

balanced nationalist beliefs. In promoting their norms EU is trying to show that is accepting and promoting their internalization. While it did not forge completely new identities, EU accession reinforced the identification with Europe (Risse 2010).
In the Western Balkans, public support for EU norms and values and EU membership, broadly speaking is more fragile. While Europeanization and democratizations are clearly linked, there is public resentment whenever EU demands for compliance with the Copenhagen Criteria clash with nationalist beliefs, e.g. regarding the role of minorities and the extradition of war criminals to the International Criminal Tribunal for the Former Yugoslavia (ICTY) (Mendelski 2012, Stojanović 2012).

The dominance of "differential empowerment through conditionality" has given rise to concerns about "shallow Europeanization" (Goetz 2005: 262) or "Potemkin harmonization" (Jacoby 1999) since sustainable compliance with (costly) EU policies ultimately requires internalization. While the EU introduced impressive reforms "*on paper*, developments on the ground are *modest to nil*" (Mungiu-Pippidi 2005, 22). In the Western Balkans, we have a dual situation; formal compliance with EU norms and rules is progress, from one side, and from the other, rule-consistent behavior is still insufficient (Elbasani 2012).

2. *LIMITED STATEHOOD AND THE WESTERN BALKANS*

Western Balkans states have faced with the difficulties of the lack of state capacities mixed with problem of borders and political authority. Statehood has two dimensions related to sovereignty (Risse 2011).
Legal adoption and implementation of EU norms and rules requires the significant state capacity. The Copenhagen Criteria require accession countries not only to transpose EU law into national legislation, which is less resource-intensive since staff, expertise and money can be concentrated at the central level, but they also need to have the administrative infrastructure in place to put EU laws into practice. It is at the decentralized levels of governments, where the capacity to practically apply and enforce EU policies is most wanting. The Western Balkans have been engaged in significant formal domestic change because even the weakest and most contested states have legally adopted EU norms and rules, including in areas where costs are high. The issue is effective implementation and enforcement. The Western Balkans suffer from serious problems of decoupling between formal institutional changes and prevailing informal institutions and behavioral practices. Macedonia adopted an electoral code in compliance with international standards but clientelistic strategies of attracting voters still persist (Giandominico 2012).

Corruption and clientelism have undermined the effectiveness of the formal institutional changes. This is the reason it why (EU-induced) judicial reforms in South Eastern Europe have not made much of a difference with regard to the rule of law (Mendelski 2012). Indeed, the EU's efforts to promote democracy have been at best differential. Limited statehood seems to be the main cause of ineffective implementation of EU-induced reforms and the decoupling between formal institutional changes and rule-inconsistent behavior. It does not only affect the capacity to comply with EU expectations for domestic change but has also implications for the willingness of elites to adopt and implement reforms in the first place.

Change is always costly. Introducing political and economic reforms does not only require money, staff, expertise and information. It also creates political costs for governments, which risk losing public support, or political power altogether, over imposing costly and unpopular changes. The enlargement literature has focused on the democratic quality of a regime as the main factor influencing the costs of Europeanization.

Human rights, democracy and the rule of law are certainly important when it comes to determining the overall misfit between EU institutional requirements for closer cooperation and membership in the Western Balkans. The lower the democratic quality of a country is, the higher the costs of adoption, which may become prohibitive, particularly in areas relevant to political power, such as judicial reform. The protection of minority rights and the regional cooperation with neighbors, which both ranges high on the EU's agenda, is also more costly for countries, whose borders are still contested and ethnic identities continue to clash.

While limited statehood appears to be a major impediment for the successful Europeanization of the Western Balkans, the EU is ill-equipped to deal with it. Because of this EU developed comprehensive programs of capacity-building to strengthen the reform capacity of EU candidates. The Stabilization and Association Framework provides for similar instruments for the Western Balkans (Friis/Murphy 2000). In 2000, the EU introduced CARDS (Community Assistance for Reconstruction, Development and Stabilization) as a proper program of financial assistance for the Western Balkans. The cooperation framework also provided for technical assistance by extending "twin-ning" and TAIEX (Technical Assistance and Information Exchange Instrument) to the CARDS recipient countries. In 2006, the Pre-Accession Assistance Instrument (IPA) replaced the various financial programs. The IPA program consists of five components, including transition assistance and institution building, cross-border cooperation and regional, human

resources and rural development.

EU Western Balkan policy has focused on financial and technical assistance to formulate and enforce central government reforms necessary to implement the obligations of the Stabilization and Association Process.

The Commission decided to periodically assess whether the Western Balkans complied with democracy, human rights and the rule of law with assessment to annually publish regular reports about the country's progress. Macedonia has also been quite responsive to EU conditionality. The prospects of signing a Stabilization and Association Agreement helped end the violent conflicts launched by the Albanian minority in 2001. In the same time, the insistence of the EU on free and fair elections in Macedonia as a precondition for opening membership negotiations fostered compliance with international standards within only one year – while the 2008 parliamentary elections had been criticized as violent and fraud, the 2009 local and presidential elections were praised as the best ever. But neither conditionality nor capacity-building have been able to get at the clientelistic structures that have been undermining the willingness of political actors in Macedonia to fully comply with electoral laws held (Giandomenico 2012)

The EU has always prioritized stability over democratic change (Börzel et al. 2009). Moreover, conditionality and capacity-building are certainly powerful means to bring about formal institutional change. But they are of little use in changing the domestic strategies of ethnic nationalism and economic clientelism. Europeanization has remained largely shallow giving rise to formalistic, short-term and technocratic reforms rather than sustainable and transformative domestic change. In other words, the more limited the statehood of a country is, the more likely we are to find a decoupling between formal institutional changes and informal institutions and behavioral practices.

Moreover, the EU has no experience as a state-builder nor has it developed the necessary policies to become one. In order to transform a region ridden by ethnic violence and lingering conflicts, it takes more than conditionally, capacity-building and selective coercive powers.

At the same time, the EU's "technocratic and capacity-related approach" (Fagan 2012) to state-building has also had some reverse effects undermining the Western Balkans attempts to build strong central state institutions and creating a national identity. While the formal adoption of power-sharing arrangements have at times resulted in administrative fragmentation weakening central state institutions, minor-

ity rights and the right to return of refugees have sometimes fuelled rather than mitigated ethnic conflict (Biermann 2012, Fagan 2012). Likewise, focusing on the formal adoption of *acquis*-related reforms and neglecting implementation has at times helped consolidate rather than change informal institutions of corruption and clientelism. (Elbasani 2012)

CONCLUSIONS

The EU has helped to accelerate and lock-in domestic change in consolidating democracies in countries of Western Balkan by empowering liberal reform coalitions that support EU integration and that see a clear accession perspective. EU pressure for adaptation and capacity-building mostly results in a formal institutional change, while it is not sufficient to transform informal institutions and behavioral practices. EU constantly forced the countries of Westen Balkans to build a state because international relations theory has a fundamental interest in observing all interactions between the law and politics. EU state-building regulations are influenced by a certain vision of the rationalization of law, minority status, human rights and economic growth.

The concept of state-building was invented for the purpose of dealing with the institutional problems of post-conflict or decolonized societies. State-building, by definition, means that some external actors control some prerogatives of sovereign power, providing citizens with physical and economic security. According to Fukuyama, state-building is the 'creation of new government institutions and the strengthening of existing ones.' (Fukuyama: 2004) But the state-building can be successful only if it has domestic support. Formal institutions need to be rooted in society; otherwise they risk becoming useless or being captured by private or patrimonial interests.

European state-building project for its overly technical and administrative approach, while local actors are not given an opportunity to participate properly in the process, and social interests in a state built in this manner are not adequately represented. The insistence on institutional mechanisms, without parallel work on creating legitimacy for the newly established institutions, resulted in a lack of trust in such institutions and their 'external builders'. The EU is an 'empire in denial' which intends to cover up the 'relationship between power and responsibility' within its own state-building project. (Chandler, 2006)

The experience of the Western Balkans, however, also shows that consolidated statehood is as important as democracy to make Europeanization work. Uncontested sovereignty and sufficient state capacity are indispensable to comply with the EU expectations for domestic

change. For countries that lack either one or both, membership is too far a perspective to provide sizeable and credible incentives to engage in costly reforms. Somewhat paradoxically, the EU has neither the power to induce democratization nor to build states. While it has developed a comprehensive approach for democracy promotion, the EU lacks a clear strategy for state-building in the first place. The result of the implementation of the Europeanization state-building pattern was an intermingled strategy defined as the 'Balkanization of the Europeanization process'.

Promoting stability might imply supporting non-democratic and corrupt regimes where it serves the economic and geopolitical interests of the EU and its member states. This certainly contradicts the image of the EU as a normative power. The inconsistent use of membership conditionality does not only mitigate the transformative power of the EU in the Western Balkans it damages its international credibility as a "normative power" creating a new "capacity-expectation gap". Why should EU make any efforts to fulfill EU expectations for the respect of human rights, democracy, the rule of law and good governance, if the EU is neither willing to reward those, who comply, nor is capable of punishing others, who do not? The civilian power identity of the EU, which favors a "developmentalist" approach of creating the economic and social conditions for political transformation rather than pushing for rapid regime change is no excuse for an inconsistent use of its soft power.

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MAJOR CHALLENGES OF HUMAN RIGHTS IN GREECE

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INTRODUCTION

It has been over 50 years since the United Nations (UN) Universal Declaration of Human Rights, was signed by most of the countries but the abuses of the fundamental human rights continue to grow on alarming scale.

One of the most important freedoms is the Freedom of Speech, which together with the Human Rights, who are stipulated in the Universal Declaration of Human Rights and closely to our region, in the European Convention of Human Rights, are taken for granted in the western countries, but in recent years we have seen conditions worsened around the world. In 1997 for example, Human Rights conditions were reported to remain unchanged in comparison with the previous years. But unfortunately in some countries, actually the situation of human rights respect has worsen. In 1998, the UN reported that even though over a hundred governments had agreed to help outlaw some of the worse violations of the human rights, torture and degrading behavior, for example were still on the increase.

In the 21 st century, the situation of respect of human rights around the world, did not look as bright and cheerful for most people as we would have imagined, or hoped, it to be. The slow deterioration of the human rights started with the "War on terror", carried out by the United States, which was triggered by the terrorist attacks in the United States on September 11, 2001. The situation for human rights seems to have deteriorated. This "War on terror", has shown us that not only terrorist commit human rights viola-

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tions, but also governments who are sacrificing rights for security. To back up the claim, take for example the "Patriot Act" in the United States, which was promulgated by Congress under the excuse to protect the democratic rule of law in the United States and to protect the rights and liberties of all Americans. Unfortunately many Americans don't know, that the so called "Patriot Act" has allowed the Government to intrude, into the personal lives of people, by monitor their: phones, emails, messages etc. Amnesty International, in its 2004 report, noted the set back of the international values of human rights in the new millennia. The focus of the Amnesty International report of the value of human rights, was on the issue of increased violations of human rights by governments around the world, and violence by armed groups, such as the case of Republic of Macedonia. The abuse of power by governments around the world, puts international law and multilateral action undermined and marginalized, for the pursuit of national security. Also the year of 2004 is known in the European Union, as the year in which the Framework decision on European Arrest Warrant came onto power. With this mechanism, which was light years ahead of the current political status and relationships between Member-States of the EU, had done many violations of the fundamental human rights of the European citizens, which were subject of the European Arrest Warrant. The years of 2001-2007, according to the reports of Amnesty International, Fair Trials International and Human Rights Watch, were the most difficult years for the human rights around the globe. Starting from the degrading conduct and torture, of prisoners in the Abu Ghraib prison in Baghdad, atrocities done by the US Government on Iraqi POW, which was against the provisions envisaged in the Geneva Conventions. Also other violation of human rights around the globe are: the famous El Massri case in Republic of Macedonia, the Afghan war (2001-2003), the invasion of Iraq (2003-2009), the invasion of Chechnya (1994- present), the invasion of Georgia (2008-present), and also the conflict between the Syrian Government, lead by Bashar Al. Assad and the Syrian rebels. As we can see in today's world there is almost no respect for the human rights, which are been put after national security. Even the most liberal democratic societies have negative scores on the respect of the human rights and liberties of their citizens. The only instrument left to combat

government violations of human rights are the global international conventions of human rights, which prohibit any degrading behavior and torture and killing of innocent populations. The United Nations, remains the only institutions which protects and respects human rights around the globe and urges some government to stop the violation of human rights on the account of gaining better national security. Restricting human rights and increasing national security are not the same things in a democratic society. Summed up altogether, the main challenges for human right in the modern world are:

- Poverty and global inequities
- Discrimination
- Armed conflict and violence
- Impunity
- Democracy deficits
- Weak institutions

There are so many examples of various countries, corporations and institutions violating human rights. Some are contributing to suppressing rights in other countries. Others are ignoring the plight of people in other countries whose rights are denied due to their own economic and political interests in those other countries.

Human rights include a variety of aspects, from civil and political rights, to socio-economic rights. The modern challenges for human rights in the world are more and more concerning. The solution of the problem is in increased governmental accountability in every country and creating initiatives and networks of civil society organizations in the country, which will help in restoring justice and equality among all citizens. The most important thing is that human rights are given by nature and upheld by the declaration of the UN and Conventions, and other various international mechanisms. But in every country the government is responsible for protection of human rights of its citizens. Democratic government is open government and it is accountable before the people, non-democratic government is separated by legal and other means from the people and uses every power it has to limit basic liberties and rights, such as the freedom of speech, freedom of press, internal di-

vide of the people etc.

The human rights in Republic of Greece, are in the focus of the experts' public in recent years, because of the constant violations of fundamental human rights in many areas, which are mentioned in the reports of the many international organizations such as: Amnesty International and Human Rights Watch and from governmental bodies, the US Department of State's annual report on respect of human rights worldwide. In recent years, we see constant threat of human rights in Republic of Greece, starting from the xenophobia and violence towards migrants and ending with the rise of ultra – conservative parties with Nazi insignia, such as Golden Down and Greek Patriotic Party. The Greek Constitution guarantees protection of fundamental rights to all Greek citizens. Also Republic of Greece is a signatory of the European Convention of Human Rights, Geneva Convention-Relating to the Status of Refugees and United Nations Convention against Torture. As a Member State of the European Union, Republic of Greece is responsible for upholding and protecting the European values which consist of: Democracy, Rule of Law and Protection of Human Rights. But unfortunately the European reality is different. Safeguards of human rights vary from Member State to Member State. The proof of that inequality of protection of fundamental human rights is the Framework Decision on European Arrest Warrant, where fundamental rights of the subjects in the criminal procedure are constantly violated. Republic of Greece receives constant critics of abusing the rights of the subjects of the European Arrest Warrant by inhumane treatment, shady interrogations of suspects, inadequate legal defense and poor interpretation in the procedure. The abovementioned reports of various international organizations about the protection of human rights in Greece, indicate these problems as crucial problems,which the Government of Greece must resolve . The Amnesty International report, the Human Rights Watch, The Greek Helsinki monitor and the US Department of State reports, highlight the problems in the following areas of the human rights[3]:

- Failure to grant necessary protection to women, victims of domestic violence or trafficking or forced prostitution;
- Treatment of migrants and refugees

3. http://amnesty.org/en/region/greece/report-2013 (Amnesty International) ; http://cm.greekhelsinki.gr/index.php?sec=194&cid=3801 (Greek Helsinki Monitor); http://www.state.gov/documents/organization/204503.pdf (US Department of State Country Reports)

- Treatment of objectors to military service
- Arbitrary arrests in the name of “War on Terror” on unofficial mufti, thus violating Article 9 of the European Convention on Human Rights
- Excessive use of force
- Torture and ill-treatment
- Freedom of expression
- Prison conditions

The Amnesty International report is from the year 2012. Throughout the year the situation for violating fundamental rights escalated because of the country’s economic crisis. Despite the major protests which were in Greece’s main cities, Athens and Thessaloniki, the Greek Government remain European oriented and promulgated austerity measures to smooth the economic crisis, which at the same time plunged the country in bigger recession, protests and civil disobedience. Amnesty International report of human rights abuses, also indicated that far right conservative party, Golden Dawn gained major popularity among the Greek people, despite their far right, xenophobic – anti migrant policy. The Amnesty International report, highlights the areas of major violations of human rights, which are: Ill treatment of migrants and asylum seekers, excessive use of force, torture and ill treatment and prison conditions. In the effort for better understanding of these problems, they have to be examined one by one.

1. ILL TREATMENT OF MIGRANTS AND ASYLUM SEEKERS

Republic of Greece is the gateway to Europe, according to many refugees, who are coming from Africa or the Middle East. Many of these refugees seek asylum on various reasons at the Greek authorities. Indications of the Amnesty International report, are stating that refugees were detained for too long periods in Immigration Detention Centers and police stations.[4] Also, this reports shows violence and ill treatment towards immigrants by police officers, such as: ethnic profiling, beating and verbal abuse. Also intolerance and xenophobia are spread among the Greek people, according to the Amnesty international Report. This report also mentions the effort of the Greek Government

4. http://amnesty.org/en/region/greece/report-2013/page 2 - *Refugees, migrants and asylum seekers*

to prevent further ill treatment of migrants and asylum seekers. In April 2013, a new legislative provision was introduced by the Greek Government, allowing for the detention of irregular migrants and asylum-seekers on grounds such as suspicion of carrying infectious diseases such as HIV. Also, positive remarks of this report are given to the fact that, the Greek Government made little effort to improve the appeal level of the asylum determination procedures, and made little progress in establishing fair and effective system. But however the new Asylum Service system, had not yet been started by the end of 2012, due to serious recruitment of personnel problems.[5] The case before the European Court of Human Rights (M.S.S vs. Belgium and Greece)[6] put the spot light over the inefficiency of the Greek asylum system. Also another important remark in 2012 was the public condemnation of Greece, by the European Committee Against Torture, for failure to improve the detention facilities and poor detention conditions. Also the new legislation provided for the establishment of "first reception centres", where third country nationals, arrested for "irregular entry" into Greece, could be detained for up to 25 days. However, among other things, the legislation failed to provide a remedy for those detained in such centres to challenge the lawfulness of their detention in court. Another highlight of the Amnesty International report was the erection of the 10 km long fence along the coast of Evros River to physically prevent refugees to enter Greece. According to the Amnesty International, Republic of Greece is still lacking sufficient protection of human rights of migrants, refugees and asylum seekers. Also must be noted that concerning asylum The UNHCR, the UN special rapporteur on the human rights of migrants, Amnesty International, CPT, the UN CAT, the deputy ombudsman for human rights, Human Rights Watch, the Greek Council for Refugees, and Doctors without Borders expressed concern about the country's problematic asylum policy and practices. Specific problems included serious obstacles in accessing asylum procedures due to structural deficiencies and nonfunctioning screening mechanisms, unacceptable living conditions for asylum seekers, lack of permanent reception centers and the use of ad hoc facilities under developed refugee welfare systems. Also the work of National and International Civil Society Organizations to prevent this problem, is high-

5. *http://amnesty.org/en/region/greece/report-2013/page 3 - Refugees, migrants and asylum seekers*

6. *Court of Justice of the European Union, Press release no 96/11, Luxemburg 22 September 2011*

lighted in the reports. Their primary concern were the police sweeps against migrants allegedly based on their physical appearance. The police sweeps, code-named Xenios Zeus, started in August and continued throughout November. Police rounded up individuals perceived to be undocumented migrants, and NGOs claimed that police placed some in administrative detention in overcrowded conditions without any screening to distinguish refugees meriting protection from other migrants.[7]

2. TORTURE AND ILL TREATMENT

In the Amnesty International 2012 report and in the US Department of state Human Rights Report on Greece, from 2012, there are several key notes about torture and ill treatment in immigration facilities and police stations. The most famous case which brought media attention on human rights violation in Greece, was the case of Andrew Symou. According to the Amnesty International Report and Fair Trials International reports, this case was about a British tourist by the name of Andrew Symou, which was arrested in Greece, for alleged murder. The 21 year old boy, was mistreated, with major violation to the procedural rights in the criminal procedure. He wasn't interrogated by the police according to the provisions in the Greek Criminal Procedure Law, nor the provision stipulated in the Framework decision on the European Arrest Warrant. His trial was delayed, until enough evidence were gathered and he was ordered by the judge in detention. He was placed in infamous "Koridalos" prison in Athens, where he awaited his trial. Suffice to say, in the Fair Trials International Report, Andrew Symou was placed in a cell with five other inmates. The cell was unsanitary, and he slept on a old mattress filled with fleas.[8] Finally he was released from prison and returned home to his parents, after one year struggle with the Greek Judicial System. Amnesty International highlight another two major moments of torture and ill treatment, which are: Excessive use of force by the police, which withdrew from the town of Keratea where clashes between police and residents protesting against the creation of a landfill site had been ongoing since December 2010. Also there were reports of excessive use of tear gas and other chemicals by the police, and allegations of ill-treatment of town residents. The authorities

7. *http://www.state.gov/documents/organization/204503.pdf, 12*

8. Fair Trials International, Official Report of Case of Andrew Symeou, London 2012, 3

also reported a large number of injuries to police officers in the clash. Moment number two by the Amnesty Internation report on human rights in Greece was, the Manolis Kypraios, a journalist which has suffered total loss of hearing after a riot police officer threw a stun grenade in front of him while he was covering the demonstration in Athens on 15 June. A criminal and disciplinary investigation began into his case. At the end of the year, the Athens Prosecutor's Office filed charges against as yet unidentified police officers for intentionally causing the journalist serious bodily harm.[9] The ill treatment and the excessive use of force is common in Greece, because of the frequent demonstrations. Violent clashes with the police are frequent as well, due the dissatisfaction of the austerity measures of the Greek Government. Partially the excessive use of force, is not deliberate, considering that the Greek police have to confront large crowd of protesters, which are violent. The problem with the violation of human rights in the criminal procedure, is a different thing. In all reports of Amnesty International, Human Rights Watch and the State Department, Human Rights Reports, Greece is critiqued for excessive use of force and the abuse or overuse of the "Detention" measure in the criminal procedure towards subjects of the European Arrest Warrant and domestic perpetrators. The fact that the Greece is abusing all the European Arrest Warrant system, is the fact that not all EU Member States are ready to provide equal treatment and protection of human rights in the criminal procedure.

3. **PRISON CONDITIONS**

All reports of human rights, agree about the prison conditions in Greece. They are all negative. In the Amnesty International report on human rights in Greece, under the section prison conditions, and in the Fair Trial International, Justice in Europe Campaign Report, the Greek prisons are rated most negative, because of horrible conditions the prisons are. The most infamous prison in Greece, according to the Amnesty International Report is the prison Korydallos in Athens, the same prison the subject of the European Arrest Warrant Andrew Symeou was held. In this prison are incarcerated some of the most notorious Greek and foreign prisoners, commitants of serious crimes, such as: Organized crime, Terrorism, Human Trafficking, Murder, Money Laundering

9. http://www.amnesty.org/en/region/greece/report-2012#section-17-4, 4

etc. Also the most famous part of the prison conditions in Greece, according to the Amnesty International Report is the case before the European Court of Human Rights (Taggatidis and others vs Greece)[10], where 47 prisioners complained about the prison conditions in the Ioannina prison in Greece. Also detention conditions in Immigrants centers in Greece are poor. Illegal Immigrants are not treated humanly and also are detained in rooms with six other illegal immigrants, and are fed poorly.

4. RACISM AND DISCRIMINATION

The level of concern about racism in Greece is very high. In the human rights reports, are highlighted several cases of failure of police officers to protect third country nationals from racially motivated attacks. Also violence towards tourists, refugees, migrants are on the rise. Xenophobia and Racism in Greece, are on the rise for the past several years. They culminated when the country was plunged in economic crisis and on the brink of political and economic chaos. The culmination was visible when the far right party "Golden Dawn" from anonymous group, had become favored party between the Greek people. Golden Dawn is in center of racist attacks and violence towards migrants because of its Nazi political platform, which is based on ethnical clean Greece. Their leaders which are in the Greek Parliament, holding 17 seats, use Nazi rhetoric's, and publicly assault other people over their beliefs and skin color. Also Golden Dawn is responsible for attacks at the Migrant Center in downtown Athens. Also are famous for donating food to only poor Greek citizens, and blood every Sunday. They are famous for the hospital incident, where they stormed in the General Hospital in Athens, demanding to release all non-Greek patients. Strange phenomena is that the poor Greek citizens and small business owners, agree with their politics. Golden Dawn members are responsible for attacking tourist, migrants and refugees on daily basis, but it is peculiar that no member of the Golden Dawn party is reported to be arrested for an attack on a race basis. This is yet another challenge for this European Union's Member State. In order to comply with the European values, Greece must counter racism in all of its forms. The same thing goes for discrimination. Discrimination is very common in Greece, and the situation is

10. http:// www.amnesty.org/en/region/greece/report-2012#section-17-4

escalating on daily basis. The constant attacks on asylum seekers and migrants in the country are happening on daily basis. the Racist Violence Recording Network reported that more than half of the 87 recorded incidents were connected with extremist right-wing groups that had acted in an organized and planned manner. Mostly the attacks were carried out by far right extremist party "Golden Dawn". Also troubling fact is not achknowleding the Macedonian minority as ethnic minority living in Greece. These are worrying fact for democratic country which is part of the EU. Also very peculiar fact, regarding the respect of minority's right in Greece is the census of population, which was made on European level in 2004. Greek Government headed back then by New Democracy Party, claimed that 96% of the population are Greek, 2% are Albanian, 1% Turks and 1% Slavic Macedonians.[11] This population projection is false, having in mind the fact that there are more ethnic communities in Greece who are denied any kind of rights to proclaim their ethnicity. Also in order to prevent the violent racist attacks, the Greek President Karlos Papoulias issued a decree for specialized police unites in Thessaloniki and Athens to investigate the violent crimes. This decree was unsuccessful, because according to the Amnesty International Report of 2012, it failed to protect victims who are without papers in Greece and migrants. The migrants and the asylum seekers who are coming from the Middle Eastern countries, or immigrants, migrants and asylum seekers, who are coming from Africa, are constant target for the racially motivated attacks of the far right wing groups. Mass racial attack in 2012, happened in Athens, in the Agios Panteleimon neighborhood in Athens, where large number of migrants and asylum seekers were attacked by members of the Golden Dawn party, and substantial material damage was made on their shops and homes. The police investigated the attacks, and their investigation indicated that two MP of the Golden Dawn party, were personally involved in the attacks, and as consequence, the Greek Parliament lifted their immunity and charges were brought.[12] Among other discriminated groups in the Greek civil society are the people with HIV. According to the report of Human Rights Watch, in May 2012 the police arrested and forcibly tested for HIV over 100 sex-workers. Serious concerns were expressed over the stigmatization of 29 of the arrested

11. *Microsoft Encarta 2009, Greek population census from 2004, 12*

12. *http://www.amnesty.org/en/region/greece/report-2013#section-56-6 , 7*

after their personal details including their HIV status and photographs were published by police and charges were brought against them for intentionally causing serious bodily harm. The violation of human rights is at the forced testing for HIV of all arrested sex workers.[13] This is unimaginable in an European Country, which cherishes European values. Another challenge for the respect and protection of human rights in Greece is the ill treatment and discrimination of Roma population. The children of Roma population in Greece, are and remained segregated and excluded from education, while Romani families are threatened with eviction.[14] Another important highlight of the Amnesty International report is the case before the European Court of Human Rights (Sampani and others vs Greece).[15] Greece lost the case and was guilty of violating the European Convention of Human Rights in this case, because of the segregation of Romani children in primary education institutions. This problem with the Roma communities unfortunately is common issue in the European Union and applicant countries in the Western Balkan, such as Republic of Macedonia, Albania, Bosnia and Herzegovina. The violation of human rights of Roma population is very common. This injustice can be undone by the help of Civil Society Organizations, various educational programs and dedication by the central and local government. Last but not least, the LGBT community in Greece is discriminated and attacked. Homophobic violence is escalating in Athens on daily basis. Allegedly attackers are member of the Golden Dawn party, which is far right nationalist party.

5. **FREEDOM OF EXPRESSION**

Freedom of expression is fundamental right, stipulated by the European Convention on human Rights. In Greece, however this right was challenged on several occasions. The most notable case was of the journalist and magazine editor, Kostas Vaxevanis he was put on trial in Athens for breach of privacy, after he published the names of 2,000 Greeks alleged to have private bank accounts in Switzerland and called for investigations into possible tax evasion. He was acquitted after a day's hearing. The Prosecutor's Office of the Athens First Instance Courts appealed, and Kostas Vaxevanis was referred for trial before the Athens Misdemeanours Court. In the wider public this scan-

13. http://www.hrw.org/news/2013/06/12/greece-abusive-crackdown-migrants,5

14. http://www.amnesty.org/en/region/greece/report-2013#section-56-6 , 8

15. http://www.amnesty.org/en/region/greece/report-2013#section -56-6 , 3

dal was named the "Lagarde List". Many members of the former Government of Greece, which was led by the New Democracy Party, their names were published in this list, for tax evasion, bribe and illegal Swiss accounts. Kostas was defending himself, with the right of free speech and the guaranteed freedom of expression. Another incident caused by far right party "Golden Dawn", including three Members of Parliament of the same party, tried to prevent the premiere of the play Corpus Christi, by verbally abusing and threatening the actors and members of the audience. In November, the people who had staged the play were charged with blasphemy. Amnesty International called on Greek Authorities to ensure Freedom of Expression for those involved in the play, and be released from Blasphemy charges. However trial date has not been set yet, during the end of the 2012. Greece is an Christian Orthodox country, where the church has big influence in politics and in everyday life. The Freedom of Expression of artists, however must be guaranteed fully, despite the common believes.

CONCLUSION

Republic of Greece is on the verge of political and economic crisis. The rise of far right parties with Nazi insignia, are common during conditions like these. Currently the Greek Government, led by Andonis Samaras, is fighting on several fronts, to prevent further economic depth, to solve the unemployment issues and to enforce the obligations taken from the European Convention of Human Rights. The Government is aware of this problem, and it is doing everything it can to prevent further violation of basic human rights. However it is not acceptable for a country, which is a Member State of the EU, to violate fundamental rights of refugees and asylum seekers. Refugees and Asylum seekers are vulnerable group in Greece, they have to be treated according to the provisions of the ECHR. Their criminal acts must be sanction by the police, and the police only, not randomly by far right parties. Their requests for asylum applications, must be readable to their language and processed expedite. Also the Government must offer living conditions at the immigration centers, for refugees and asylum seekers. Also the civil sector of the country, must cooperate closely with the government to prevent further violation of

human rights by building and creating campaigns of non violence, to prevent ethnic profiling and race based violence.

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MULTICULTURAL ENVIRONMENT – IDEAL CLIMATE FOR DEVELOPING PLURILINGUISM

Anka Veselinova Ms.C [1]

ABSTRACT

21st century globalization and internationalization encourage and enhance both multiculturalism, defined as different cultures living in the same community, and plurilinguism which refers to the ability of speaking several languages. Workforce mobility is gradually increasing everywhere in the world, especially in Western Europe, and causes rapid changes in the demographic and linguistic map of a country. Therefore, what makes a country wealthier is its cultural and linguistic diversity. From the other hand, living in it becomes more complicated. Multiculturalism seems to be an ideological phenomenon that enriches the diversity of the geographic map tapestry. Still, it increases the desire to express one's own identity in his/her surroundings. That identity continuously adjusts to the environment and slightly changes as a result of agreeing with the generally accepted norms of internationalized behaviour and the feeling of the wholeness in a society.

Key words: globalization, internationalization, multiculturalism, plurilinguism, identity,

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INTRODUCTION

All people in this world have their own identity which consists of a multitude of branches, summarizing the linguistic, historical, geographical, social and

religious dimension of their existence. In addition, their ethnicity has the most important role in the mutual society. Matching one or more identities in a multicultural society can undergo a strategy for successfully synthesizing mechanisms of action and behavior in society, as well as noticing and respecting differences existing between themselves and the environment. In meanwhile, opportunities to achieve personal or collective emotional intelligence and maturity are being increased, if one's personal spirit or community's spirits are raised to the point that one also nurtures tolerance by developing awareness of differences, accepting them as the priceless treasure of innumerable puzzles that tailor the map of a country.

1. MULTICULTURALISM AND INTERCULTURALISM – TWO SIDES OF THE SAME PHENOMENON

While multiculturalism describes the environment where people of different cultural backgrounds live, interculturalism refers to the mixture of skills and competencies that an individual has acquired through interaction and communication with different cultures or by living in a multicultural environment. Above all, the interculturalism understands the philosophy of appreciating diversity, respect for the dignity of the individual, his intellectual and spiritual life regardless the nation, people or race he belongs to. In fact, it is a way of learning through various cultures that actually disseminates understanding, equality, justice and harmony in the diverse society in order to learn how to acknowledge the unique cultures and to find common elements of the society. The vision of a just and harmonious society can be achieved only with interculturalism, which is incorporated in the knowledge of yourself and others, and is inspired by the respect for the human dignity and the commitment to social justice.

What is needed for the common good of the people in a society of diverse linguistic and cultural backgrounds? First of all, mutual recognition of similarities, respect for differences and willingness to share experiences of different cultures and languages is a must. From this point of view, Byram concluded that experiencing the world from a different point of view leads to a

new view of his own experience of the world and to a new understanding of his own experience.[2]

Governments increase the practice of a multicultural policy in order to encourage the socialization of citizens of different backgrounds. This policy is often used as a tool for fighting against nationalism, racism, prejudice and incomprehension of other people. Multiculturalism encourages a dialogue where the points of tangency between the culture of someone and the culture of someone else should be found. The culture of the new globalized world is based on the union of all the points of tangency of all existing cultures, and we are required to understand all these similarities and differences, to become aware of them and respect them as we want to be respected and primarily understood by others. In other words, we need to change our views without actually being changed. We need to look from the eyes of the others and become 'them' for a second. This is how we'll understand their ego, and we won't break it. At the end we won't stop being 'us', we'll just continue our life with a larger open-mindedness and with richer experience and awareness of someone else's understandings.

2. PLURILINGUISM AND MULTILINGUISM – TWO SIDES OF THE SAME PHENOMENON

Plurilinguism refers to the ability to speak more than two languages. Wolfgang Mackiewicz in his presentation on "Plurilinguism in the European society" at the conference organized by the Swiss Academy of Humanities and Social Sciences, held on June 14, 2002, stated that there was a difference between multilinguism and plurilinguism. Multilingualism marks the linguistic diversity of a society, and plurilinguism refers to the knowledge of more languages by an individual. Multilinguism and plurilinguism are actually two sides of the same coin.

The society of the European Union has multilingual nature and needs plurilingual citizens who can communicate among themselves besides the language barriers.

2. *Byram, M(1997) Teaching and assessing intercultural communicative competence. Clevedon:Multilingual matters, p.7*

Why plurilinguism occupies such a prominent position in the educational agenda of the EU? The answer is simple: in order to achieve the most competing and most dynamic economy in the world. The French presidency initiative for greater mobility in the labor market means mobility between jobs and geographic mobility among members. To achieve this, it is necessary to develop appropriate language and cultural skills. If European citizens wish to work in another Member State, they should not rely solely on the English language, but they need to have knowledge of other languages, too.

Globalization visualizes new challenges of social cohesion and integration. Language and cultural skills are more than essential and necessary in order to benefit from employment and mobility prospects. Hence, the priority of the European Council is to stimulate the creation of plurilingual and intercultural citizens who are able to communicate in several languages across linguistic and cultural boundaries. This is how, lifelong enrichment of the plurilingual repertoire of an individual is encouraged. This repertoire is made of different languages and language varieties, different levels of proficiency and include various types of competences. Plurilingual competence in an individual develops easily in case of a contact with a multilingual environment because different languages aren't taught in isolation and can affect each other in the process of learning and in their communicative use. Over time, the individual becomes aware of his repertoire that already exists and the potential to build it up. Europe doesn't require proficiency in several languages, but some valuable communication skills in at least two other languages besides their mother tongue.

Plurilinguism does not include only the communicative ability in other languages. It also requires awareness and appreciation of other languages and their speakers. It is important to help people to develop awareness for the multilingual nature of Europe and the world, as well as to help them become more aware of their own identity as plurilingual individuals, no matter whether it comes from learning in an institution, at home or only in a multicultural environment.

3. EXAMPLES OF MULTICULTURAL AND MULTILINGUAL AREAS

The cultural mosaic of a mixture of languages, cultures, ethnicities and religions visibly functions in Canada, which is an experimental state with more than 200 nations at the same ground. Each new immigrant wave helps forming this vast, under-populated space and complements the diverse chain with another colorful link. English and French, being at the pedestal position, have multiple roles in the Canadian society as official languages, working languages, and mother tongues. Besides them, there are around 200 other languages in Canada. The most common are Chinese, Spanish, German, Italian, Cantonese, Arabic, Mandarin, Portuguese, Polish, Russian, Vietnamese, Korean, Aboriginal, and there is Macedonian language among other Slavic languages, as well.

The Balkans also abounds in multicultural environments, including Macedonia that constantly keeps the attention of the world. Here, three major ethnic groups share cohabitation: Macedonians, Albanians and Turks and there are a dozen smaller ones as: Roma, Serbs, Bosniaks, Vlachs, Croats, Montenegrins, Russians, etc. Their common past and the newly created European mobility contributed to this space to be weaved of colorful carpets, suitable for all ethnicities. Their mutual everyday life forced them to share their main values of life, to learn from each other how to work together and communicate on the official Macedonian language or by using a language from the ethnic groups living in this area. Bilingualism is partially present here in some municipalities where Albanian is a second official language.

CONCLUSION

Multiculturalism in a country encourages broadening horizons and opening the spirit, and hence the beginnings of cross-cultural understanding. The culture of each nation is expressed through their behaviour, decision making, ethics, morals and values of their society. All cultures are built over many years depending on their history, geography, religion and sociology. To achieve cross-cultural understanding, first we need to become aware that our

behavior is culturally limited. Our attitudes, values and morals that we consider normal can be perceived as odd by people from other cultures. If we succeed to look at ourselves from the viewpoint of the others, then we may realize that diversity is not a flaw and a weakness, but rather a virtue that fosters the release of the spirit from the constraints and helps overcoming stereotyping, nationalism, prejudice, racism, sexism, and personal and collective ego.

To be able to successfully communicate with the members of another culture other than ours, we need to know the language and the culture of the people, which means gaining an intercultural communicative competence, which is a set of knowledge, skills, attitudes, critical and cultural awareness. Thus, people who are exposed to multicultural and multilingual environments, are also imposed to a huge potential for developing cultural and linguistic communicative skills from their neighbours, friends and co-citizens, which gives them an enormous advantage in the idea of understanding the entire mankind.

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MULTICULTURALISM AS A FACTOR FOR ACCEPTANCE OF PUBLIC POLICIES

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ABSTRACT

Multiculturalism as a factor for acceptance of public policies is a complex and controversial issue which merits a closer look.

In this paper, the authors will explain theoretical model of the role of multiculturalism in public policy through the example of the creation of security identity as the archetype of multicultural identity. This model, also, can be analyze as a possible tool for using securitization in public policy, regarding access to an issue or challenge that may affect creating a unifying factor that will affect the creation of security identity as an introduction to multicultural identity.

Multiculturalism is a question of identity, authenticity and survival. Furthermore, Identity can be discussed as, what we would call, a collective social identity: religion, gender, ethnicity, "race" sexual orientation. This list is very heterogeneous. From this point of view, the influence of the multiculturalism and the multicultural identity in the process of public policy acceptation can be inevitable and particularly important precondition for the development of multicultural democracy.

Finally, if we consider the securitization as part of public policy in security issues and the possibility of creating multicultural identities, then analyzing the impact of multiculturalism in public policy is undoubtedly important issue.

When we consider all of the above mention, we understand the importance of setting a model for highlighting the importance of multiculturalism in adopting public policies in one society.

Key words: multiculturalism, identity, public policy securitization, security identity

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INTRODUCTION

Multiculturalism is a question of identity, authenticity and survival. Public policies are the main link that allows full achievement of the public interests. This would involve: equal opportunity to all members of our society (no matter race, ethnicity) and maintaining each person culture without prejudice The most important would be programs and services to be designed and operated in full consultations with public, in order to promote their needs and expectations. In addition to this, the securitization in the public policy is undoubtedly an important factor in creating a stable identity of the person and its identification with national responsibility in one society. The theoretical model of the role of multiculturalism in public policy through the example of the creation of security identity can be particularly crucial for understanding the essence of the existence of public policies, especially within the multiethnic democracy.

1. MULTICULTURALISM – CULTURAL IDENTITY

When we talk about multi-ethnicity and multiculturalism, the volume of focus on these challenges and politics of recognition that nowadays democratic societies are facing with, are mutually similar. The challenge is endemic, especially in liberal democracies, because they are supporters of the principle of equal representation at all. Is there chance for democracy to disappoint the citizens, by discriminatory and exclusionary terms of morally disturbing way when key institutions in the system failed to take care of our own interests? Are people with diverse identities can be presented as equal, if public institutions do not recognize their personal identities, but only universally shared interests of civil and political liberties, income, health care and education? Despite the deviation of each of us as individuals in the name of common rights as all other citizens, they pulled respected people in the name of equality? In that sense, our identity as a man or woman as a member to a particular nation, religion is a matter of publicity?[3]

Our reactions to questions about how to recognize different cultural identities of the members of a pluralistic society is that the purpose of presenting the

[3] *Gutman, Amy. "Multiculturalism – examining the politics of recognition". New Jersey: 1994, pg. 4*

respective differences in public institutions is misleading. An important component of modern liberalism helps to support this reaction. It lead to the fact that lack of identification with institutions that serve the public purposes, is the price that citizens should be willing to pay to live in a society where all of us treated as equals, without given our ethical, religious, racial or sexual identities. It is the neutrality of the public sphere, which includes not only governmental institutions but also the institutions that fight to protect freedom and equality of citizens. In line with this, our freedom and equality as citizens only applies to our common characteristics - our universal needs regardless of our personal cultural identity, " primary goods " such as income, health, education, freedom of religion, freedom of thought, speech, media, assembly, the right to vote and the right to public action. All of the interest's mention above shall apply to all people regardless of their personal religious view, race, ethnicity or gender. That is why public institutions should strive to recognize our personal cultural identities in our treatment of free and equal citizens.

Are we in position to conclude that all requirements for recognition by specific groups, often made in the name of nationalism, are illiberal requirements? This conclusion would be too hasty, but isn't the most people need security cultural context to give meaning and signpost to their life choices? If this is so, then the security cultural context also makes a good ranking among primary, based on what for most people is a good life. Recognizing and treating members of some groups as equal, it seems that requires public institutions to admit more than to ignore cultural differences, at least for people who self- understanding depends on the vitality of their culture.[4]

Multiculturalism is a question of identity, authenticity and survival.

Identity - When talking about identity, it is interesting the conclusion of Joseph de Maistre[5] "In the course of my life I have seen Frenchmen, Italians, Russians, and even know, thanks to Montesquieu, that one can be Persian, but man haven't met, yet."

Identity that recognize Taylor discussion is what we would call a collective social identity: religion, gender, ethnicity, "race" sexual orientation. This list is

4. *Ibid, pg. 5*

5. *Maistre de Joseph. "Considerations sur la France". London: 2d ed. Bale, 1797, pg. 102*

very heterogeneous. Such collective identities are important to their stakeholders and others in many different ways. Religion, for example, unlike others, entails the commitment. Gender and sexual orientation, unlike others, is grounded in the sexual body, and both are experienced differently in different times and in different places. However, it is universally sexual identity refers to norms of behavior, dress code and character. It is such as important to mention the relationship between individual and collective identity: we realize the the identities of each person in the two major dimensions. There is a collective dimension – collective identities, and there is a personal dimension, which consists of other morally relevant features - intelligence, charm, wit, cupidity - dishonesty.[6]

The identity that we build as personalities largely depends on the lifestyle and the impact of social norms and belonging to certain groups in it . "There is, in other words, irony in the way in which the ideal - I can call Bohemian ideal - where authenticity requires us to reject many of the "frame" in our society, to turn around and make it the basis of " the politics of recognition ""[7] says Taylor . We build ourself based on tool - a set of features available from our culture and society. We make choices but we do not determine the options we choose . This raises the question of how we can recognize authenticity in our political morality, essentially or monologic.

Charles Taylor made a remarkable effort to recover the moral ideal of authenticity as opposed to distorted form of authentication, that leads to individualism. He suggests dialogic nature of authenticity , and justifies the need for recognition.[8]

Identity – survival. Survival - As Gutman says, the desire to maintain the identity of French Canadians not always wish that somewhere there should be people who will speak the language of Quebec and Quebec exercise practices. In fact, it is a desire that language and practices continuously transmitted from one generation to another.

In many modern societies, education of most people was conducted by institutions and guided by the government. In this context, education is within the

6. *Gutman, Amy. "Multiculturalism – examining the politics of recognition". New Jersey: 1994, pg. 151*

7. *Ibid, pg. 155*

8. *Taylor, Charls. "Multiculturalism and The Politics of Recognition," New York: Princeton University Press, 1992, cmp..30.*

political domain. This is not in itself accident: social reproduction involves collective goals. Furthermore, as children develop and gain autonomous identity that we should respect, liberal state has a role to protect the autonomy of children against their parents, church and community.

Property listed in order of discussion for survival - is social reproduction.[9]

Multiculturalism and its characteristics are essential for the creation and adoption of public policies.

Public policies mirror the real situation within a society. Satisfaction of each individual in order to exercise their rights and freedoms, as an expression of multiculturalism, suggesting the creation of public policies that are in support of the current needs of the public, that settled the basic parameters for respecting multicultural differences.

2. PUBLIC POLICIES - HUMAN NEEDS FOR RECOGNITION AND IDENTITY

Public policy has a profound impact on our quality of life. Prudent public policy creates an environment that promotes health, prosperity and peace. Bad public policy, in the literal sense, can destroy a society from the ground up.

During the process of public policy creation, groups act collectively. Better public policy leads to more informed decisions, better understanding of human behavior, more effective institutions to resolve differences of opinion, and, as a result of it, the healthier, safer, smoother and more productive life.

Therefore, good decisions require public institutions that can act in accordance with the preferences of the group - through polls and other tools of representative government. The group, almost never unanimously agree with the decision but it is imperative that they agree with the process by which it is achieved. Most human efforts require society to act as a community. When it

9. *Gutman, Amy. "Multiculturalism – examining the politics of recognition". New Jersey: 1994, pg. 159*

comes to most goods and services, there is no reason for people to agree on a common course of action. In fact, it can be expensive, inefficient and ideologically unacceptable to many to populate the machinery of government with responsibilities that are better handled in the private domain.

Good public policy should improve the average welfare of society. Of course, good public policy is often elusive. In fact, the idea of what constitutes "good public policy" is often doubtful. We can ask whether we equally understand the common good? Whether it is equally important for all of us? Even when reasonable people will fail to agree on a desired outcome – children do not die at birth, people are living longer, healthier life, every individual to be educated in a way that will enable it to be more productive - however, some societies fail to meet these basic goals. Most of the world lives in dire poverty and deadly violence. Mistake of human potential can almost always be traced to bad public policy: the lack of good public institutions, failure to give voice to the people of the nation, lack of public infrastructure (roads, ports, etc.) or other policy failures that stifle human potential.

According to Almond and Powell there are three particularly important challenges facing modern states: building community, encouraging the development and provision of democracy and human rights. In fact, many public policies fully or partially reference to these changes. Public policies are designed to strengthen national identity and community by strengthening the common language or culture, or by promoting consistency and fidelity to the political legacy. Economic policies aimed at promoting economic and social development and to distribute benefits acquired more or less extensive. Eventually, other policies are trying to build or improve mechanisms (democratic institutions) that allow citizens to control policy decisions. In the past century, most Western nations were transformed from authoritarian or oligarchic regimes to democracy. Government policies have been increasingly used to achieve the current needs and requirements. We cannot claim that they do democratic governments in the interest of its citizens.

When we are trying to connect the multiculturalism and public policies, maybe it's an interesting issue to talk about multicultural public policies. As every

public policy, multicultural policy is national responsibility and incorporates certain values and attitudes. How can we make this process more visible? This can best be done with positive encouragement from governments in one society. If the public institutions proclaim long-term strategy for multicultural democracy, respectfulness of the human race regardless ethnic origin, religion or other multicultural characters, and if the public policies are shaped in order with that specifics of the society, than the acceptance of the public policies will be on higher level.

3. SECURITY IDENTITY AND SECURITIZATION AS A TOOL IN PUBLIC POLICY

Talking about multiculturalism and his acceptance of public policies, it is necessary to focus on a key moment in the creation of multicultural relationships through continuous public policy, and as a unifying common need in society.

This need is most base and shows remarkable vitality unite citizens and acceptance of public policies within the handling of risks and threats to security. Threats and risks are ever present, but when they go beyond just everyday human security and social dimension and move into international relations with its influence and endanger the so-called International Security, then we can notice a need for creating a new form of identity. This form of modern identity called "security identity", according to the theoretical structure which will be discussed below, we believe that is the basis of creation of multiculturalism and is part of the policies of states and alliances or coalitions. The basic motive of these policies lies in creating a safe environment and eliminating the risks and threats through appropriate model analysis.

According to the theoretical structure of security in international relations that gives Buzan, second besides survival of the reference object and its setting across sectors and levels of analysis is Securitization. Securitization is constructed from inter-subjective settings existential threat by building sustainable political effects. The discourse here in the form of presenting some-

thing in the form of an existential threat to the existence and determination of the reference object, but creates Securitization moves and the question is when it will be accepted in form, though not necessarily accepted meaning, especially throughout the civilized, predominantly free discussion.[10]

In terms of the established level of analysis and Securitization of threats they will make presented in terms of threats that are usually seen as negative. According to the Copenhagen School of Security Studies, Securitization is one of the levels of analysis of threats to the security object reference, which can be military and non-military, and show a reference object of protection and the type of threats. The main objective of this approach is to construct a concept of security that will mean something more specific threat or problem, because the threats and injuries can occur in different areas, not only in the military.[11]

In it we talk about creating a special security challenge in terms of multicultural identity, which relates to the creation of security identity as part of the multicultural identity.

This created an identity, the identity is created multicultural identity in itself as a strong unifying factor contains a created identity, and that identity is security. The identity of the security is created by the Securitization as a tool for mobilization of citizens in relation to a specific threat.

However, the creation of identities, basically include activities aimed at dealing with risks and threats. More about the security identity as the identity created in whose creation is used as securitization level of security analysis in which the determined need by creating a European security identity will say in addition to this section.

Due to better clarify the application of safety analyzes and their relative levels of the threats and risks against Securitization can be used and the theory of framing by Ericsson, which attempts to include diagnostic and prognostic feature under threat.
We can give examples of creating identity, primarily through security issues

10. *B.Buzan, O.Waever, J.de Wild,* ***"Security: a new framework for analysis"****, Lynne Rienner Publishers, Inc., Colorado-USA, 1998, str.25*

11. *L. Georgieva, "Menadziranje na rizici" Jugoreklam, Skopje, 2006, pg. 25*

and security policy of the European Union including and directions of political determination for the creation of European identity, meaning and use of public policies.

Through the strengthening of political actors, the European identity is determined by the relationship between national identity and fundamental European values, based on the danger of multiculturalism and security within the European security space.

These European values used by political actors as connecting or opposing the transfer of major national - state functions at the level of the European Union,[12] as shown in the application of European public policies aimed at promoting European values and vital interests.

That European identity can be defined as a security identity as the primary goals of the European Union's security and as a global actor, but that framework must survive multiculturalism and ethnic identity and European identity that will be usable in international relations.

The definition of European identity is defining common security identity, and speaking Deutsch, defining the security community: "Achieving the vulnerable community and institutional reinforcements and practical enough widespread and credible and capable of long term cause sure expectations maintenance of peace". Continuing the theorizing of Deutsch, another in 1996 and Ole Weaver says represents the practical view that: "The exercise of the security identity is possible through created the EU institutions and bodies associated with their actions in practice , focused on threats and risks , but also focuses on the interests and beliefs of governments in preserving the peace".[13] Considering that Ole Weaver is one of the founders of the Copenhagen School and securitization as level of security analysis, we can safely continue the theoretical connection and connect the Securitization on threats in European politics with their use in the creation of European identity and guiding public policies backed Securitization as a tool. Particularly obvious connection between multiculturalism and public policy in creating the European

12. *Pawel Kardwski, Viktoria Ireneusz Kaina, European Identity, Theoretical Perspectives and Empirikal Insights, Lit Vergal, Berlin, 2006, pp 185*

13. *Christie Kennet, United States Foreign Policy&National identity in the 21st Century, Routledge, New York, 2008, pp 43*

institutions basically are multicultural and draw the support of public policies in its functioning , in terms of maintaining peace , throat or basic tool is multiculturalism.

Security identity is the first and most important link connecting over the construction of European identity. In fact the European Union within their interests to implement security policies and maintaining the security of European security space , trying to now and in the future despite the member states include the candidate, and that assumes a dynamic activity of the European institutions and the continued use of multiculturalism and public policies.

As a result of the need to create common security in the European Union between different nations, their cultures and political identities in order to protect the vital interests of the Union defined a multicultural approach and the creation of European identity as security identity. It is extremely important that the Union did not insist on changing cultural and political identity in the Member States but to connect them to a higher level of civilization. This ways which are accessible to the "Europeanization" of building the European cultural identity and a new political identity in light of societal security (mutual security) among member states.[14]

In this way we can approach the theoretical explanation of multiculturalism and the use of public policy in the creation of European identity identified through European security identity. It is actually mutually related public policy on a security, cultural and global activity levels, which should contribute to create a state of lasting peace and allow unfettered development that European economic and security space, certainly use in achieving global impact.

Positive multiculturalism and multicultural identity is undoubtedly a challenge for proper development of any democratic society. It can be used as an indicator for increasing the level of public policy awareness and acceptances. If the public institutions in a society understand the multicultural differences of its citizens, and implemented this characteristic in the public documents, strategies and policies, then there is good chance for increasing the level of

14. Vive, Oler, Buzan, Beri, Kalstrup, Morten, Lemetr, Pjer. "Identitet, migracija I novata bezbednosna agenda vo Evropa" Akademski pecat, Skopje, 2010, str. 93-94

popularization of the public policy. In addition to this, security identity is the basis of creation of multiculturalism and is part of the policies of states and alliances or coalitions. Thus, understanding the importance of “building” security awareness, each public policy will have to involve this elements of security needs and self-identifications, in order to fulfill the citizens expectation.

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HUMAN RIGHTS AND ETHICAL STANDARDS: IMPLICATIONS FOR THE ROLE OF FORENSIC PSYCHOLOGIST

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ABSTRACT

Forensic psychology involves science and profession of psychology to the criminal investigation and the law. Psychologists working in applied forensic psychology may offer many services in this areas: psychological assessment, court-ordered evaluations, criminal profiling, assessment of affective states, impact of divorce, custody, separation, visitation on children, sexual assault, assessment of substance and alcohol abusers, juvenile offenders and the list goes on. The psychologists in forensic area attempt to balance the interests of the individual against collective interests or the interests of the other individuals. They are challenged with the most complex social and cultural issues, which increases the need of ethical awareness and human rights. This article analyses the concept of human rights and the relationship with ethical standards contained in the American Psychological Association's code. The main aim is to underline the importance of conceptual structure between human rights and ethical standards in the work of the forensic psychologist. That will help psychologists in developing ethical awareness that is essential in dealing with forensic practice.

Key words: Human rights, ethical standards, Forensic psychology

INTRODUCTION

Forensic psychology involves science and profession of psychology to the criminal investigation and the law. It could be defined as assessment, treat-

ment, and consultation that orbits around clinical issues taking place in legal contexts.

Forensic psychologists play a very important role in the assessment of offenders, provision of support and guidance for others involved. Psychologists working in applied forensic psychology may offer many services in this area: psychological assessment, court-ordered evaluations, criminal profiling, assessment of affective states, impact of divorce, custody, separation, visitation on children, sexual assault, assessment of substance and alcohol abusers, juvenile offenders, and the list goes on. Part of their job is also working with victims. Research is a further element of their vocation, as is presenting evidence in court and advising parole boards and mental health tribunals.

The psychologists in this area attempt to balance the interests of the individual against collective interests or the interests of the other individuals. They are challenged with the most complex social and cultural issues, which increases the need of ethical awareness and human rights.

Human rights are strong claims for the provision of fundamental set of conditions (education, health, freedom of movement) that, if not realized, are likely to result in serious harm to the persons concerned. They protect the essential attributes of human beings: needs, capacities, and interests. The concept of human rights provides a way of bridging the deep divisions of nation, ethnicity, gender, and social status. It performs a search for the universal things for all people in the world. Violation of human rights occurs when individuals are treated as objects, rather than as people with respected goals.

In order to prevent their violation and express the rights to which all human beings are entitled, the United Nations General Assembly adopted the Universal Declaration of Human Rights on 10 December 1948. It came up directly from the experience of the Second World War. The Declaration is consisted of Preamble and 30 articles that represent specific rights: freedom from torture, right to work, security of the person, fair trial, freedom to marry, freedom of religion and many other issues.

The Universal Declaration of Human Rights is of great value for forensic psychology. It imposes important general ethical constraints on practice. Among other, it encourages psychologists to be aware of respecting the core human rights while practicing forensic interventions.

PSYCHOLOGICAL ETHICAL PRINCIPLES

The APA (American Psychological Association) code of ethics represents one of the most through and sophisticated codes for psychologists. It is an effort to base the fundamental psychological job on the essential ethical principles. It gives detailed standards to cover most of the situations faced by psychologists. Its goals are the wellbeing and protection of the individuals and groups with whom psychologists work and the education about ethical standards of psychology.

APA code of ethics consists of introduction, Preamble, five ethical principles and 10 groups of ethical standards. Human rights can be connected to the core values of the principles of the APA's ethical code.

The five ethical principles given by the APA are: Beneficence and nonmaleficence, fidelity and responsibility, integrity, justice, and respect for people's rights and dignity. The ten standards include: resolving ethical issues, competence, human relations, privacy and confidentiality, advertising, record keeping and fees, education and training, research and publication, assessment and therapy.

The ethical principles, opposite of the standards have more aspirational nature, and tend to direct and inspire psychologists toward the ideals of the profession. The principles don't represent obligations. There is a connection between the human rights and the APA's code of ethic five principles.

Beneficence and nonmaleficence means improving the well-being of the people with whom psychologists work. Psychologists should be aware of the possible effect of their own physical and mental health to the offenders with

whom they work Activities undertaken with offenders should not harm them, and should be directly beneficial in all possible situations. A major goal of clinical work with offenders is equipping the professionals with competence and experience to obtain these human rights conditions.

Fidelity and responsibility is the second ethical principle. The purpose is to promote trusting relationships between psychologists and offenders. Trust provides a sense of security, which encourages offenders to accept that psychologists attempt to keep offenders' legitimate interests in mind and to be sincere and transparent.

Integrity is about behaving in an honest and professional way with offenders. It requires that psychologists do not deceive or mislead offenders. Psychologists must be completely clear about the limits of confidentiality and ethical responsibilities to the wider community. They must never take advantage of the vulnerable people in order to achieve their own material or emotional interests. The two core human rights values of freedom and well-being are clearly apparent in this principle.

The fourth ethical principle is justice. All individuals should be treated fairly and receive fair segment of rights-based benefits. Offenders have a right of freedom from discriminatory or hostile practice. Psychologists should recognize the rights that offenders have as individuals. Psychologists need to guard against obvious and hidden prejudices that may disadvantage offenders.

Forensic psychologists should take a great respect for people's right of dignity, which is the fifth ethical principle given by the APA code of ethic. Psychologists have to actively consider the fundamental worth and dignity of the people. The rights of privacy, confidentiality, and self-determination should be protected. Individuals have right to decide what goals to adopt and how to realize them within the acceptable community standards.

Although the APA code of ethics is very detailed and huge, it cannot always include all ethical issues and situations that could occur during the practice.

Sometimes forensic psychologists tend to follow it in exact, mechanic way in the decision making process, which could lead to potential problems.

Therefore a complex, overreaching model is introduced. The overreaching ethical model unites the APA principles and standards and the concept of human rights. It provides a valuable tool for decision making and could be great help for accomplishing the ethical principles, and solving various, often very difficult and complicated ethical problems by forensic psychologists. It enables psychologists to evolve outside the list approach of ethical issues.

The outer circle consists of the ten APA ethical standards. The middle circle includes the five human rights values and their related ethical principles of APA. APA's general principles can be viewed as appearances of five human rights. The inner circle includes the values of well-being and freedom, as well as the theory that establishes their relationship.

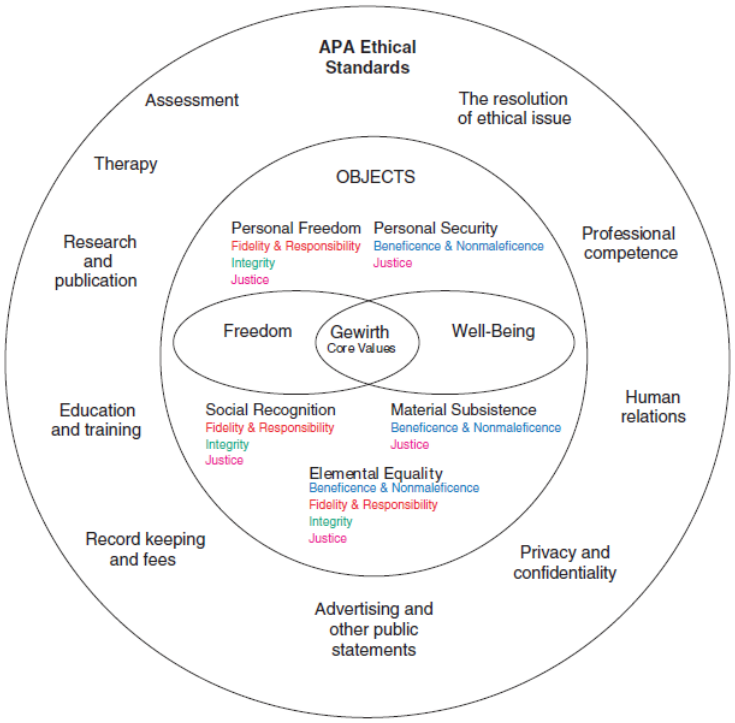

Figure 1. Model of human rights and APA's ethical code (Gewirth (1981, 1996)

The human rights framework provides a platform for integrating the ethical and psychological aspects of assessment and treatment. It offers theoretical structure that is likely to aid psychologists in developing ethical sensitivity that is necessary in dealing with the forensic practice and awareness of how values and skills are interrelated.

All psychologists must be educated about the essential ethical concepts, and should continue to expand their ethical expertise throughout working careers. Introducing an official code of ethics is necessary in order to guarantee ethical practice in the field of forensic psychology.

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THE ROLE OF AMNESTY INTERNATIONAL IN PROTECTING OF HUMAN RIGHTS

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ABSTRACT

Man as an individual has the inviolable rights which are protected by numerous conventions, declarations, constitutions and laws. The role of human rights and freedoms are guaranteed rights and they reflect the role played by human and civil society. Human rights can not buy, earn or inherit, they are "inalienable" because no one has the right to confiscate any reason. These rights are inherent to every human being, regardless of his race, color, sex, language, religion, political or other opinion, nationality, property status, status of birth etc.. Human rights is particularly important in the relationship between people and the state. They control and regulate the performance of the state government on individuals, are granted freedoms of individuals in relation to the state, and they are required by the state to meet the basic needs of the people within its jurisdiction. Internationally these rights are best described in the international instruments agreed between states and that set standards in the field of human rights. The most famous such instrument is the Universal Declaration of Human Rights in which are reflected the principles that have a strong influence in the world. The Declaration itself is not binding, but over the years it has become legally binding through international custom and practice, because they are used in many states constitutions and legal cases. In today's world that are more acts of violence, torture and turmoil, it is inevitable there is no legal protection of man and his rights. For this reason, despite the existence of the European Court of Human Rights, organized and formed a number of international and national organizations,

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with the sole purpose to protect universal human rights. One of the most influential and also the largest organization for the protection of human rights worldwide is Amnesty International. It is a worldwide campaigning movement that works to promote and protect human rights around the world, which has been carefully kept by the Universal Declaration of Human Rights and other international standards. Amnesty International is actually a global NGO, ie the movement of people who are fighting for the protection of human rights and their international recognition. The vision of this organization is to give support to each individual in order to be able to enjoy all the benefits and rights that are provided with the Universal Declaration of Human Rights. Amnesty International characteristic is that it works with and for the people through their organizing campaign to protect and promote human rights. She through her campaigns actually send messages to all governments and authorities to respect the rule of law and thus affect international relations.

Keywords: human rights, international organization, promotion, protection, organizing

INTRODUCTION

Amnesty International is the largest international organization for the protection of the rights of man all over the world. It is a worldwide campaigning movement that works to promote all human rights, which has been carefully stored in the Universal Declaration of Human Rights and other international standards. This organization is a movement of people who are fighting for human rights and for their international recognition.

It has more than 2.2 million members, supporters and signatories in more than 150 countries and territories in every part of the world and an international NGO which is a non-partisan, independent and free of any government, political persuasion, economic interest or religion. Amnesty Internejshenel is a democratic and self-organization, which is funded mainly through membership fees paid by its members, voluntary contributions and

2. *Amnesty International-Nobel Peace Prize, 1977, more on www.Nobelprize.org*

3. *United Nations Award for contributions in the field of human rights, 1978, more on www.unhchr.ch*

donations from its worldwide membership.

Amnesty International was formed in London, England in 1961 by Peter Benson and turns his attention to the violations of human rights and campaigning for the protection of the same,[2,3] In 1977, Amnesty International was awarded the Nobel Peace Prize for her (against torture), and in 1978 received an award from the United Nations for human rights.

[4] Vision of the Amnesty International is a world in which every person enjoys all the human rights guaranteed with the Universal Declaration of Human Rights. Following his vision, the task of Amnesty International conducts research and shares ie organize campaigns aimed at prevention, protection and an end to human rights violations. Its members believe that the protection of human rights violations in the interest of all people throughout the world. So starting from the lawlessness and abuse of human rights and inspired by hope for a better world, they work to improve human lives. Hence arises that Amnesty International advocates for the protection of human rights worldwide.

Amnesty International campaigns in the hope to help those who need support and protect. Working for and with people all over the world, she is fighting for every person to may enjoy all the rights guaranteed by the Universal Declaration of Human rights. It through its campaigns send messages to all governments and other powerful institutions to respect the principle of the rule of law.

1. SPHERE OF ACTION OF AMNESTY INTERNATIONAL

The sphere of action of Amnesty International is clearly defined and refers to the protection of human rights around the world. Specifically this organization fights ie key areas of operations:

- *protection of women;*
- *protection of children;*
- *ending the torture and execution (barring any illegal torture people);*

[4] *Statute of Amnesty International 27th International Meeting, 2005*

- *protection of prisoners of conscience (freedom of conscience and freedom of expression, and the release of all prisoners of conscience);*
- *protection of refugees;*
- *protection and overcoming the phenomen of human rights violations that are related to his physical and psychological integrity;*
- *abolishing the death penalty, torture and other cruel treatment has held prisoners;*
- *fair (fair and fast) trials tnr.politichkite prisoners*
- *overcoming the phenomen of discrimination on any grounds: gender, race, religion, language, political opinion, national or social origin, and others.*
- *regulation of the global arms trade.*

Besides the activities in these areas, Amnesty International stands for protection in zones of armed conflict, ending political killings and disappearances, ensuring prison conditions by international human rights standards, providing free education for all children in the world, breaking recruitment of child soldiers. This organization acts as a protector of human rights all over the world and its actions are not only superciliary for governments but and for all non-governmental organizations, institutions and individuals. It does not support and opposes any government or political system, and works even in cases when you do not agree with the beliefs of those whose rights are violated.

Amnesty International as mass movement for the protection of human rights operates on the principles of international solidarity, global security, human rights universality, impartiality, independence, democracy and mutual respect.

Amnesty International act through her voluntary membership, which stands for the cessation of human rights violations, by putting pressure on governments, armed groups, government organizations, to respect the law and to apply international standards of human rights, organized a series of educational activities on human rights and encourages all non-governmental organizations, individuals and social institutions to support and respect human rights. It is his work to discover the violations of human rights used array techniques, such as pressure on public opinion and on the governments in the world by organizing various actions ranging from public demonstrations to

writing letters, from human rights education to concerts to increase funds from individual appeals for help for specific cases to global campaigns for some particular examples. Despite all stated conducts research organization facts, systematic and unbiased individual cases and patterns of human rights violations through interviewing victims, observing trials, working with human rights activists and all these findings it published in the media, in letters or its website. It is also issued and periodicals, reports, educational materials for the rights of man and other rights-protective literature. In these publications are published cases of violation of human rights in the world, and their readers she proposes to send letters of support for victims of inhuman acts. By taking the above actions by Amnesty International give good results in the fight for human rights. Amnesty International on its work and activities submitted official messages or reports end of each year and through them send messages to all the world's governments to ensure decent, persistent, respect and realization of human rights anywhere in the world.

2. AMNESTY INTERNATIONAL CAMPAIGNS AND THEIR IMPORTANCE IN INTERNATIONAL RELATIONS

Amnesty International as a protector of human rights all over the world campaigns and organize public demonstrations in order to promote and protect human rights. That through its membership worldwide campaigns to stop torture and promotion of safety, for the protection of women, the abolition of the death penalty, to control the use of weapons for the protection of refugees, protection azilcite victims protection campaign from poverty and others.

2.1. CAMPAIGN “WAR ON TERROR”

The so-called "anti-terror" is one of the key campaigns which was conducted by Amnesty International. Amnesty International campaign so called "Anti-terror" began on June 26, 2005 and it applies to all governments that there is evidence that use raw violent interrogation methods used torture and various inhuman and degrading treatment in detention. This campaign strives to

unite governments in their activities in the fight against torture in order to confront the harsh reality that is consequence turturata.

Namely terrorism over the past decade has led to a violation of all human rights everywhere in the world. Although terrorism is not a new phenomenon, "fight against terror" leads in order to exert pressure on governments to protect their citizens who are facing threats and demand their rights. Amnesty Intrnational requires all governments to find common ground in the fight against terrorism and responsible to take actions to uphold international law and to argue for an absolute ban on the use of torture.

By running this campaign Amnesty Intrnational sends the following messages:

- *The use of torture and any form of cruel or inhuman behavior is not justified;*
- *Violence and the use of harsh treatments must stop;*
- *The use of force does not increase the security of citizens;*
- *Torture only serves to perform violence and it is a form of terror;*
- *Closure of all illegal prisons, where it cruel and inhumane treatment and enabling all people to have full, honest and fair trial or be released;*
- *All calls for torture and cruel treatment to be fully investigated by impartial authorities.*

But records and evidence show that states continue to use force and cruel treatment rather than to fight for their abolition. Such countries are Egypt, Syria, Afghanistan and America. Unlike them key leaders who actively combat terrorism and who have successfully lead this campaign England and some European countries.

Amnesty Intrnational addressed to President-elect Obama's America and asked the human rights to be at the center of its work program. She called the president and his administration to take concrete steps in the first 100 days of that basic is to announce the plan and the date of closure of the illegal prison Gvatanamo in Cuba, issued an executive order to ban torture and other cruel treatments such as specified in international law and to establish an inde-

pendent commission to investigate abuses caused by the U.S. government determined campaign against terror. According to the report, Obama was able to make reforms on human rights in America and to clear up the past by taking actions to prevent terror and to restore security in the Americas.

2.2. CAMPAIGN "TERMINATION OF ABUSE AND VIOLENCE AGAINST WOMEN" - STOP VIOLENCE AGAINST WOMEN

Violence against women is often ignored and rarely punished and is the biggest scandal of human rights violations today. Experiences and threats of violence affect the lives of women everywhere, regardless of their race, religion, social status, education. Women and girls suffer disproportionately from violence and abuse, they are beaten, raped, осакатувани and killed while in a state of peace and times of war, in the hands of the state, society and family.

Starting from the idea to protect women, March 5, 2004 Amnesty Intrnational begins a global campaign to stop violence against zhenite. This run a campaign based on the definition in the Universal Declaration of Human Rights on the elimination of violence against women, according to which violence against women is: "*any procedure which causes psychological, sexual or psychological harm, injury or suffering to women, including forced or willful deprivation of liberty, whether occurring in public or private life*. "

Amnesty Intrnational through this campaign focuses on ending violence against women, ranging from domestic violence to violence against women in armed conflicts, the two most dangerous areas of the violence of the suffering millions of women around the world. Ultimate goal of this campaign is to create a world in which women and girls will enjoy the basic human rights.[5] ***Life free from violence is a basic human right***. Although this right is defined in the Universal Declaration of Human Rights, yet his advanced interpretation shows that this definition is missing because it does not cover and does not sanction all forms of violence against women. So it should be extended to include the following types of violations of women also represent violence, such as: domestic violence, violence against women in society and discrimina-

5. *Universal Declaration of Human Rights Article 3, December 10 1948*

tion against women by the state. Violence against women can be physical, psychological or sexual violence that are prevalent worldwide.

Amnesty International by running this campaign is pushing for the implementation of violence against women in all existing rights and providing legal protection to all forms of violence, seek to end gender discrimination against women and this campaign managed to protect women.

2.3. CAMPAIGNS TO CONTROL THE USE OF WEAPONS TRAFFICKING IN WEAPONS -CONTROL ARMS AND ARMS TRADE

Unregulated global arms trade causes misery and suffering around the world. Every year millions of people suffer as a result of unregulated global arms trade. Millions of people daily live with fear that they can be killed.[6] Today there are about 639 million peaces weapons and eight million of them are produce each year. This data is daunting, it is assumed that if this continued until 2020, the number of war victims to surpass dead prichineteti deadly outbreaks of malaria and measles. So if you do not take strict control over the production and use of weapons, it will continue to be used in violent conflicts, state learning, crime and performing family violence. If governments take action to stop the trade in and use of weapons many lives will be lost and many human rights would be violated, and the availability of weapons will increase and as a consequence will continue wars and many people will be tortured and forced to homes. Wicked arms trafficking, wars and abuses can and must be stopped. This is a global problem that faces the world and it takes a global, common solution. So Amnesty International together with IANSA-Internacional Action Network on Small Arms and Oxfam Internacional conducts a campaign CONTROL ARMS in order to force governments to adopt laws that would regulate the production of weapons and weapons will disrupt world trade order to protect people from armed violence, the military, security forces, armed groups and criminal gangs. They through this campaign urging governments worldwide to make a joint decision on the termination of the use of weapons. According to them, in trade and the use of weapons should all adhere to the same rules taking into account the rights

6. www.controlarms.org, www.iansa.org,www.oxfam.org

chovekot.In 2006, 153 governments voted wholeheartedly for conducting negotiations to reach an international agreement to control the arms trade, order to put an end to this deadly trade. After two years of voting still see suffering and killings and wait for governments to fulfill the promise to bring mutual agreement. Governments must start statutory negotiations to arrange the arms trade and to ensure that they will implement them as soon as possible in the time that is necessary to help end armed crises. According to Amnesty International, governments must to sign and to ratify international agreement on arms trade, so that he entered into force, which is desperately needed to save lives and to protect human rights. Amnesty International with this campaign published many reports and organizes meetings with over 100 organizations in over 40 countries around the world in order to unite the people to ask their governments to take action on international arms control. This campaign began in October 2003 and has since received support from more than a million people worldwide, and the vote of the General Assembly of the United Nations found that this campaign ie the resolution came into force to adopt an international agreement on world trade arms voted 153 governments as a step towards the achievement of the goals of this campaign.

2.4. CAMPAIGNS AIMED AT ABOLISHING THE DEATH PENALTY

Thousands of people around the world are waiting to be killed by their governments.Amnesti International organized this campaign to put an end to these killings across the world. Amnesti International opposes the death penalty because it constitutes a violation of two fundamental human rights as guaranteed with the Universal Declaration of Human Rights, and they are Article 3 and Article 5:

- The right to life and
- Right nobody to be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

The death penalty is the ultimate most cruel, inhuman and degrading punishment which by its type is irreversible and it cannot affect correctional among prisoners in relation to the commission of criminal offenses. Amnesty Interna-

tional opposes the imposition of the death penalty from the beginning of its implementation on the political prisoners but over time it opposes imposing the death penalty for anyone who is sentenced to death. In 1971 Amnesty International demands of the United Nations and the Council of Europe to make all possible efforts to abolish the death penalty worldwide. International Conference on the Death Penalty, held in Stockholm in 1977, only 16 countries have abolished the death penalty for all crimes. Today this figure amounted to 80 countries. In 1989 Amnesty International organized global campaign against the death penalty and started to work on the abolition of this cruel punitive measure by developing warnings laws, collecting information on the use of the death penalty throughout the world and has developed a program of work against the death penalty in cooperation with other human rights organizations and governments. In 2000 the project Moratorium Amnesty International together with several organizations presented the Secretary-General of the United Nations, more than three million signatures in support of the campaign for complete abolition of the death penalty worldwide. Amnesty International leading the campaign especially fighting for the execution of children, or the abolition of the death penalty on juvenile perpetrators - who at the time of the crime were under 18 years of age. Execution against children is prohibited in international law, the Convention on the Rights of the Child ratified most world countries except Somalia and the United States continued to condemn children to death. [7]In The Convention of Children Rights in Article 37 stipulates that: ***"No child cannot be subject to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisoned without the possibility of release can give u dealt culprit-offender who is younger than 18 years."*** Amnesty International since 2000 has revealed 26 cases of execution of children across five states and they are Pakistan, China, Iran, Congo and America. On executions Amnesty International special advocates abolishing executions of child perpetrators throughout the world and especially focused on the abolition of executions in Iran and Pakistan. This campaign is of great importance for America 30 years that uses the death penalty and in January 2007 in America were 1059 executions of which one third were in Texas, which marked the 30 anniversary of the execution in the U.S. criminal legal system. In these thirty years, 70 coun-

[7] *artical.37 of the United Nations Convention for the Protection of Children, www.undemocracy.com*

tries have abolished executions and 128 countries and turned back court killings. No through campaign efforts they be abolished in America. There are signs that America is slowly turning against the death penalty that arises from the fact that in 2006 were carried out 53 executions, which is the lowest number in the last ten years and reduced the death sentences.

Amnesty International and all supporters of this campaign believe that the death penalty has no place in a modern criminal justice system and that it is not a correctional measure for prisoners.

CONCLUSION

Amnesty International as massive international organization for the protection of human rights on December 10, 2008 together with all human rights advocates celebrated the 60th anniversary of the adoption of the Universal Declaration of Human Rights. Universal Declaration set the basic principles for the protection of human rights at the heart of all international organizations that fight for the promotion, protection and realization of human rights. It cause significant progress in human rights, creating international standards for human rights, laws and institutions have improved thanks to which many lives anywhere in the globe today and after 60 years there are still violations and abuses of human rights and therefore Amnesty International its latest report, which he called **"60 years of human rights failure - governments must apologize and act now,"** appeals to governments and world leaders requiring them to apologize to the 60 years of human rights failure and inability to argue for specific improvements. It urged them to take concrete steps to solve problems, not just to celebrate the Universal Declaration of Human Rights.

The 2008 report of Amnesty International about the state of human rights in the world begins with the words: Human Rights in Darfur, Zimbabwe, Iraq and Myanmar demand immediate action. Injustice, inequality and impunity marks world today. Governments must act now to stop staring space between promises and realized.

The report shows that 60 years after the adoption of the Universal Declaration of Human Rights by the United Nations, people are still tortured and ill-treated in at least 81 countries, face unfair trials in at least 54 countries and are not allowed to speak freely in at least 77 countries. According to Amnesty International 2007 was characterized by the inability of Western governments and the unwillingness of the authorities to urgently acceptance of some of the worst human rights crisis worldwide, ranging captured trenches erupted into inequalities in living millions. Amnesty International warned that the most intimidating and threatening the future of human rights is the absence of a shared vision and joint lead. According to Amnesty International 2008 is the year which is a favorable opportunity for the coming to power of new leaders and new leaders principles are emerging on the world stage and to set up a new government that should act chaotic policies and practices that in recent years has made the world more dangerous and separated place. It prompted governments to set up a new headquarters for joint leadership based on the principles of the Universal Declaration of Human Rights. The report 2008 Amnesty International specifically warned that world leaders are able to refuse, but their failure to act has a high cost. As is the case with Iraq and Afghanistan, human rights problems are not isolated tragedies, but more like viruses that can infect and spread very quickly and not to endanger us all. Governments today must demonstrate compliance in outlook, courage and determination principles 60 years ago, led the United Nations to adopt the Universal Declaration of Human Rights. More growing demands of the people for justice, freedom and equality, so people will be angry and will not be quiet, not silent as world leaders ignore their pleas for help.

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ALTERNATIVE DISPUTE RESOLUTION - A CHALLENGE TO THE LEGAL SYSTEM

Elizabeta Spiroska[1],

ABSTRACT

This study is a brief introduction for the needs assessment and sustainability of alternative dispute resolution (ADR). It shows that, ADR models need to be considered in their institutional context: through their advantages and disadvantages, the selection criteria, the degree of interdependence with the legal system, economic context, as well as infrastructure and financial sustainability. Also, it is necessary to identify the parameters that determine the possibilities of successful ADR intervention: economic development, the strength and organization of the private sector, political stability, legal framework to support ADR, but also less quantitative and more general aspects such as respect for the rule of law and the culture of settlement within the existing judicial system.

Currently, there is no international convention that regulates ADR services. However, primarily within UNCITRAL, also EU, there are adopted certain norms, which aims to serve as a model for national legislatures.

ADR services are achieved through different forms and are governed by different sets of substantive and procedural rules.

ADR interventions can be divided into direct negotiations: judicial and extra-judicial settlement and indirect negotiations: arbitration, media-

[1]. *Elizabeta Spiroska, Ph.D Candidate at "Ss. Cyril and Methodius University", Skopje, Law Faculty "Iustinianus Primus"*

tion, hybrid MED-ARB, conciliation, mini litigation, evaluation board for resolving disputes and expertise. Commonly used ADR models are mediation and arbitration.

Properly designed ADR, taken under appropriate conditions, can support judicial reforms, improve access to justice, increase stakeholder satisfaction with the results, reducing delays, reducing the costs of resolving disputes. Because of the effects they produce on the way of seeing the conflict and how the conflict resolves, ADR have the potential to change the society.

Key words alternative dispute resolution (ADR), resolve disputes, judicial reforms, stakeholder satisfaction, reduce costs

INTRODUCTION

The name " Alternative Dispute Resolution"

The term " alternative dispute resolution " or " ADR " is an umbrella term - used to describe various methods of resolving disputes outside of traditional methods such as litigation . Sometimes the " A" in ADR is defined as " appropriate " rather than " alternative " in the sense to point out that ADR refers to finding the most appropriate way to resolve the dispute . Sometimes there is no " A" , but simply used the phrase " dispute resolution " as a way to show that they accept all potential approaches for resolving the dispute . Regardless of which acronym is indicated , the concept of ADR is based on expanding the tools available to resolve disputes .

Beyond this simplified clustering approaches, ADR also is understood as a particular philosophical idea. For many proponents of ADR, using

different approaches to resolving the conflict has greater meaning and greater purpose. For example, there are views that the use of ADR is considered as part of efforts to achieve world peace or healing of damaged communities. Others perceive ADR as a way to improve the equality of the parties. Others stress the value of the economic potential of ADR processes for the courts as well as for the stakeholders and society at large.

Simply put, alternative dispute resolution is a common term for the ways in which the parties can resolve disputes with (or without) the help of a third party.

2. Definition of alternative dispute resolution

Although certain ADR techniques are well established and frequently used, such as mediation and arbitration, there is no fixed definition of alternative dispute resolution. The term alternative dispute resolution includes a wide range of processes, many of them with little in common, except that each of them is an alternative to full-blown litigation. The parties, the lawyers and the judges are constantly adapting existing ADR processes or make new ones, in order to meet the unique needs of their disputes.[1] The definition of alternative dispute resolution is constantly expanding to include new techniques.

ADR techniques are not designed to compete with the traditional court system. ADR options can be used in cases where litigation is not the most appropriate time for a solution. They can also be used in combination with litigation when the parties wish to explore other options, but also want to remain free and to return to the traditional court process at any time.

1. *Arizona is one of the few states that allows an attorney to be appointed a judge with full powers for the length of a case or series of proceedings. In Maricopa County, pro tempore judges handle matters, help keep backlogs down and cover for vacation schedules.*

3. Origin of alternative dispute resolution

Achieving equality, efficiency and expertise outside the formal litigation through alternative technics is not a recent idea. Conflicts exist from the beginning of mankind. Found its place in the Bible and related religious and historical documents, and were discharged by different processes, including negotiation, mediation, conciliation, arbitration and adjudication. The first negotiations in the Bible is between the serpent and Eve in the Garden of Eden. Buddhist tradition recognizes the conflict as an integral part of human behavior and has developed a spiritual and practical guidance to help resolve disputes. In 1800 BC, Syria to resolve disputes with other kingdoms used arbitration and mediation. In 400 BC Athens was established feature - public arbitrator to relieve overburdened courts and to ensure faster resolution of those disputes whose sides believe they can be resolved outside the formal way of justice. Although the option of arbitration was voluntary, the function - arbitrator considered for civil commitment, sanctioned with loss of citizenship.[2]

The birthplace of ADR, at least in its most recent form, is the United Sates of America.[3] Although similar forms of dispute settlement have long existed in China,[4] the study and acceptance of concept of ADR by the Chinese legal circle and business community has been of quite recent origin.[5]

However, since the early forms of reconciliation and friendly atmosphere revealed the primary motivation of ADR - achieving a compromise between the conflicting parties and avoiding open disputes as well as violent consequences of coercive force in the execution of court decisions.

2. *Jerome T. Brrett, A Histiry of ADR: The story of a Political, Cultural, and Social Movement, The Association for Conflict Resolution, http://www.adr.gov/events/2009/may7-2009-materials-history.pdf*

3. *In the late 1980s and early 1990s, many people became increasingly concerned that the traditional method of resolving legal disputes in the United States, through conventional litigation, had become too expensive, too slow, and too cumbersome for many civil lawsuits. This concern led to the growing use of ways other than litigation to resolve disputes. As of the early 2000s, ADR techniques were being used more and more, as parties and lawyers and courts realized that these techniques could often help them resolve legal disputes quickly and cheaply and more privately than*

I. LEGAL SOURCES OF ALTERNATIVE DISPUTE RESOLUTION

Currently there is no international convention that regulates ADR services. However, primarily within UNCITRAL adopted certain norms, which aim to serve as a model for national legislation.[6] Some of the countries have adopted their own national laws, as the case with the Republic of Macedonia. Certain permanent arbitrations have their own rules. So Arbitration at the International Chamber of Commerce in Paris has a set of rules that suit individual ADR methods.[7] Furthermore, the International Centre for Dispute Resolution at the American Arbitration Association has changed its rules in order to add norms for international mediation which is based on UNCITRAL model.[8] Finally and London Court of International Arbitration has developed its own set of rules for mediation.[9]

II. CLASIFICATION AND TYPES OF ADR

1. Clasification of ADR

ADR services are achieved through different forms and are governed by different sets of substantive and procedural rules. However, many of ADR initiatives in the last twenty years, were aimed at exploring less hostile methods of resolving conflicts.[10] There are many ways to classify ADR processes, which could relate to the role of the third party or to the nature of the process or its outcome. There are a number of types of ADR and three main types of ADR processes:

- facilitative
- Advisory
- determinative.

2. Overview of different types of ADR

a) Facilitative processes

could conventional litigation. Moreover, many people preferred ADR approaches because they saw these methods as being more creative and more focused on problem solving than litigation, which has always been based on an adversarial model.The term alternative dispute resolution is to some degree a misnomer. In reality, fewer than 5 percent of all lawsuits filed go to trial; the other 95 percent are settled or otherwise concluded before trial. Thus, it is more accurate to think of litigation as the alternative and ADR as the norm. Despite this fact, the term alternative dispute resolution has become such a well-accepted shorthand for the vast array of nonlitigation processes that its continued use seems assured. http://legal-dictionary.thefreedictionary.com/alternative+dispute+resolution

2.1.1. Mediation

Mediation is an informal dispute resolution process in which a neutral third party, known as a mediator, helps disputing parties reach an agreement. Mediators facilitate negotiation and settlement by providing direction and encouragement, working collaboratively with the parties and finding creative ways to reach a mutual solution. The mediator has no power to impose a decision on the parties and the mediator's decision is not binding. Mediation is growing in popularity since it is often a speedier, less costly alternative to trial. Mediation is employed in a variety of disputes including family law, real estate and contractor disputes.[11]

2.1.2 Settlement conference

A settlement conference is a meeting between opposing sides of a lawsuit at which the parties attempt to reach a mutually agreeable resolution of their dispute without having to proceed to a trial. Such a conference may be initiated through either party, usually by the conveyance of a settlement offer; or it may be ordered by the court as a precedent (preliminary step) to holding a trial. Each party, the plaintiff and the defendant, is usually represented at the *settlement conference* by their own Counsel or attorney. Conferences are frequently conducted by a judge or other neutral party, in the form of a mediation.[12]

2.1.3 Summary jury trial

The summary jury trial (SJT) is a form of ADR designed to facilitate settlement. It is often successful when other forms of ADR were attempted but failed. The SJT is counsel`s presentation to a jury of the plantiff`s and defendant`s views of the case and the jury`s advisory decision to the parties based on the presentations.[13]

4. *The Chineese Communist Party developed a system for mediating between people which is used to resolve civil disputes.*

5. *Zheng Rungao, ADR in P.R.China, http://www.softic.or.jp/symposium/open_materials/11th/en/RZheng.pdf*

6. *General Assabley Resolutions: Arbitration Rules of the United Nations Commission on International Trade Law, Model Law on International Commercial Arbitration of the United Nations Commission on International Trade Law, Revised articles of the Model Law on International Commercial Arbitration of the United Nations Commission on International Trade Law, and the recommendation regarding the interpretation of article II, paragraph 2, and article VII, paragraph 1, of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done at New York, 10 June 1958, UNCITRAL Arbitration Rules as revised in 2010, Working Group III: Online dispute resolution for cross-border electronic commerce transactions: draft procedural rules*

2.2. Advisory processes

2.2.1 Conciliation

Like mediation, conciliation is a voluntary, flexible, confidential, and interest based process. The parties seek to reach an amicable dispute settlement with the assistance of the conciliator, who acts as a neutral third party. The main difference between conciliation and mediation proceedings is that, at some point during the conciliation, the conciliator will be asked by the parties to provide them with a non-binding settlement proposal. A mediator, by contrast, in most cases and as a matter of principle, will refrain from making such a proposal.[14]

2.2.2 Minitrial

The mini-trial is in essence a structured negotiated settlement technique. Although designed like an expedited trial, it is actually a means for the parties to hear the other side's point of view and attempt a negotiated settlement. If a settlement is not reached, one benefit of the mini-trial is that the parties have already prepared a significant amount of their cases which will be useful for any subsequent trial. Although there are many variations, the mini-trial in its most common form involves a brief presentation of each parties' case to a panel made up of senior party representatives with authority to settle. The panel is chaired by a neutral, selected jointly by the parties. At the close of the hearing, the neutral recommends a specific outcome. The other panel members then attempt to negotiate a resolution, with the evidence presented during the mini-trial and the recommended outcome serving as a basis for the negotiations.[15]

2.2.3 Early neutral evaluation

Early neutral evaluation is a process that often occurs early in the pretrial stage. A neutral is retained by the parties and counsel to assess

7. http://www.iccwbo.org/Products-and-Services/Arbitration-andADR/Arbitration/ICC-Rules-of-Arbitration/, http://www.iccwbo.org/products-and-services/arbitration-and-adr/adr/adr-rules-and-guide-to-adr-rules/

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9. http://www.lcia.org/Dipute_Resolution_Services/LCIA_Mediation_Rules.aspx

10. Barbara McAdoo, The Minesota ADR Experience: Exploration to Institutionalization, Hamline Journal of Public Law and Policy, Vol.12, 1991, p.65

11. http://legalcareers.about.com/od/glossary/g/Mediation.htm

12. http://en.wikipedia.org/wiki/Settlement_conference

the strengths and weaknesses their case and provide assistance in finding common ground in the dispute. This informal process helps each side view the case from the others perspective and offers an evaluation as to how the matter may be decided in court. The recommendations of the neutral are influential but non-binding.[16]

2.2.4 Expert determination

Expert determination is a confidential and binding process that can offer an effective means of settling a technical issue or dispute. It is an impartial and flexible process. The expert is required to act fairly and give each party a reasonable opportunity to be heard and respond to the other party. The determination of the dispute will be by an independent person with expertise relevant to the dispute.[17]

2.2.5 Neutral fact-finding

A process where a neutral third party, selected either by the disputing parties or by the court, investigates an issue and reports or testifies in court. The neutral fact-finding process is particularly useful for resolving complex scientific and factual disputes.[18] A neutral fact finder conducts an independent investigation into the cause of the disagreement. The fact finder will interview both sides, gather additional information, and then present findings and possible solutions to the parties. The findings and recommendations are not binding but are incorporated into the negotiations between the parties and their counsel. The fact finder usually does not directly participate in the negotiation process.[19]

2.2.6 Discovery referees

Sometimes known as a Special Master, a discovery referee oversees the fact-finding process of litigation. These special masters, or judicially-

13. *Thomas Bateman III, The Summary Jury Trial, http://www.nadn.org/articles/BatemanThomas-TheSummaryJuryTrial-AnIntroduction%28June2010%29.pdf*

14. *http://www.dispute-resolution-hamburg.com/conciliation/what-is-conciliation/*

15. *http://www.justice.gc.ca/eng/rp-pr/csj-sjc/dprs-sprd/res/drrg-mrrc/05.html*

16. *http://www.adrservices.org/other-processes.php*

17. *http://www.out-law.com/en/topics/dispute-resolution-and-litigation/alternative-dispute-resolution-and-mediation/expert-determination/*

18. *http://www.americanbar.org/groups/dispute_resolution/resources/DisputeResolutionProcesses/neutral_fact-finding.html*

appointed referees, provide the narrow, but intense focus required to deal with complex technological or scientific issues for which sitting judges may not be qualified due to either background or time limitations. They may also supervise settlement processes or implement settlements once they have been reached. In short, special masters are quasi-judges with specifically defined duties designed to relieve the court of functions beyond its core responsibilities. Additionally, they leave time for that court to deal with issues that are within its normal scope: deciding who is right and who is wrong under the law.[20]

19. *http://www.adrservices.org/other-processes.php*

2.2.7 Case evaluation

A non-binding process in which parties present the facts and the issues to a neutral case evaluator who advises the parties on the strengths and weaknesses of their respective positions, and assesses how the dispute is likely to be decided by a jury or other adjudicator.[21]

20. *Viggo Boserup, Expanded Use of Special masters, JAMS ADR Blog, August 1, 2013*

21. *http://en.wikipedia.org/wiki/Alternative_dispute_resolution*

2.2.8 Negotiation

This is the simplest form of ADR. Where two people have a dispute they can negotiate a solution themselves. The advantages to the parties involved are that it is completely private and it's fast and cheap. Where parties to a dispute cannot settle it themselves they may instruct solicitors who will negotiate on their behalf. Even when negotiation fails at these early stages of a dispute and court proceedings start solicitors will usually continue to negotiate on their client's behalf. This results in many cases being settled out of court. Regardless of the type of negotiation, experts recommend entering into it with a cooperative rather than a competitive attitude. They stress that the point of negotiating is to reach agreement rather than to achieve victory.[22]

22. *Any method of negotiation may be fairly judged by three criteria," Roger Fisher and William Ury wrote in their book Getting to Yes: Negotiating Agreement without Giving In (2000). "It should produce a wise agreement if agreement is possible. It should be efficient. And it should improve or at least not damage the relationship between the parties.*

2.3. Determinative processes

2.3.1 Arbitration.

Arbitration is a method of dispute settlement using private entities known as "arbitral tribunals". Arbitral tribunals usually consist of either one or three arbitrators. The primary role of an arbitral tribunal is to apply the law and make a dispute decision by administering a so-called "arbitral award". In principle, arbitral awards are final and binding. They can only be challenged before a state court under exceptional circumstances. For example, it applies to cases where the parties never validly agreed on arbitration. Arbitral awards can be enforced in most countries worldwide.[23]

2.3.2 Med-Arb.

As a hybrid, Med/Arb was conceived to help parties resolve their disputes through mediation first, followed by arbitration to resolve outstanding issues that parties could not resolve in mediation. What makes Med/Arb unique is that the same neutral acts as a mediator first, and then as an arbitrator. This is the classic model: mediation is completed first to then be followed by arbitration on unresolved issues, should there be any such issues left outstanding.[24]

2.3.4 Private trial

Often the parties to a dispute, especially business entities, require discretion to avoid public disclosure of sensitive information or secrets. A private trial offers all the advantages of courtroom litigation in a private and confidential setting. Typically the private trial is governed by the court rules and procedures that would apply if the dispute went to trial. However, all documents filed with the tribunal are kept confi-

23. *http://www.dispute-resolution-hamburg.com/arbitration/what-is-arbitration/*

24. *Jose Antonlo Garsia Alvaro,Med/ARB:the "Gamby" of ADR, ADR Commercial Journal, June, 2012, http://aryme.com/docs/adr/2-4-183/*

dential, protecting your sensitive business information. Furthermore, the parties are able to choose the presiding "judge" from the professional panel of neutrals. Some cases present complex legal and technical issues, and it will often serve the interests of all parties have an arbitrator who has particular expertise in the area of law involved. At the conclusion of the private trial, the parties' appointed judge will issue an enforceable judgment. Much like a normal trial, the decision of a private trial is subject to an appeal, which may also be conducted in a private setting. With a private trial, the parties can keep sensitive information confidential and avoid the delays and cancellation costs associated with a congested court calendar to have their dispute ruled on in the comfort and privacy of the ResRem offices.[25]

ADR procedures previously described are typical for the Anglo-Saxon law states, while European countries have not yet developed the concept of multiple possibilities, within which the parties would have the available menu of different types of ADR. Most European countries, as the main ADR proceedings despite arbitration develop mediation.

3. Common features of ADR models

Despite the existence of different ADR methods, they all have the following common characteristics: autonomy of the parties, flexibility, independence, focus on interests, managerial skills, confidentiality and economy. For effective decision making by policy makers and improve the overall social conditions, theoretical foundations and practical reasons for ADR interventions are different. The challenge is to institutionalize all these different mechanisms, so their application will be natural and normal, and will not depend on innovation of customers` consent or lawyers or judges.[26]

25. *http://www.resolutionremedies.com/adr_process/private-trials.asp*

26. *Frank Sander, ADR: Expansion, Perfection and Institutionalization, ABA Dispute Resolution I, supra note 4, at 1*

The parties should consider the following characteristics of ADR, particularly mediation and arbitration. A single neutral procedure: Many IP or technology disputes involve parties from different countries and relate to rights that are protected in several jurisdictions. In such cases, court litigation may well involve a multitude of procedures in different countries. Through ADR, the parties can agree to resolve their dispute under a single law (for arbitration) and in a single forum, thereby avoiding the expense and complexity of multi-jurisdictional litigation.Party autonomy: Because of its private nature, arbitration offers parties the opportunity to exercise greater control over the way their dispute is resolved. Depending on their needs, they can select streamlined or more extensive procedures, and choose the applicable law, place and language of the proceedings.Neutrality: Mediation and arbitration can be neutral to the law, language and institutional culture of the parties and thus avoid any home court advantage that one of the parties may enjoy in the context of court litigation, where familiarity with the applicable law and local processes can offer significant strategic advantages.Expertise: The parties can select mediators and arbitrators who have special expertise in the legal, technical or business area relevant to the resolution of their dispute.Confidentiality: The parties can keep the proceedings and any results confidential. This allows the focus to be kept on the merits of the dispute, and may be of special importance where -as is often the case in IP or technology disputes - commercial reputations and trade secretsare at stake.Finality of arbitral awards and party autonomy to settle: Unlike court decisions, which can generally be contested through one or more rounds of litigation, arbitral awards are not normally subject to appeal. In mediation, the parties have the autonomy to settle their dispute.Enforceability of arbitral awards: The Convention for theRecognition and Enforcement of Foreign Arbitral Awards of 1958, known as the New York Convention, provides for recognition of awards on a par with domestic court judg-

mentswithout review on the merits. This greatly facilitates the enforcement of awards across borders.

III. THE ALTERNATIVE DISPUTE RESOLUTION MECHANISMS IN THE EUROPEAN UNION: A BRIEF OVERVIEW

At the end of 2011, the European Commission presented two complementary proposals intended to help consumers resolve disputes with businesses without needing to have recourse to the courts. One proposal is for a directive regarding the alternative resolution of consumer disputes (“ADR”); the other is for a regulation regarding the online resolution of such disputes (“ODR”). The Commission considers that both consumers and businesses will benefit from these measures because they will enable them to resolve disputes quickly, simply, and effectively without recourse to the courts. This can increase consumer confidence where cross-border transactions are concerned, and thus promote the operation of the internal market. [27]

ADR schemes, also known as "out-of-court mechanisms", already exist in many countries to help consumers involved in disputes which they have been unable to resolve directly with the trader. They have been developed differently across the EU and the status of the decisions adopted by these bodies differs greatly. Today, more than 750 ADR schemes exist in EU Member States, but ADR has not yet reached its full potential. Why? Firstly, there are both sectoral and geographical gaps in ADR coverage. Secondly, consumers and businesses often do not know about those schemes. Thirdly, not all businesses are ready to engage in the ADR process.[28] The European Parliament approved a new ODR Regulation and a new Alternative Dispute Resolution (ADR) Directive on 18 June 2013.[29] The new legislation on ADR[30] and ODR[31] will allow consumers and traders to solve their disputes with-

27. *Commissie voor Consumentenaangelegenheden Alternatieve geschillenbeslechting in de EU, Advisory Report: Alternative consumer dispute resolution in the EU, Maastricht/Amsterdam, march, 2012*

28. *Member States will implement the ADR/ODR rules by July 2015. The ODR platform will be operational in January 2016.*

29. *The EU's Commissioner for Health and Consumer Policy, Tonio Borg, said: "ADR and ODR are a win-win for consumers, who will be able to resolve their disputes out-of-court in a simple, fast and low-cost manner, and also for traders who will be able to keep good relations with customers and avoid litigation costs."*

30. http://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:165:0063:0079:EN:PDF

31. http://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:165:0001:0012:EN:PDF

out going to court, in a quick, low-cost and simple way. The ADR Directive will ensure that consumers can turn to quality alternative dispute resolution entities for all kinds of contractual disputes that they have with traders; no matter what they purchased (excluding disputes regarding health and higher education)and whether they purchased it online or offline, domestically or across borders. According to the ODR Regulation, an EU-wide online platform will be set up for disputes that arise from online transactions. The platform will link all the national alternative dispute resolution entities and will operate in all official EU languages.[32]

IV. MACEDONIA CASE: FORMS OF ALTERNATIVE DISPUTE RESOLUTION, WITH SPECIAL EMPHASIS ON MEDIATION

In the Republic of Macedonia, introduction of alternative dispute resolution mechanisms was one of the measures incorporated in the Strategy for Judicial Reform of 2004 for raising effectiveness of the judiciary. The EU accession-driven reform and alignment with European standards was the context in which the concept of mediation was developed. Macedonian's commitment to ADR can be seen in the "developments" in ADR in recent years.

Forms of ADR represented in the Republic of Macedonia and governed by positive laws are: arbitration and mediation. Also, a special authority: National Council for the peaceful settlement of labor disputes, was introdused by a special law.

1. Arbitration

Permanent Arbitration Court at the Chamber of Commerce of Macedonia is a permanent arbitration institution established under the Law on

32. http://ec.europa.eu/consumers/redress_cons/adr_policy_work_en.htm

Chambers of Commerce and the Statute of the Economic Chamber of Macedonia. Arbitration Court attached to the Economic Chamber of Macedonia is responsible for resolving disputes about rights that the parties are free to have and for which the law prescribes the exclusive jurisdiction of the courts of the Republic of Macedonia, unless the parties agree its jurisdiction.

As the institution responsible for the arbitrage of domestic disputes and disputes with an international element, the Permanent Arbitration Court at the Chamber of Commerce of Macedonia, working since 1993. In recent years, the work of Arbitration at the Chamber of Commerce of Macedonia took place under autonomous arbitration rules of the institution. On April 20, 2011, the Regulation on the work of the Permanent Arbitration Court at the Chamber of Commerce of Macedonia was adopted. [33]

2. Peaceful resolution of labor dispute

The Law for the peaceful resolution of labor disputes,[34] provides a peaceful way to solve collective and individual labor disputes, but only those related to the determination of the minimum wage and the establishment and termination of employment. According this Law, peaceful settlement of disputes will be free, and the budget will be allocated funds to set up National Council to be professional institution with director and conciliators or arbitrators who will lead the process to resolve the dispute ended with agreement from both sides.

3. Mediation

Mediation, although introduced in 2006[35] as a system of alternative dispute resolution, faces significant challenges in its implementation.

33. *http://www.mchamber.org.mk/%28S%28qxbf3555ezhmcbrijtmziuqv%29%29/default.aspx?mId=50&lId=1*

34. *Official Gazette of the Republic of Macedonia No.87/07*

35. *Official Gazette of the Republic of Macedonia No.60/06*

The number of cases is low, despite several legislative interventions, institutional adaptations and project support.

At the legislative level, mediation is regulated with the Law on Mediation, as lex specialis. The Law on Mediation was first adopted in 2006. It introduced a system of out of-court settlement of disputes, *"aiming to unburden the courts from a significant number of cases and provide faster and more economical access to justice of citizens and effective alternative dispute resolution"*. The Law on Mediation in a general way regulates the procedure for mediation. The law expecialy determines the subject of mediation, principles of mediation, the mediator concept, the mediation, completing mediation, the costs of the proceedings and the award of mediator, supervision, Chamber of Mediators and its organs. The amendment to the Law[36] stipulated that the Chamber of Mediators of the Republic of Macedonia is a legal entity, and this enabled smooth functioning of the Chamber and its registration in the Central Register of Republic of Macedonia.

As the number of cases remained low, it was considered that broadening the areas in which mediation is applied, would lead to improved performance. Consequently, the Law was further amended,[37] with the aim to facilitate the access to dispute settlement before or after the commencement of litigation. These amendments expanded the application field of mediation to family and criminal disputes. Another change was designating the Ministry of Justice as responsible institution for trainings for mediators and issuance of certificates for completed trainings for mediators, which previously had been the responsibility of the Chamber of Mediators. The law also set out legal basis for enactment of bylaws and entailed other précising provisions. The Law on Criminal Procedure and the Law on Juvenile Justice were amended to introduce mediation in criminal cases. The amendments did not

36. *Official Gazette of the Republic of Macedonia No.22/07*

37. *Official Gazette of the Republic of Macedonia No. 114/09*

lead to a significant increase in the number of cases. The Law Amending the Law on Civil Procedure[38] applied since September 2011, in the provisions for preparatory hearing states that in disputes in which mediation is allowed, the court is obliged along with the invitation for preparatory hearing to communicate a written notice that the dispute can be resolved through mediation and that the parties should state during preparatory hearing whether they agree to settle the dispute through mediation. The provisions of the Civil Procedure defines and other items relating to the mediation: it provides that civil proceedings are interrupted when both parties so request, to resolve the dispute by mediation or otherwise, interrupted proceedings will continue on request of one of the parties, and if no such request, the procedure will kept on after the expiry of 45 days from the date of termination. It is believed that these legal provisions represent a step forward in the field of mediation, because they entail the obligation to inform clients about mediation and provide an opportunity to choose mediation as a way of resolving their disputes before the main hearing. It is expected that these amendments will result in higher level of application of the Law on Mediation, given that they allow for a more active role and binding role of the judge in referring the parties to mediation.

Already 169 mediators have been appointed, after having attended initial training. However, most of them have not handled a case of mediation. Furthermore, 22 trainers for mediation have been trained.

The Chamber of Mediators, founded in 2007 is not sustainable in terms of human resources and finance, as it has no stable income sources.

Bylaws governing mediation in the Republic of Macedonia are following: Rule for manner and procedure of conducting training for mediators[39] and a Tariff of reward and compensation costs of mediators.[40]

38. *Official Gazette of the Republic of Macedonia No.116/10*

39. *Official Gazette of the Republic of Macedonia No.12/11*

40. *Official Gazette of the Republic of Macedonia No.12/11*

The practical application of mediation in the country began in 2006 and it can be divided in two periods: first period: from 2006 to the end of 2009. In this period in accordance with the regulations nor the Chamber of mediators of Macedonia, nor the mediators, have the obligation to record initiated and completed mediations. In this period, assuming initiated and completed over a hundred cases, subject to mediation; second period is from late 2009 until today. In this period under legislation Chamber of Mediators and mediators are required to record ongoing and completed mediations in the register of the Chamber of Mediators of the Republic of Macedonia. According to records in the Register, during this period, are initiated and completed 4 cases and 6 cases from the project for free legal assistance in the Basic Court Skopje 2. At this time in cooperation with the Chamber of Mediators, the Republic Court Skopje 2 Skopje, the Basic Court in Prilep and IFC conducted three pilot projects for free mediation to resolve commercial and labor disputes under the jurisdiction of these courts.

Since 2006, when began construction on the legal framework for mediation as an alternative to trial, until today, very little is achived. It is not yet established common legal infrastructure needed for the development of mediation. Despite the promotion efforts, mediation has not become a well known institute among ordinary people. Furthermore, coordination of involved institutions and consultation with stakeholders is poor. There is need of continuous acting, first act of construction, and then develop of mediation. In this process very helpful can be the experience of neighboring countries and worldwide experience, also.

CONCLUSION

ADR are useful for promoting the rule of law and other development goals. Properly designed ADR, taken under appropriate conditions,

can support judicial reforms, improve access to justice, increase stakeholder satisfaction with the results, reducing delays, reducing the costs of resolving disputes. In addition, ADR can help in preparing community leaders, increase civic engagement, facilitate the public processes for managing changes, reducing tension in the community, resolve conflicts and prevent their further development. Because of the effects they produce on the way of seeing the conflict and how the conflict resolves, ADR have the potential to change the society.

With the Law on Mediation in 2006, Macedonia has made a progressive step in this area. But this fact does not include the conclusion that the area of mediation is a closed issue in the Republic of Macedonia because this material requires constant adaptation to new trends.

ADR philosophy within the EU is in constantly developing and changing. In the EU ADR and ODR are seen as low-cost, simple and fast procedures and are therefore beneficial to both consumers and traders, who can avoid court costs and procedures. Well-functioning ADR procedures across the EU will encourage consumers to seek solutions to the problems they encounter when buying products and services in the Single Market. This will help them save money that they can invest in a better way. In addition, efficient ODR procedures will boost online purchases, in particular from traders in other EU countries. More online and cross-border trade in the EU will give consumers more options to choose from and will help them make the best deal. It will also provide businesses with new opportunities and help drive economic growth. All EU consumers are entitled to equal access to consumer redress. Therefore quality ADR entities should be available for all types of consumer disputes in all EU Member States. Consumers and traders should also be aware of such opportunities.

From the contents of this paper, we can conclude that there are not appropriate laws and regulations, nor the appropriate institutional framework for the development of mediation in Macedonia. Pro future, there is need of consistent modification and application of legislation, and increased efficiency of government bodies, courts and other involved parties, their cooperation with one goal: to achieve a higher level of realization of rights through the ADR.

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TORTURE AND DISABILITY IN DEVELOPING COUNTRIES: LEGAL BARRIERS AND NEW DEVELOPMENTS IN THE AFRICAN CONTEXT

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ABSTRACT

Developing countries face a twofold challenge in the treatment of persons with disabilities: insufficiencies in the health care systems; and the challenges resulting from poor access to medical treatment or other interventions. Although the practice of institutionalization is present, the general lack of health care access leaves the treatment of an overwhelming number of persons with disabilities to their families and communities. The paper draws attention to the latter problem and explores the challenges of protecting persons with disabilities from torture and ill-treatment inflicted in the private sphere within the international legal framework. The paper compares the international legal provisions within the anti-torture and disability contexts, particularly where it regards the definition of torture and the scope of protection, and extrapolates on their complementary nature. It focuses on the UN CRPD as an innovative mechanism of stronger protection against torture in the private sphere.

1.

2.

Keywords: Disability, Torture, Persons with Disabilities, Human Rights, International Law

INTRODUCTION

When analysing the interrelationship between torture and disability within the African context, it is important to note that African states, similar to other developing countries, face not only the problems connected to the insufficiencies of the health care system, such as forced medical treatment or compulsory detention, but as well the challenge of the lack of access to medical treatment or other intervention (WHO, 2013). Although the practice of institutionalization is present, the general lack of access to health care leaves the treatment of persons with disabilities, particularly persons with psychosocial disabilities, to traditional healers, and family or community members (WNUSP, 2005), thus creating two potential arenas for torture and ill treatment; a public and a private one. Therefore, next to the much analysed problem of torture and ill treatment in the health care setting, combating these practices in the private sphere deserves further investigation, since the number of persons with disabilities who do not have access to health care, and remain at home or homeless is significant in this region. (Mitra / Posarac / Vick, 2011:24)

Persons with disabilities are especially vulnerable to violence and abuse at home, at the hands of family members, caregivers, and members of the community (Fiduccia / White, 1999). In many cases, such practices remain undetected or are being justified, instead of being recognized as torture or other cruel, inhuman, or degrading treatment or punishment (Disability Rights Promotion International, 2007). Moreover, within the international legal sphere, due to the state involvement being a constitutive element of "torture", respective practices in the private sphere have traditionally not been granted the same level of prohibition, rendering the victims unprotected due to the diminished responsibility of the states for the acts of non-state actors. However, in its General Comment Number 2, the Committee Against Torture has

made a significant leap towards levelling the playing field. The Committee not only broadened the definition of torture to include non-state actors, but as well expanded the responsibility of the states towards their practices (CAT General Comment 2: para.15,18). In the context of disability, the CRPD further enables this approach by adding—more than any previous convention—stronger emphasis on the states' positive duties and private relationships.

Using the African context, this paper aims to draw attention to the challenges in the protection of persons with disabilities against torture and ill-treatment in the private sphere as compared to the health care setting; analyse the evolution of the definition of torture and the state responsibility regarding these practices as the catalysts for their prevention and prosecution; and introduce the Convention on the Rights of Persons with Disabilities and its Optional Protocol as a mechanism for further strengthening of the protection from torture inflicted by non-state actors.

First, this paper provides a brief overview of the international anti-torture legal instruments in order to place the CRPD in the international anti-torture framework. Second, this paper analyses the evolution of the definition of torture, highlights the importance of its wide interpretation with respect to its potential for application within the private sphere, and analyses the contribution the CRPD makes to this issue by introducing society and responsibility of the states for the acts of non-state actors. Third, it analyses the potential impact that the architecture of the substantive rights in the Convention may have on the protection against torture in the private sphere through its enhancement of positive duties of the states within the civil and political rights.

Finally, the paper offers concluding remarks on the compatibility of international torture and disability provisions as a path towards a

stronger protection of persons with disabilities against torture in the private sphere.

TRADITIONAL LEGAL CONCEPTS VERSUS EMERGING HUMAN RIGHTS TRENDS

On the African continent, persons with disabilities are protected against torture under both regional and universal human rights frameworks. Within the regional legal context, the African Charter on Human and Peoples' Rights prohibits all forms of exploitation and degradation, including torture, in its Article 5, which stipulates only a negative provision that "… All forms of exploitation and degradation of man, particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment shall be prohibited" (African Charter on Human and Peoples' Rights 1981:5).

The universal legal framework contains an absolute prohibition of torture under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), which is complemented by the International Covenant on Civil and Political Rights, addressing the issue of torture in its Article 7, as well as by the two conventions targeting specific groups: the Convention on the Rights of the Child, within the scope of its Article 37, and the Convention on the Rights of Persons with Disabilities (CRPD), which adapts this most basic human right to the specific situation and needs of the disabled via two pathways; through a general provision against torture, and through its specific substantive provisions.

First, the CRPD's Article 15 paragraph 1 provides persons with disabilities with the right not to be subjected to torture or to cruel, inhuman, or degrading treatment or punishment (CRPD 2006:15). The Conven-

tion adds on to this negative formation traditionally associated with first generation rights by adding particular importance to the positive obligation of the states to prevent torture of persons with disabilities; paragraph 2 contains the obligation for States parties to take all effective legislative, administrative, judicial, or other measures in order to protect persons with disabilities from torture or ill-treatment on an equal basis with others (CRPD 2006:15).

Second, the CRPD's specific substantive provisions offer authoritative guidance in the interpretation of the right not to be subjected to torture for persons with disabilities, such as Article 12 recognizing the equal right of persons with disabilities to enjoy legal capacity in all areas of life, including whether to accept medical treatment (CRPD 2006:12), or Article 25 recognizing that medical care of persons with disabilities must be based on their free and informed consent (CRPD 2006:25).

The CRPD makes a further contribution to the specific issue of protection against torture in the private sphere. First, it does so by placing an emphasis on the role of private actors and society to an extent well beyond previous conventions, thus opening new avenues for redress. Second, by attributing positive duties to the civil and political rights, traditionally thought of as negative, it enhances the active role of the states in protecting persons with disabilities from their rights' violations taking place in the private sphere.

When it comes to the personal scope of the CRPD's Article 15, the notion of torture is to be interpreted by Article 1 of the CAT, which defines it as an act against persons if the following four elements are present: (a) severe pain or suffering; (b) intent; (c) purpose; and (d) State involvement; acts falling short of this definition constitute cruel, inhuman, or degrading treatment or punishment under Article 16 of the CAT (CAT 1984:1). Consequently, the Committee Against Torture has

provided a wider interpretation of the definition of torture in relation to the State involvement requirement. According to paragraph 15 of its Comment Number 2, the prohibition against torture relates not only to public officials, such as law enforcement agents in the strictest sense, but as well to "agents, private contractors, and others acting in official capacity or acting on behalf of the State, in conjunction with the State, under its direction or control, or otherwise under colour of law" (CAT General Comment 2: para.15). In the sphere of disability, this interpretation includes doctors, health professionals, and social workers, including those working in private hospitals, other institutions, and detention centres (CAT General Comment 2: para.15). Finally, in paragraph 18, the Committee has widened the scope of protection to include the victims of torture inflicted by non-state actors to "non-State officials or private actors", thus holding the States responsible for acts of torture committed in the private sphere (CAT General Comment 2: para.18).

The CRPD may be taken as an additional affirmation of the attitude to broaden the scope of torture to include non-state actors. Its reference to private actors, as well as its introduction of society as an important actor, confirms the notion of state responsibility for the actions of non-state actors. By introducing the society, the Convention makes "a broader demand, made not only to the state but also to society, to allow persons with disabilities to fully become members of society and the various communities of which they are part" (Megret, 2008.31). The Convention thus departs from human rights' traditional emphasis on the relationship of the individual to the state and "displays more sensitivity to issues of structural power and oppression than the mainstream human rights framework has typically done" (DeBurca, 2010.52), taking into account the specific situation of persons with disabilities, leading to their restrictions of freedoms being imposed by a

private actor or society in general, as much as from the state itself.

It is worth noting that the Convention is the first international human rights treaty to impose explicitly an obligation on the state to “take all appropriate measures to eliminate discrimination on the basis of disability by any person, organization, or private enterprise” (CRPD 2006:4). By expressly referencing private actors, this non-discrimination obligation strengthens, among others, state responsibility within the field of torture and ill-treatment. As well, the Convention references the public and private spheres in Article 9 on accessibility, which seeks to dismantle the various forms of discriminatory barriers, stipulating the state’s responsibility to “ensure that private entities that offer facilities and services which are open or provided to the public take into account all aspects of accessibility for persons with disabilities” (CRPD 2006:9). Since accessibility is an article of general application, this reference should contribute to the anti-torture framework by preventing what Degener calls, “ill-treatment and torture through neglect, referring to acts amounting to torture or ill-treatment, which are deemed legitimate when backed by a medical reason”. (UN OHCHR Expert Seminar on Freedom from Torture and Ill Treatment and Persons with Disabilities, 2007.15) As reasonable accommodation may be viewed as a mechanism of preventing torture and ill-treatment in the detention or coercion setting, accessibility may be taken as a tool for preventing torture and ill-treatment outside the health care setting; by dismantling barriers, especially the attitudinal ones, accessibility provisions may influence the perception of these practices as illegal, and therefore facilitate protection mechanisms.

Regarding the amplification of state responsibility, the Committee followed the same logic found in the state involvement requirement. In paragraph 15, it not only established that States bear international re-

sponsibility for acts and omissions of their officials and others in situations of custody or control, (prisons, hospitals, and "institutions that engaged in the care of the mentally ill or disabled"), but further broadened the scope of this responsibility onto non-state actors in its paragraph 18.

The Committee stated that, "where State authorities or others acting in official capacity or under color of law, know or have reasonable grounds to believe that acts of torture or other ill-treatment are being committed by non-State officials or private actors and they fail to exercise due diligence to prevent, investigate, prosecute and punish such non-State officials or private actors consistently with this Convention, the State bears responsibility" (CAT Comment Number 2 para. 18). Therefore, states must exercise due diligence in preventing, investigating, prosecuting, and punishing such non-state officials or private actors. The Committee as well provides argumentation for this approach, and considers state inaction to be a catalyst for such practices: "Since the failure of the State to exercise due diligence to intervene to stop, sanction and provide remedies to victims of torture facilitates and enables non-State actors to commit acts impermissible under the Convention with impunity, the State's indifference or inaction provides a form of encouragement and/or de facto permission" (CAT Comment Number 2 para.18).

The Committee therefore affirms the opinion that the "traditional dichotomy between positive and negative rights in the international human rights arena has been widely losing acceptance" (Fredman, 2006.4). The traditional division of civil and political rights as negative rights, which do not imply any action on the part of the state, and socio-economic rights as positive, which call for the state to create circumstances for their fulfilment, is being replaced by recognition of the unity of civil rights with socio-economic rights. This implies "the

acknowledgement that all rights, regardless of their nature, can give rise to positive as well as negative obligations on the State; duties to respect, protect and fulfil" (ibid. 2006).

The Convention further emphasizes the positive duties of states. It obligates the states to define all rights through the prism of an all-encompassing inclusion, thus adding new substance and a positive duty into every substantive right via its general provisions (CRPD 2006: preamble).

A further commitment to the positive duties on the part of the states is visible in the CRPD's architecture of individual substantive rights. The Convention incorporates highly disability-specific interpretations of existing human rights, which transform formerly (and essentially) non-interference based rights into positive state obligations. In doing so, this blends political rights with economic, social, and cultural rights, both throughout the structure of the Convention (through the accessibility and inclusion provisions, which create a positive duty for all substantial rights), as well as within its individual articles. In doing so, the Convention depicts civil rights as a means of ensuring economic rights; civil rights in fact become social rights at the fulfilment level (Kayess & French, 2006.4). For example, the right to privacy (a civil right) covers the "health and rehabilitation information of persons with disabilities" (CRPD, 2006:22). In fact, many so-called negative rights involve positive obligations from the state, and positive rights, as well, incorporate negative obligations. In Article 10, for example, the Convention requires signatory states to assume "all necessary measures" that ensure the ability for disabled persons to enjoy the right to life on an equal basis with others." As such, this incorporates the standpoint espoused by the UN Human Rights Committee that the right to life obligates national governments to take positive action to-

wards the protection and enablement of life (OHCHR General Comment 6.para 5). Article 13 guarantees the equality of disabled persons within judicial systems by stipulating positive duties: "States Parties shall ensure effective access to justice…including through the provision of procedural and age-appropriate accommodations...," para. 2: "…States Parties shall promote appropriate training for those working in the field of administration of justice…" Article 14, as another example, stipulates both: 'enjoy the right to liberty and security of person' and 'not be deprived of their liberty unlawfully or arbitrarily.' Related to the issue of torture and ill-treatment, Article 15, paragraph 2 requires states to provide for any and all measures that preclude the use of torture, cruel, inhuman, and degrading treatment of persons with disabilities. Such language, in essence, revises the Article from that of non-interference to positive duty.

In the case of persons with disabilities, who regularly face structural discrimination, incorporating positive duties on the part of the state or a private actor is of vital importance since precisely these positive duties will eliminate the structural barriers affecting persons with disabilities. In turn, this will grant them access to the right at the core of a given provision, and the Convention systematically highlights both dimensions of the rights within its substantive provisions. Further, in cases where torture and ill-treatment takes place in the private sphere, the duty of the state to "protect" provides a gateway for its international responsibility regarding violations of human rights committed by non-state actors.

It is important to note that an effective legal framework is only the first step in securing human rights for all. Regarding the issue of torture and ill-treatment outside the health care system, where persons with disabilities are exposed to violence within the family and within the context of community based social service delivery, implementation

and monitoring mechanisms are of vital importance for the prevention of torture and ill-treatment. Capacity-building of national human rights institutions, organizations of persons with disabilities, and independent expert organisations is the safest path to effective implementation and monitoring of legal provisions, leading to transparency of services both in institutions and in the community.

CONCLUSION

Persons with disabilities, in particular persons with psychosocial disabilities, belong to one of the most vulnerable minority groups in the context of human rights violations. Facing structural and attitudinal barriers, this group often remains without a voice, unnoticed in the wider human rights sphere.

On the issue of torture and ill-treatment, this group experiences human rights violations both in and out of the health care setting. In Africa, in addition to forced treatment and detention, torture and ill-treatment consistently occur in cases where medical treatment is not available, leading to persons with psychosocial disabilities being left to the care of their families or becoming homeless. These human rights violations are often inflicted by family members, neighbours, and associates.

In the international human rights legislative framework, states have traditionally not been held responsible for the violations committed in the private sphere, thus rendering respective victims unable to seek protection under international human rights norms. However, a new trend has begun to emerge, visible in both opinions and comments of the United Nations human rights bodies, as well as in the architecture of the latest addition to the human rights treaty system, the UN CRPD.

The Committee Against Torture has widened the scope of torture to include private actors. As well, it has stipulated the responsibility of states for violations committed in the private sphere. This attitude corresponds to the growing trend in the international human rights sphere that states have the duty to not only respect, but as well to fulfil and protect, when it comes to human rights. In doing so, the Committee places an additional emphasis on interpersonal relationships, instead of focusing solely on the state to person relationship.

The CRPD presents a further contribution to this trend. It too emphasizes the importance of including private actors within the international legal framework, by noting not only family and individuals, but also society at large. In addition, it charges the states with the responsibility to act when rights' violations are committed by private persons. Perhaps its biggest contribution is the consistent and systematic placement of obligations on the states within all of its substantive rights. The Convention does not perceive only socio-economic rights as positive, demanding action on the part of the state, but as well foresees an active role of the state in the protection of civil and political rights, including the right to be free from torture.

This new attitude is of vital importance for persons with psychosocial disabilities in Africa and other developing regions, whose rights are often violated by private individuals that hold no connection to the state, and were therefore previously outside of the scope of international human rights. Both the General Comment of the Committee Against Torture, as well as the text of the CRPD provide new pathways for redress, previously unavailable in the international sphere, with the distinctive aim of fostering stronger protection for the most vulnerable in every day life.

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KNOWLEDGE MANAGEMENT – STRATEGY FOR ACQUIRING COMPETITIVE ADVANTAGE AND IMPROVING ORGANIZATIONAL EFFICIENCY UNDER THE CONDITIONS OF AN OPEN MARKET

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ABSTRACT

The process of globalization in the last century set new challenges for managers. The interest in knowledge management is increasing. Knowledge management is a newly-developed interdisciplinary model of work, which has the knowledge of the organization in its focus. In the new economy – knowledge economy, the most successful companies are the ones rich in human capital, as opposed to the ones rich in material resources. Knowledge management is an exceptionally important concept for improving the organizational efficiency and acquiring competitive advantage.

Key words: globalization, organizational knowledge, knowledge management, competitive advantage, organizational efficiency

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INTRODUCTION

The passing over time and space, with the help of the new technologies through the quick and simple transfers of information in the written and the electronic media, opens the vision for connecting the world globally. The dynamic changes in science and technology facilitated the process of globalization. This makes the process of globalization easily attainable.

The process of globalization is particularly experiencing development through the technological advancement in the field of telecommunications and transport, and it mostly manifests itself when the application of information technologies begins.

The main objective of globalization is profit. The process of globalization aims at creating new markets, conquering new markets, finding new and cheaper raw materials, decreasing the risk in work, dominance of the international markets by the multinational companies. Developed countries imposed the thesis that the rational development of the economy can only be achieved on the basis of strict work criteria, where multinational companies blended in excellently and became the carriers of this international connection. In other words, the process of globalization is an internationalization of the world production and trade.

Considering the current situation of the open markets, it becomes increasingly clear why organizations need a new management paradigm of work that will correspond to the current conditions: markets are increasingly competitive, and the rate of innovations is increasingly growing; the time for gaining experience and knowledge is reduced; early retirement and increased mobility of the work force; the larger part of the companies' work is based on information; the products and the services are complex, most often enriched with informational components; the need for continuous learning is becoming an inevitable reality.

Property, capital, and equipment lose the decisive role in the market econo-

my. It is completely certain that a company's ability to learn and change, faster than its competitors in the market, is the greatest advantage that a company can have. Individuals, companies, even entire societies increasingly turn towards developing their abilities and applying the knowledge for the purposes of realizing the set objectives. In the meantime, companies develop appropriate strategies for using their existing resources and abilities, or for acquiring new ones, which are necessary for accomplishing the desired objectives (gaining customers, increasing the market share, improving the image, etc.). It may be said that a large number of companies create specific strategies for survival on the open market, to differentiate themselves from the others and to be competitive. Competitive advantage is what makes one company different from the others, or what one company does that others cannot do, or does something better than other companies – distinctive abilities, or it has something that other companies do not have – unique resources.

In an environment that is rapidly and unexpectedly changing, and in which a company seeks for a way to create and maintain competitive advantage, the knowledge that the company owns becomes a decisive factor in the struggle for competitive advantage. Individual learning is no longer enough. It is necessary to develop collective, organizational learning, and knowledge. The collective, explicit knowledge, and the intellectual capital or the so-called "immaterial wealth", becomes the competitive weapon of the contemporary age. Companies increasingly turn towards their intellectual capital, becoming aware that knowledge represents the basis of the competitive advantage in the capitalist society. Precisely because of these reasons, it is in the interest of the top management to provide the opportunity for continuous learning and training of the employees. Professional development not only enables employees to acquire new knowledge (which will be of use to the company), but it also motivates them to remain with the company despite the open labor market. The acquired knowledge should serve as an informative input in the making of quality management decisions. However, the acquired knowledge also enables the employees to have independence in work and contribute to the development of the company. Hence, new responsibilities arise: employees start to act as entrepreneurs, demonstrate self-initiative in improving the

work processes, and thus, create value for the company.

1. KNOWLEDGE ECONOMY AND THE CONCEPT OF KNOWLEDGE MANAGEMENT

Information and knowledge are the main drivers of the contemporary knowledge economy or knowledge-based economy (knowledge-driven economy). The absolute reality that characterizes the dynamics of today and the chaotic world of the global competition is a necessity for creating new products and services, and introducing the latest technology if a company wants to achieve competitive advantage.

In the knowledge-based economy of today, knowledge becomes the most valuable capital. The way in which an enterprise generates, supports, transfers, integrates and protects knowledge, becomes crucial for its success.

Knowledge can be a characteristic of the individual, shared in a group or institutionalized in the organizational processes and data bases – organizational capital. It is clear that the different carriers of knowledge are complementary and influence each other in the defining of the organizational ability, and form the intellectual capital of the enterprise.

In the last period of transition, Macedonian enterprises faced a great challenge. In parallel with the processes of restructuring, a change of the capital ownership took place. The results from this process in the Republic of Macedonia were far from the expected. In the struggle for survival, enterprises were shaken to their foundations, and only a part of them managed to position themselves in the Macedonian market. In this process, there were also newly-established enterprises trying to answer the current conditions through developing capacities for successful performance and persistence in the market. The primary objective of the enterprises was achieving competitive advantage within the frameworks of the national economy.

The processes of EU integration and the strong expansion of the international business conditioned a parallel competition of the enterprises with both the internal consolidation and the global competition. This meant a constant adaptation according to external factors and development of internal capabilities and results through effective strategic management.[3]

In their efforts to accept the paradigms of the developed and successful companies, Macedonian enterprises should not disregard the fact that the modern knowledge-based economy sets the intellectual capital as a key imperative, and the knowledge as a factor of productivity and efficiency. If it is known that human capital is a source of intellectual capital and stored knowledge, then the great importance of the strategic management of human resources will also be perceived, and employees will be considered an investment instead of an expense of the enterprise.[4]

2. KNOWLEDGE AS RESOURCE IN THE ORGANIZATION

Analyses show that there is no other resource that has had as much influence as the knowledge of the national and the global economy, but also in all spheres of social activity, which can be seen from the following[5]:

- Knowledge influences democracy – highly developed countries are also the most democratic countries
- Knowledge increases the effectiveness and the efficiency in the economy, industry, society
- The degree of knowledge influences the management style
- Knowledge is expensive – the sale of knowledge brings a greater income than the sale of any other resource

Knowledge changed the attitude towards the people that have it – managers turn towards maintaining and building human capital

3. http://www.kas.de/wf/doc/kas_12888-544-1-30.pdf (15.008.2013

4. *Ibidem*

Knowledge is found in people in the shape of experience, skills, values, culture, behavior, standards. Knowledge can be bought, but it can also be created by way of reasoning or it can be acquired through practice. Within the organization, knowledge is referred to as human capital and it represents an immaterial resource of special strategic importance. As such, this resource is difficult to manage and it requires a special approach. Human capital or knowledge differs from other material resources in the organization by the following specificities:[6]

- Duality of ownership – knowledge can be transferred from one individual to another, by which the first individual would not lose ownership over knowledge. This is not possible with material resources – every item has its own single owner. The duality of knowledge allows for its expansion (multiplication), which is especially important to an organization.

- Sharing of knowledge (expansion, multiplication) leads to increasing the knowledge in the organization, while sharing of material resources leads to their reduction.

- Increasing the quantity of knowledge leads to increasing the quality of knowledge – if knowledge is available to a greater number of people, the greater the probability for its perfection, upgrading.

- Ignorance is the same for all, while knowledge varies – knowledge depends on the individual who owns it, and because every individual is different (different experiences, opinions, values…) the same knowledge is individualized depending on the one who owns it.

- Today, knowledge is the most valuable resource in the organization – developed countries in the world earn huge profits by selling knowledge, while developing countries sell raw materials and earn poverty.

- The knowledge processes and flows in an organization that is learning are more important than the cash flows – knowledge should be the

5. *Radosavljević Ž. „Menađment znanja i(il) znanje u menđmentu“, Centar za edukaciju rukovodećih kadrova i konsalting – Beograd, 2008 p. 26*

6. *Ibid p.29*

bloodstream of an organization and it should reach into all of its pores.

Literature explains the existence of two types of knowledge in the organization:[7]

- Explicit – knowledge that can be expressed with the help of a formal language, exchanged between individuals, and that can be used by everyone to whom it is available (reports, articles, manuals, patents, images, videos, software, programs, etc.).
- Implicit – knowledge that is personal, it is expressed through individual experience and the abilities of the individual, and it includes skills, creativity, innovation, personal beliefs, values, etc.

In addition to the abovementioned one, there are also other classifications of knowledge, including:[8]

- Declarative knowledge – (know-what)
- Procedural knowledge – (know-how)
- Causal knowledge – (know-why)
- Conditional – (know-when)
- Relational – (know-who, know-where)

Due to these specificities, knowledge management is not a simple process, nor is it a classic management process. Nevertheless, there is no doubt that today knowledge management becomes a necessary condition for survival and development of the organizations. Therefore, it should be encouraged and continually upgraded.

3. THE CONCEPT OF KNOWLEDGE MANAGEMENT

The dynamic environment and the struggle for survival in it, made organizations turn towards continuous and fast acquisition and maintenance of today's most powerful resource – knowledge.

The concept of knowledge management appeared in the 80s of the twentieth century. Knowledge management is maximizing the advantage of organiza-

7. *Dimotrovski R. „Menađment znanja kao poslovna strategija“, available at http://www.vps.ns.ac.rs/skolabiznisa/sb_files/radovi_2/2.10.pdf (29.09.2011)*

8. *Slavković M. “Upravljane znanjem I menadzerske kompetencije”, p. 1, available at http://markoslavkovic.com/uploads/media/Upravljan-je_znanjem_i_menadzerske_kompetencije_01.pdf* (19.12.2012) p.7

tional knowledge, identifying information, wisdom, and strengthening human and digital capabilities.[9] Knowledge management is the creation, storage and transfer of knowledge in the organization.[10] Knowledge management is the practice of selective knowledge application acquired through past experiences, present and future decisions with the purpose of improving organizational effectiveness.[11]

The eighties and the nineties of the twentieth century were marked by the transition from industrial society to knowledge society. This was a period that imposed the need of development of multiple management disciplines: total quality management (TQM), reengineering of business processes, learning organization, knowledge management, etc. Knowledge management is an interdisciplinary business model which has the knowledge of the organization in its focus. The characteristics of this model are the following:[12] knowledge management is a necessity in all forms of the business transformation, the need for innovation imposes the necessity of managing the information flow within all pores of the organization, the knowledge-based systems (such as "expert systems") demonstrate what the organization can do with knowledge, by focusing on "learning" (a learning organization), the organization continually develops its competencies.

Knowledge management comprehends the most important and the most critical issues related to the adaptation of the organization, its survival and its competencies in clash with the rapidly changing environment. Knowledge management is the embodiment of the processes within the organization that strive towards combining and interaction of data and information, which increase the capacities of the information technologies and human capital.[13]

Knowledge management is a process that should continually take place within an organization. The objective of this process is to manage the knowledge in the organization, but also to create conditions for its creation, distribution, and use. Special attention should be given to the creation of knowledge in the organization, which requires the previous provision of adequate conditions and ambience. When the organization creates a specific knowledge, the next

9. *Bath M."Defining knowledge management", 2002 available at www.destinationcrm.com/print/default.asp?ArticleID=1400 (23.12.2012)*

10. *Argote L., McEvily B., Reagans R., "Managing knowledge in organizations: An integrative framework and review of emerging themes", available at http://www.ogenvlam.com/Prokno/wp-content/uploads/2012/07/managing-knowledge-in-organizations-Integrative-Framework.pdf (23.12.2012)*

11. *Jennex M.E., "What is KM?", International Journal of Knowledge Management, 1 (4), I–IV. 2005 p.24*

12. Skyrme D.J., "Knowledge Networking: creating the Collaborative Enterprise", Butterworth Neinemann, 1999, p. 44

13. *Malhotra Y. "Knowledge Management in Inquiring Organizations", Proceeding of 2RD Americas Conference of Information System (Philosophy or Information Systems – in Track), Indianapolis 1997 p.56*

thing that should be done is to share it with the rest of the employees. The sharing (multiplication) of knowledge brings an even greater benefit to the organization. More individuals will acquire new knowledge, apply it in the work of the organization, but also, the chances for improving or upgrading knowledge will increase.

Knowledge management is not a simple process. It is far easier to manage explicit knowledge, the one which is evident and can leave a trace in the organization. Specific researches in Japanese companies have pointed out that implicit (tacit) knowledge is of special importance for the competitive advantage of the organization.[14] Tacit knowledge is individual and it depends on the personal characteristics of the individual itself. The results of this research did not aim to show that the organization should deal with promoting individuals. On the contrary, Japanese culture fosters a tradition of behavior focused on the group (collectivism – good for all). Precisely because of this, the knowledge within the organization should be beneficial for everyone in the organization. In Japanese organizations, the creation of knowledge takes place at three levels:[15]

- Individual level
- Group level
- Organizational level

These three levels do not function in isolation from one another, but they are interrelated and in interaction. Individual knowledge is in the function of improving group knowledge, group knowledge is in the function of improving organizational knowledge.

The process of knowledge management itself can be introduced through six stages:[16]

- Creation of knowledge
- Learning
- Distribution of knowledge
- Transfer of knowledge

14. *Radosavljević Ž. op.cit p.30*

15. Ibid p.31

16. Ibidem

- Use of knowledge
- Storage of knowledge

The creation of knowledge should be a continuous process. Successful people are not the ones who have learned, but the ones who learn continually. As the wise folk say "A man may learn with every day". Everyday contact allows people to learn from one another. People learn through mutual communication, but also through mutual observation, imitation, etc. People create knowledge through socialization. The creation of knowledge is also achieved with the help of communication: dialogue, collective discussion, deductive or inductive methods, hypothesis, etc.

4. BENEFITS FROM THE APPLICATION OF THE CONCEPT OF KNOWLEDGE MANAGEMENT IN THE DIRECTION OF ACQUIRING COMPETITIVE ADVANTAGE AND IMPROVING ORGANIZATIONAL EFFICIENCY

We live at a time measured in seconds. There is almost no time for decision making as a category – everything is happening now, in this moment. The ability for adaptation becomes essential for surviving in the dynamic environment. Success already requires a bit more.
Strategic knowledge management enables the connection between the theory of knowledge management and the practice in everyday work. In the era of knowledge, there is no alternative solution to organization other than the advancement and application of the concept of knowledge management.

The concept of knowledge management started to be written and spoken about in the nineties of the last century. However, the idea of knowledge management is much older. This can be seen through numerous examples of organizations which exist for decades and in which knowledge is passed from one generation to another – procedures and practices in work, technological processes, formulas, etc.[17]

The aim of every organization is to achieve sustainable competitive advantage

because, through the increased income, it enables growth and development of the organization. Competitive advantage in modern economy is the result of the successful use of intellectual capital.

Sustainable competitive advantage has its static and dynamic side. [18]

In the era of knowledge, the organization creates its competitive advantage on the basis of exploitation of organizational knowledge. Under such conditions, knowledge management should provide:[19] innovation through encouraging the expression of the ideas of employees, improvement of services provided to consumers, increase of income through improving the distribution of products and services (increasing sales), reduction of employee fluctuation through recognizing the value of knowledge and accordingly rewarding the activities related to the application of knowledge in everyday work, improvement of the processes and procedures of work and reduction of the costs of work.

Knowledge management leads to advancement of the communication processes in the organization and improves the cooperation among employees. A healthy communication and an atmosphere that encourages cooperation within the organization contribute towards increasing the trust and the mutual respect among employees, as well as improving the skills, processes and functions of the organization.

Effectiveness means carrying out the most rational processes and making the most feasible decisions.[20] Knowledge management can improve the effectiveness of the organization through advancing the decision-making process, or through making and carrying out the right decisions. Knowledge management enables the gathering of all the relevant information that are also applied in the process of decision-making, which in turn contributes to top managers being well-informed about everything happening within the organization and out of it. Managers who are well-informed and up-to-date with current developments both in the organization as well as in the changing environment, are able to react better to unexpected events (changes), to adapt easier, to modify current activities if necessary.

18. *Sundać D., Švast N., „Intelektualni kapital - temeljni čimbenik konkurentnosti poduzeća“, available at http://eobrazovanje.mingorp.hr/UserDocsImages/Knjizca_intelektualni_kapital.pdf (06.04.2013) p. 52*

19. *Slavković M. op. cit. 10*

20. *Ibid p.5*

A problem that may arise in the organizations applying the concept of knowledge management is employees leaving the organization. When leaving the organization (voluntary or involuntary) employees take the acquired knowledge along with them. The outflow of human capital may comprehend a reduction of competitive advantage, especially in the case when an employee leaves to work in a competitive organization. Therefore, managements should strive towards defending the human capital in their organizations.

On the other hand, a problem may arise in the organizations applying the concept of knowledge management when employing new staff. Newcomers do not always have the necessary knowledge for carrying out the activities in the organization, or their knowledge is not compatible with the activities that they should carry out. It takes a certain amount of time for newcomers to "fit" in the organization, or to be trained for the work. During that time, there is a possibility that the organization suffers through the reduced effectiveness while newcomers integrate. However, new employees may also bring new knowledge and experiences that will be of use to the organization.

The concept of knowledge management can also improve the efficiency and productivity of the organization. Although the application of the concept itself is costly, the benefit for the organization is greater. Knowledge management may lead to advancement of the organization's efficiency through reduction of production costs, reduction of production time, reduction of decision-making time, etc.

The concept of knowledge management encourages both the creativity and the innovation in the organization. The approach to organizational knowledge may encourage generating of new creative solutions to specific problems.

The effects of the application of the concept of knowledge management are difficult to measure and express quantitatively. Namely, as with all other strategies, knowledge management also produces long-term results. The results from this concept cannot be exactly represented, but they can be de-

scribed instead.

The successful application of the concept of knowledge management has a positive effect upon all the stakeholders of the organization. In general, the concept of knowledge management should contribute to reduction of costs, increase of consumer satisfaction, increase of productivity, increase of profit, increase of innovation, market leadership, organizational stability and changes in the organizational culture. [21]

CONCLUSION

The process of globalization imposed the need of finding new ways of work, or organization management, which results with modification of the management processes themselves. Namely, because of the free market and the dynamic market factors, which are in constant development – change, strategic management necessitates new aspects and tools for achieving goals and successful work of the organization. This resulted from the fact that the value and the resources are no longer perceived in the same way as in the "traditional" economy, not only from the aspect of organizations, but also from the aspect of countries, regions, industries. The way of creating value for the consumers, which is the fundamental criterion for successful functioning of the organization, significantly differs from how it was in the past – from the way of creating value in the "traditional" economy. The new way of creating value requires a new management approach, or a new way of work.

Organizational knowledge is slowly but surely becoming a key resource for the success of the organization. Today, world economy is facing a whole new challenge. The production and the technological revolution are already in the past. The stage is entered by the managerial revolution – the era of knowledge. Managerial revolution points out the need and the importance of intellectual capital as a condition for successful work and for achieving the competitive advantage of the organization. The traditional means of production have lost the decisive role in acquiring competitive advantage. If the success of an organization in the traditional economy was measured by the quan-

21. *Bergeron B. "Essentials of Knowledge Management", John Wiley and Sons, New Jersey, 2003. p.28*

tity of produced and sold products, today the success of an organization is measured by the intellectual capital – the knowledge, skills and abilities that an organization owns. In knowledge economy, which is on the horizon, organizations will compete at which one owns better intellectual capital and at finding a better way to develop the human resources in the organization. Implementing systematic and continuous learning in the entire organization becomes one of the most important forms of human resources development.

During the transition from industrial economy to knowledge economy, the effective use of knowledge becomes one of the decisive factors in the competitive battle among companies. Knowledge management as a process through which an organization generates the value of its property based on knowledge, is an imperative in modern business. In conditions of changing and unpredictable modern business, and in the struggle for conquering competitive advantage, companies are intensely focusing on the knowledge they possess. Developing the necessary knowledge within the organization, requires a focused combination of the knowledge and the abilities of all the participants in the management process – people, technologies and processes.

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THE RELATION BETWEEN THE LONG-TERM INVESTMENTS AND THE RISK

Marijan Stevanovski[1]

ABSTRACT

Long-term investments are considered the investments of capital in assets and activities from which the beneficial effects are expected in the future e.g. in a period which is longer than one year. Those are the investments in permanent (fixed) assets, permanent (lasting) turnover assets and long-term financial disposal.

The long period of investments, such as the independence of the events which can take place during a longer period of time makes these investments to be of a greater risk than the ones which are made in a shorter period of time, at which the time proximity of the events allows the effects of the investments to be seen with a greater certainty. The risk encloses the capital of the investments, but also the profit that is expected from their usage. It is as a rule proportional of the time for the tying of the capital. But, besides the duration of the investments, the degree of risk is under the influence of some other circumstances as well, such as the dinamics of the economic development, the changes in the market, the political situation in the country etc.

The incertitude and the risk are following the man and all of his activities. But, the urge to maintain the life forces the people to operate in risk conditions. That does not yet mean that every long-term invest-

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ment in conditions of incertitude and risk is justified and acceptable. What is acceptable is only the investment for which there is a relatively lesser probability for that risk to manifest itself with some damaging consequences.

Key words: long-term, investment, risk, incertitude, capital, profit, funds, fixed, turnover, assets.

INTRODUCTION

The existing of incertitude about the effects of the long-term investments and the risk to save the funds of the invested capital should not represent an obstacle for the fulfillment of the economic activities. The risk is always present, the management of the capital in terms of incertitude and risk is not seen in the restraint of the investment of capital, but in the capability to estimate the greatness of the risk and the probability for its manifestation in damages, such as in the undertaking some measures for the decreasing of those damages, in case that their creation could not be completely avoided. For that purpose, when decisions are made about the long-term investments, it is necessary to see the factors of the risk, to estimate their action and when appropriate measures will be undertaken, the probability for it to manifest in damages will be brought to a more acceptable measure.

1. TYPES OF LONG-TERM INVESTMENTS

A treatment of long-term investments have all of the investments from which effects are expected in the future, during a time longer than one year. From that type are not only the investments in physical objects-supplying of land, building objects and equipment, but also the invest-

ments in buying other enterprises, implementation of the economic-propagation campaign, realisation of marketing products, but also the investments in researches and development.

Irrespective of the type of objects and activities which are being invested in, the long-term investments can be investments in the permanent capacity (enterprise, a single department etc) which are changing the permanent conditions for working (the old, lasted equipment is being changed, the capacity is being expanded etc.) or investments in a new capacity or activity, which are helping in the creation of conditions for the inducing of a new activity. The distinction of the long-term investments according to this criteria has a great, practical meaning in the assessment of the effects from the long-term investments. The constant capacity is a result of the former investments. Those investments are followed by expenses which together with the operative expenses are a condition for the creation of output, realisation and certain profits. With the additional investments in the already existing capacity new work conditions are being created, but there is also a change in the constant extents of the expenses and the profits. To realize the effects of the additional long-term investments, it is necessary from the extents of the expenses and profits which are being expected from the exploitation of the total investments (old and new) to substract the ones that would be realized with the usage of the old, former investments. The assessment of the effects of the long-term investments in a new capacity is much simpler, because all of the profits (utilities) from the usage of the new capacity are a result of the new long-term investments.

2. PLANNING OF THE LONG-TERM INVESTMENTS

The planning of the long-term investments, whether there are investments in permanent or in new capacities is a complex process which

includes more activities. The more important ones between them are:

- *perception of some alternative possibilities for investing*
- *Researching and planning of technical, technological, organisational solutions for the realisation of the investment market researching*
- *researching of the possiblities for securing of a necessary capital for investing*
- *researches and assessment on the economic justification of the investments*

Besides a complaint and an intention for investing a capital, the investor usually also has an idea that he or she would like to realize with the investment. If there is not such an idea, there comes the need for gathering ideas for a possible investment. But in both of the cases, the ideas for investment should be preliminary examined, with a purpose to reject the ideas which will show themselves as unrealizable or do not fit in the concept for the development of the enterprise. The selection of ideas is necessary to reduce their number, but also to protect the investor from some unnecessary investments and expenditures that would be created in the further phases of their research.

The preliminary accepted idea for investment, depending on its nature must be a subject of further researches. This type of researches usually demands more time and also repeating to laboratory and other experiments, until the expected results are achieved. Nevertheless, the researches do not stop only on the finding of solutions directly connected to the product, but also to series of other circumstances which are meaningful for the accomplishment of the manufacture, such as: the choice of the location, the type and the size of the building objects, the type and the size of the manufacturing equipment etc. The researches on the market are also necessary because of the estimate of the capacity size and the profitability.

The technical, technological and organizational solutions for the manufacturing of a certain product, complemented with certain normatives and data about the prices of the certain elements of the investments, give the possibility to assess the size of the necessary capital on the part of the constant assets, but also on the turnover assets. The gained size of the necessary capital often passes the possibilities of the investor for his assurance from proper resources, which causes the need to also engage capital from other resources. When there are some more important projects in question, the promotor of that project himself takes the care for assuring of capital for the financing of the project. For that purpose, the promotor makes efforts to gain partners whose participation in the project can eather be with securing of financial means or with securing an area for building, objects for administration, for manufacture, warehouses or parts of the necessary equipment.

We should have in mind that the success in the assurance of the necessary capital depends mostly on the quality of the project and the capability of the promotor to affirm the idea for investing in the public and convince the same one about its justification. In case of, besides all of the efforts, a part of the need for capital is not covered, the promotr is left with the possibility to make a modification of the project, with the leaving of some phases or parts of the production, reducing of the capacity and the necessary equipment and in the expense of that, he will accept the services of some other enterprises.

From the previous researches we get the answers on qustions about the possibilities for physical realization of the investment, the possibilities for sale of the products and services at definite prices, such as for the possibilities for assurance of the capital that is necessary for investment. But, for the investor it is very important to know whether the

invested capital in the realization of the idea assures an sppropriate profit - gain. For the realization of the economic justification of the investments, it is necessary to have some appropriate data about the incomes from the sale and the expenses of the work.

For the definite acceptance of an idea about investments, not only the fact that a realization of a gain is expected - is the one that is important, but also that gain should fulfill some normatives which enable the project to be assessed as economically justified.

If we have in mind that the effects of the long-term investments are realized during a longer period of time, when those investments are being assessed we should take the total effects of the project, about the whole economic life of the investment. To that effect, in the practice are used different criteria and methods for assessment of the effectivity of the long-term investments.

From an aspect of the financial planning of the long-term investments, the following activities have the greates meaning:

- *Assessment of the expenditures and the expected usages (profits)*
- *Assessment of the investments, for each alternative of the investments separately*
- *Assessment of the value of each alternative of the investments, with the application of certain evaluation methods and*
- *Choosing the most favourable alternative for investment.*

3. ASSESSMENT OF THE MONETARY FLOWS OF THE INVESTMENT

In the complete age of the investment we could differ two periods: period of investing - in which are created permanent conditions for the

realization of a certain activity and a period of exploitation (economic life of the investment) - n which the previously created permanent conditions are used for the realization of a certain activity. In the period of the investment, the assets are invested in various forms, such as: the repurchasing of the land, building of objects, supply and installation of equipment etc.

During the exploitation, as a result of the work we have profits from the sale of the products and services. The basic rule of the long-term investments is with the profits that are realized in the period of the exploitation in order to cover the investments of the capital made during the investment, such as the operative expenditures that are created in the working during the period of exploitation. For that purpose, the size of the total investments from the period of the investing as capital expenditures are being arranged by the separate years in order to be covered with the profits, which are expected to be realized in the concerned year.

The capital expenditures of the investments which are arranged by the separate years from the period of exploitation is actually the amortization of investments. The amortization as an expenditure that comes from the capital investments can be extended to the whole period of exploitation or on just one part of it as long as the period of amortization of these investments is shorter than the period of exploitation of the investment.

With the substraction of the total expenditures from the total profits by separate years, as long as the total profits are bigger than the total expenditures, we will get a positive difference - gross profit. After its taxation we get a net profit, as a clear financial result from the investment. But, the net profit has a relatively limited usage in the assess-

ment of the economic effectiveness of the long-term investments. The modern methods of assessment of investment effectiveness are mainly used by the monetary flows from the investment which are gained when on the net profit from the separate years you add the monetary flows that are realized depending on the amortization and some other elements (for example, payment of capital from the long-term marketing).

To gain the complete basis for application of the separate methods for evaluation of the investment, this type of gained monetary flows is supplemented with monetary overflows (negative sizes) that are created with the investments in the period of investing, but also with the monetary flow that will come out of the eventually unredeemed part of the investment as long as the period of exploitation is shorter than the period of amortization of the invetsments. Treatment of this kind of rest from the investment (residual value) is mostly received by the turnover assets, which do not undergo amortization. With this rest, that gains treatments of monetary overflow, we receive enlargement of the monetary overflow in the last year of the exploitation perid. After these supplements of the annual monetary flows, we receive the net - monetary flows after years, for the whole duration of the investment.

The calculation of the monetary flows when we talk about investing in a real capacity has some certain singularities related to the investments in a new capacity. This comes out in a way that the total profits and expenditures in these type of investments are a result of the old, but also the new investments. To receive the effects of the new investments it is necessary to find the difference between the effects of the total investments and the ones that would be received on the basis of using the old investments.

Because of that, the usefulness of the new investments is not only seen in the expected enlargement of the profit from the sale, but also in the decreasing of expenses because of the enlargement of the process efficiency, because of the enlargement of profit from the sale of the written off (amortization) equipment. When the amortization is being calculated, we only take the part of the amortization from the enlarged long-term inestments and when it comes to the operative expenditures, only the enlarged part of these expenses.

4. CRITERIA FOR ASSESSMENT OF THE FINANCIAL EFFECTS FROM THE LONG-TERM INVESTMENTS

For assessment of the financial effects from the long-term investments, we use the criteria of profitability and liquidity of the investments.
e profitability of the long-term investments is expressed through the rate of profitability that is gained when a net-financial effect that is expected from the usage of the investment (it can also be the net-profit enlarged with some other monetary flows such as: the amortization and the payed capital of the long-term marketing), is related to the invested capital (the value of the investment).

The liquidity of the long-term investments which shows the capability with the net-monetary flows, which enclose the capital of the used long-term trusts and the payments in favour of the capital holders (dividends, compensations for permanent investments) is being expressed through the monetary remain of the net-monetary flow that will be gained when from the net-monetary flow we substract the payments of weight of the net-monetary flow.

To enable the usage of these criteria for the estimation of the financial effects from the long-term investments it is necessary to explain some

dilemas about the following three questions: the question of the contents of financial effects, the question of the capital price and the question of the length of the period for exploitation of investments.

When from the total profit we substract the total expenditures, not including the rate of interest that has to be payed for the borrowed capital, we receive the trading profit. It is, according to that, the result from the usage of the total capital (personal and someone else's) because of which the rate of the trading profit shows the profitability of the total capital. While if we from the trading profit substract the expenditures from the financing (the rate of the borrowed capital) and the income-tax, we will receive the net-profit. The rate of the net-gain that will be received related to the net-gain shows us the profitability of the personal capital.

The usage of the gain as an element for calculation of the profitability of the long-term investments is very limited in modern conditions. Instead of this traditional period in the assessment of efficiency, we mostly use the net-monetary flows as a type of a financial result from the long-term investments. As we have seen that for several times, they also include some other monetary flows, like the amortization and the payed capital from the long-term marketing. The monetary flows according to the quoted bases are enlarging the total monetary assets, that enlarges the possibility of the enterprise for investments. From an aspect of the enterprise which better invests for the amortization of the invested assets to be done in a shorter period of time, creates the conditions for the gathered assets of the amortization to be invested again (reinvested).

The second question connected to the criteria for assessment of the effects from the long-term investments is the question about the price of

the capital sources. The price of the borrowed capital which can be seen in the height of the rate of interest from the used trusts is known for the beneficiary and the expenditures that come out of it can be easily calculated in the total expenditures from the exploitation of the investment. But, that size does not enclose the price of the personal capital. It is normally to presume that the beneficiary expects to realize a profit with a certain size on its inveted capital, from which it is possible to settle the obligations for dividends and compensations for permanent investments, but also to secure a part of that profit for the enlargement of the capital.

The price of the personal capital is usually expressed in a rate of minimal profitability. For orientation in the justification of this rate, the following can be useful: the rate of profit of the personal investments of the investor can be realized through the investing in some alternative projects; the rate of the profit that is already being realized on the personal assets in the real projects; the average rate of rentability of the personal capital which is realized in the branch in which the project belongs to in which there is also an investment; the rate of interest of the long-term deposits in the banks etc.

Because of the fact that the long-term investments are being financed by the personal and someone else's assets, there comes the need to see the average price of capital. It can be possibly done if we are familiar with the sizes of the personal capital and the capital of someone else, such as the rate of interest of the borrowed capital and the rate of profit of the personal capital.

The third question is tied to the assessment of the effects from the long -term investment and it is about the length of the period of investment exploitation (the period of the economic life of the investment). Relat-

ed to this question we could say that here is no precise criteria for the definition of the length of the period of the economic life of the investment, but, yet, the practise uses some of the indicators which orient the investment planners to define it. In that way, there is a rule according to which the economic life of the investment can not be longer than the time duration of the permanent conditions which are created with the investment. It means that it can not be longer than the physical life of the more significant parts of the equipment and the rest of the elements from the investment.

If we talk about the usage of minerals, the economic life of the investment can not be longer than the time of the total impoverishment of the minerals. The second rule when we determin the period of economic life of the investment is that it should not be shorter than the time of returning of the borrowed capital, as long as the investment is financed with the participation of someone else's capital. According to that, the period of economic life of the investment shoud move in the frames provided with these two rules.

It is certainly possible to have a certain displacing of these borders, if the high profitability allows that, without disruption of the liquidity to make the payments, which fall on the burden of the net-monetary flows. Besides, because of the more dynamic technical progress, the investors tend to shorten the economic life of the investments, so that they can be in step with the progress.

If the valid regulations in the country do not limit the rates of amortization, the organisers practice to make a faster amortization of the real assets, ensuring in a way, greater monetary flow for reinvesting in a shorter time. We often use this for other reasons, above all, to enlarge the costs of the enterprise through the enlargement of the amortiza-

tion, which will contribute to decreasing of the rate of pay, to taxation of the gain.

CONCLUSION

More of the conditions have an affect on the bringing of financial decisions in terms of incertitude, between which the more meaningful are the size of the investments, the time of assets tying, the size of the expected profit of them to the degree os possibility to realize the expected profit. With the separate possibilities for investing, the quoted conditions can come in some different combinations. On principle, we could say that for the invester what is more acceptable are the investments on a shorter period, from which we expect a greater profit, with a greater degree of possibility that it will be realized, than the investments on a longer period, which promiss a smaller profit and for which there is a lesser possibility that the same one will be realized. But, if between the alternative possibilities there are some meaningful differences in the size of the capital, then as a more favourable alternative we usually enforce the one from which a greater gain is expected, with a lesser probability that the same one will be realized, as long as the capital that shoul be invested is smaller, because in the smaller investments, the risk for capital is also smaller.

Irrespective of the combinations of these three conditions, the acceptance of decisions for long-term investments is often also conditioned by the philosophy and character of the subjects which bring and submit their consequences. Some of the subjects are satisfied with a smaller gain if there is a greater certitude that it will be realized. On the contrary, others determin for a greater incertitude and risk. In normal conditions of working the realization of a greater profit is connected to the greater incertitude and the risk.

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GLOBALIZATION AND HUMAN RIGHTS

Dori Pavloska – Gjorgjieska[1]

ABSTRACT

Starting from the definition of globalization as: “trend of firms buying, developing, producing and selling products and services in most countries and regions of the world” we can conclude that globalization as a process has started a long time ago. Still, it has taken its full speed in the more recent history, resulting into a growing interdependence of national economies, involving customers, producers, suppliers, governments in different markets. It is expected that this trend will continue even more strongly, with companies from every part of the world competing for customers, resources, talent and intellectual capital with one final goal – profit.

But what happens with the human aspect in this fast speed race for profit in the global world? How do people feel about it? Have the human rights been protected in every part of the world and by all the players that are part of the global business race?

Under the described circumstances the International Labor Organization (ILO) has ratified eight core conventions on fundamental human rights to be enforced all around the world. However, the economic globalization is faster than the implementation of the international human rights conventions.

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This paper will explore and present the impact of the globalization on the human rights with examples from developing countries where the negative impact of globalization on the human rights is obvious.

Key words:
Globalization, internationalization, international trade, exports, human rights.

EXECUTIVE SUMMARY

Technological developments have accelerated global integration and made the world a small place. The number of regional trade agreements has been constantly increasing providing for consolidated trade arrangements. The number of global corporations has significantly increased, as well as the world's total export as percentage of the world's GDP. All of this is attributed to the economic globalization process.

Human rights are determined with the Universal Declaration of Human Rights adopted by the UN General Assembly in 1948. Furthermore, the International Labor Organization (ILO) has ratified eight core conventions on fundamental human rights to be enforced all around the world. However, the economic globalization is faster than the implementation of the international human rights conventions. Corporate interests dominate economic globalization and influence the policy of individual states.

The examples of Unocal Corporation, Lidl and Ford Motor Company are only a few of the many examples of global companies breaking the human rights in parts of the world where they operate.

Even though closing the developing counties' economies may seem as a solution, examples of closed economy countries are proving that closing the economies results in stagnation and internal crises. Therefore, the solution for reducing the negative impact of the economic globalization on the human rights would be the promotion of access to justice for victims of business-related abuses and legal prosecution of the cases of broken human rights in the context of economic globalization. Thereby, an international instrument that defines a common benchmark for business conduct is essential.

1. INTRODUCTION

Since the ancient history people have understood the need to work with each other, cooperate, trade. That need has been developing further more over time, with the technological developments, enabling global integration and making the world a small place. According to the Global Policy Forum "unprecedented changes in communications, transportation, and computer technology have given the process new impetus and made the world more interdependent than ever" We are all witnesses of growing number of multinational companies which buy their raw materials in one part of the world, process them somewhere else, and sell their finished products in another side of the world. This constantly increasing flow across national borders refers not only to products, money and technology, but also to ideas, cultures and human capital. In one word, this is called – globalization.

The term globalization encompasses a range of social, political, and economic changes. According to Gilpin, R. (2001) economic globalization is associated with economic interdependence, deregulation and a dominance of a liberalized marketplace. Economic globalization now dominates international relations; it creates new markets and wealth.

But, according to the Global Policy Forum, there is a back side of the economic globalization - it causes widespread suffering, disorder, and unrest. It is both a source of repression and a catalyst for global movements of social justice and emancipation.

1.1 Problem statement

Having understood the context of the globalization and especially the economic globalization, the subject of research of this paper is the impact that the economic globalization has on human rights. The questions that this paper will attempt to answer are:

- Does the economic globalization have an impact on the human rights?
- If yes, is that impact positive or negative?
- If the impact is negative, is it possible to decrease the impact of the economic globalization on human rights?
- If yes – how?

1.2 Delimitations

Globalization can be seen from different perspectives: cultural changes of growing interconnectedness, increasing ease of travel, functioning of international political institutions, increasing power of transnational corporations. However, this paper only focuses on the economic globalization and its impact on the human rights, i.e. it looks upon the consequences of the increasing exchange of finances, goods and services through expanding global markets reflected on the human rights.

This paper will analyze the impact of the economic globalization on the human rights, which derive from the Universal Declaration of Hu-

man Rights. The Declaration consists of 30 articles, but this paper will only focus on 3 of them: Article 23, 24 and 25, which are seen as the most relevant when it comes to the economic globalization.

1.3 Paper structure

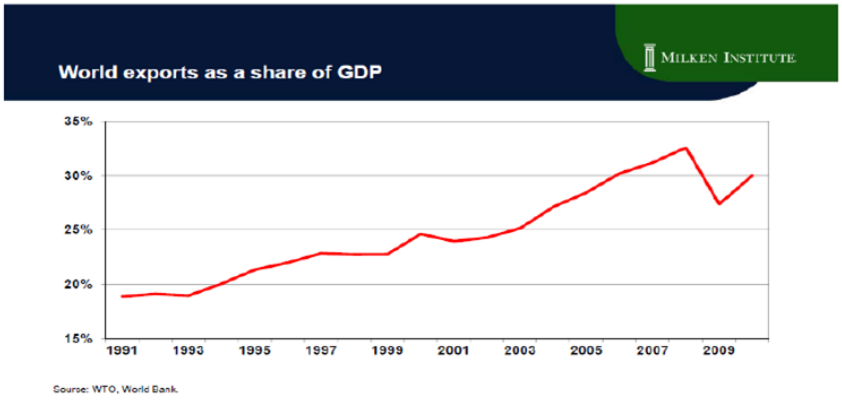
This paper is comprised of 5 sections: introduction, methodology, analysis, discussion and conclusion. The introduction section describes the context of the problem, finalizing into defined problem statement and problem questions, with clear delimitations of the area of research. The methodology section explains the theories used further on in the paper. The analysis section analyzes the globalization as a modern process on one hand and the development of the human rights on the other hand. Then it combines the two to explore the impact the globalization has on human rights. Finally it provides concrete examples of impact. The discussion section elaborates on possible alternatives for reducing the negative impact of globalization on human rights. The conclusion section provides answers to the problem questions defined in the introduction.

2. METHODOLOGY

This paper reviews and combines work already conducted in the area, which is then used as a basis for the analysis section. The paper is using in one part sources that elaborate on the globalization as a modern process, and in the other part sources that elaborate the establishment and development of the international human rights. Combining those sources the paper attempts to find a correlation between the globalization process and the international human rights.

3. ANALYSIS

3.1. Globalization



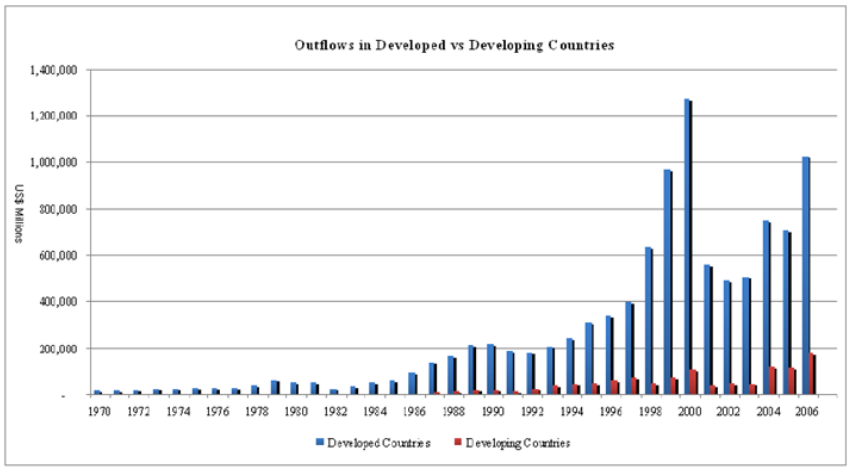
Milken Institute, using WTO and World Bank's data, presents the growing trend of the world exports as percentage of the world GDP. This growing trend speaks about the consistent expansion of the globalization processes. .
In addition, according to The Economist (2004) it was estimated that in 1970, there were 7,000 corporations, in 1993 there were 37,000 corporations, and by 2003, 64,000 with 870,000 foreign subsidiaries.

This can be related to the increasing number of Regional Trade Agreements (RTA) notified to the World Trade Organization (WTO). According to Crawford and Fiorentino (2005) in the past ten years there has been an unprecedented rate of RTAs (see Appendix 1). As of January 2005, 312 RTAs have been notified to the WTO. "As the number of RTAs increases, there are signs of consolidation of existing agreements into larger trading arrangements in all world regions." A very good example of that is the European Union, whose initial membership of 6 increased to 27 providing for consolidated trading arrangements.

From the above presented it can be concluded that the economic globalization has been accelerating in the recent period, seen through the

development of global companies operating worldwide, and the amount of exports consistently increasing enabled by favorable policies reflected in the numerous RTAs and trading arrangements.

Furthermore, it is interesting to see the origin of the constantly increasing world exports. Namely, most of the total world exports are from developed countries, as can be seen in the following chart:



Source: UNCTAD Handbook of Statistics

According to Monbiot (2003) of the top 500 multinational corporations only 29 are from low income states.

The exports from the developing countries are also increasing, but according to Melber (2013) there is an old pattern in which developing countries export mainly raw materials.

However, in the recent period the exports from the developing countries are directed more and more to other developing countries (in the period 1995 – 2005 exports from developing to developing counties increased from 40% to 45%), while the exports to the developed countries decline (in the period 1995 – 2005 declined from 56% to 48%).

“This phenomenon of dynamic growth in trade among developing countries (or South–South trade) has been coined as the “new geogra-

phy of international trade""5. For example, according to Melber (2013) the trade between China and Africa rose 24 times from 1999 to 2011. Thereby, primary goods were exported from Africa and manufactured commodities imported from China. In 2010 some 2 200 Chinese companies had operations in Africa.

This has given growth to the so called "emerging markets". Last decade, the term BRIC (Brazil, Russia, India and China) was used to refer to emerging markets with high growth potential. In 2010, six more countries have been included in the rank of these emerging markets, and the group has been designated as CIVETS (Colombia, Indonesia, Vietnam, Egypt, Turkey and South Africa). According to Slater and Holmes (2010) "emerging markets are expected to grow three times faster than developed countries … and are driving global recovery".

3.2 Human rights

In order to analyze the impact of the globalization on the human rights, elaboration of the history, development and definition of the human rights is needed.

The human rights are defined in the Universal Declaration of Human Rights, which was adopted by the UN General Assembly in 1948 as a result of the terrible experiences of the Second World War. It should guarantee the rights of every individual everywhere6. The Declaration consists of 30 articles, but this paper will only focus on 3 of them: Article 23, 24 and 25:

Article 237

- Everyone has the right to work, to free choice of employment, to just and favorable conditions of work and to protection against unemployment.

- (2) Everyone, without any discrimination, has the right to equal pay for equal work.
- (3) Everyone who works has the right to just and favorable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.
- (4) Everyone has the right to form and to join trade unions for the protection of his interests.

Article 24.

- Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay.

Article 25.

- Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.
- (2) Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.

In addition to this, the International Labor Organization (ILO) has ratified eight core conventions on fundamental human rights to be enforced all around the world, as follows (ILO 2007):

- Forced Labor Convention, 1930
- Freedom of Association and Protection of the Right to Organize Convention, 1949
- Right to Organize and Collective Bargaining Convention, 1949 Equal Remuneration Convention, 1951
- Abolition of Forced Labor Convention, 1957
- Discrimination (Employment and Occupation) Convention, 1958
- Minimum Age Convention, 1973
- Worst Forms of Child Labor Convention, 1999

However, the economic globalization is faster than the implementation of the international human rights conventions.

3.3 Impact of globalization on the human rights

President of Uganda, Yoweri Museveni, who is widely credited for integrating Uganda into world markets, said that globalization is "the same old order with new means of control, new means of oppression, new means of marginalization" by rich countries seeking to secure access to developing country markets (Lin, 2010).

The UN recognizes this fact. Its General Assembly confirmed that: 'while globalization offers great opportunities, the fact that its benefits are very unevenly shared and its costs unevenly distributed represents an aspect of the process that affects the full enjoyment of all human rights, in particular in developing countries' (UNGA, 2005).

According to Buckman (2005) the largest 500 corporations control 70 per cent of the global trade and are the primary international investors. Thus, corporate interests dominate economic globalization and influence the policy of individual states. That is the reason why the international human rights standards were not really taken in consideration in the creation of policy measures to bring the economic and financial crisis under control (International Council on Human Rights Policy, 2010).

3.4 Examples of harmed human rights by global corporations

Unocal Corporation engages in the exploration, development, and production of natural gas, crude oil, condensate, and natural gas liquids, with principal operations in North America and Asia8. In 1996 Unocal and Myanmar's military government were in a consortium for the pipeline's construction. Myanmar residents suffered human rights abuses such as forced labor, murder, rape and torture at the hands of

the Myanmar military during construction of a gas pipeline, and that Unocal was complicit in these abuses9.

Lidl was founded in 1930 in Germany as a grocery wholesaler. Today, it is one of the largest grocery retailers in Europe with over 8000 stores in different European countries10. In 2010 Lidl released advertising campaign which claimed that the company stood for fair working conditions in its entire supply chain. Lidl claimed that it opposed child labor and labor rights violations. At the same time, employees in Bangladeshi textile plants in Lidl's supply chain worked excessive overtime with no overtime premium, were not entitled to a holiday after 6 consecutive working days and were subjected to harassment and to payroll deductions.11 Furthermore, the companies in Lidl's supply chain violated the rights to freedom of association and collective bargaining and freedom from sex discrimination.

Ford Motor Company is a global company committed to producing vehicles with best-in-class quality, fuel efficiency, safety, smart design and value – built on global platforms12. Ford Motor Argentina was seen to collaborate with the 1976-83 military dictatorship, helping the regime in political repression and mistreating the Ford's workers and union organizers.13

4. DISCUSSION

The examples of Unocal Corporation, Lidl and Ford Motor Company are only a few of the many examples of global companies breaking the human rights in parts of the world where they operate. Articles 23, 24 and 25 form the Universal Declaration of Human Rights had been broken in all of the three presented examples. As stated in the analysis, this can be attributed to the corporate interests, which dominate economic globalization and influence the policy of individual states.

But if globalization is bad for the developing countries, what would be the alternative? Would the closed economy be the solution? As can be seen in the examples of North Korea and Myanmar, as well as China,

India and Vietnam (before their economic liberalization) closing the economy results in stagnation and internal crises (Lin, 2010).

Thus, the only solution can be seen in legal prosecution of the cases where human rights have been violated. At least that has been the solution for the three presented cases.

Namely, a group of Myanmar residents filed a lawsuit against Unocal in US federal court in 1996. The parties reached an out-of-court settlement in which Unocal agreed to compensate them and provide funds for programmes in Myanmar to improve living conditions and protect the rights of people from the pipeline region. This settlement was accepted by the court, and the case was closed in 2005.

In the case of Lidl, it was the Hamburg Consumer Protection Agency, which filed a lawsuit in Heilbronn district court against the German discount retailer. The suit demanded that Lidl stop deceiving customers about fair working conditions in its supply chain. Lidl agreed to withdraw the public claims and advertisements that its goods were being produced under fair and decent working conditions.

Regarding the case of Ford Motor Argentina, a federal prosecutor in Argentina filed a criminal complaint against the executives of Ford Motor Argentina, later followed by another lawsuit on behalf of Argentine workers and union organizers against Ford Motor and Ford Motor Argentina in the US District Court in Los Angeles. In 2005, Argentina's Supreme Court made a decision that there were abuses committed during the dictatorship period. In May 2013 three former Ford executives were indicted for crimes against humanity.

5. CONCLUSION

From what was elaborated earlier it is obvious that the economic globalization has an impact on the human rights. Companies create jobs

and economic opportunities, and can be a positive force for human rights improvements when they engage in responsible practices. However, according to many authors and as seen in the provided examples in the analysis very often that impact has negative consequences, resulting in breaking the human rights. Even though closing the developing counties' economies may seem as a solution, examples of closed economy countries are proving that closing the economies results in stagnation and internal crises. Therefore, as seen in the given examples, the solution for reducing the negative impact of the economic globalization on the human rights would be the promotion of access to justice for victims of business-related abuses and legal prosecution of the cases of broken human rights in the context of economic globalization. Thereby, an international instrument that defines a common benchmark for business conduct is essential.

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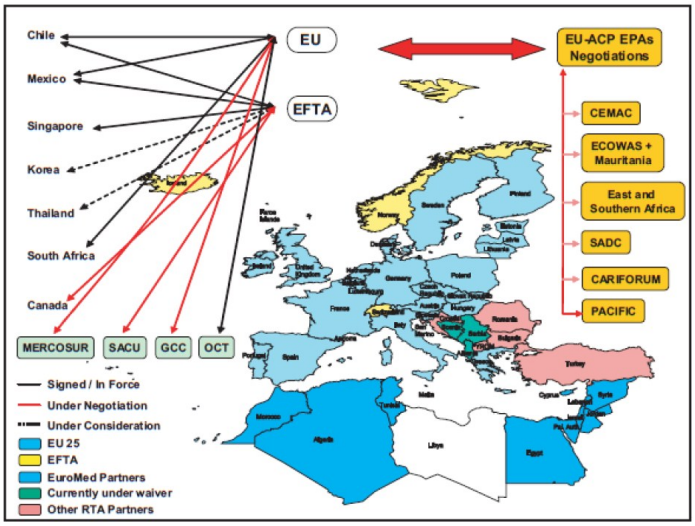
Lawsuitsregulatoryaction/LawsuitsSelectedcases/

fordlawsuitreargentina

APPENDICES

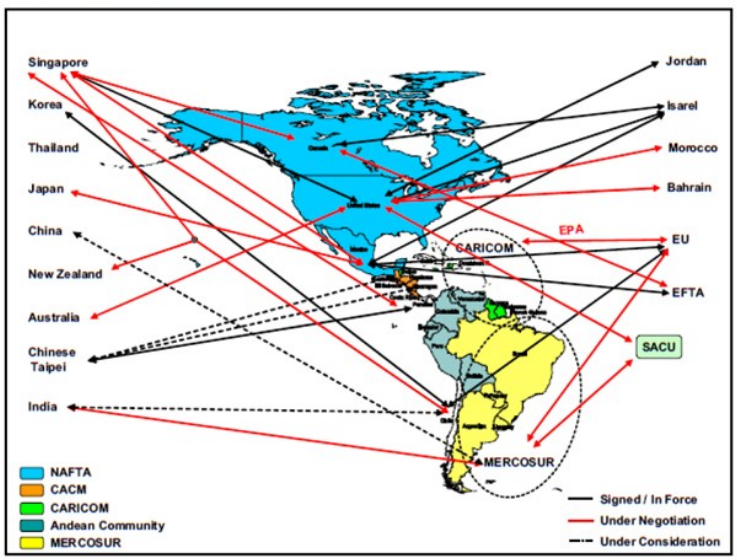
Appendix 1 – Regional Trade Agreements

Map 1: European RTA Network



Source: Crawford, J. and Fiorentino, R. V. (2005) The Changing Landscape of Regional Trade Agreements, World Trade Organization, Geneva, Switzerland

Map 2: Western Hemisphere RTA Network



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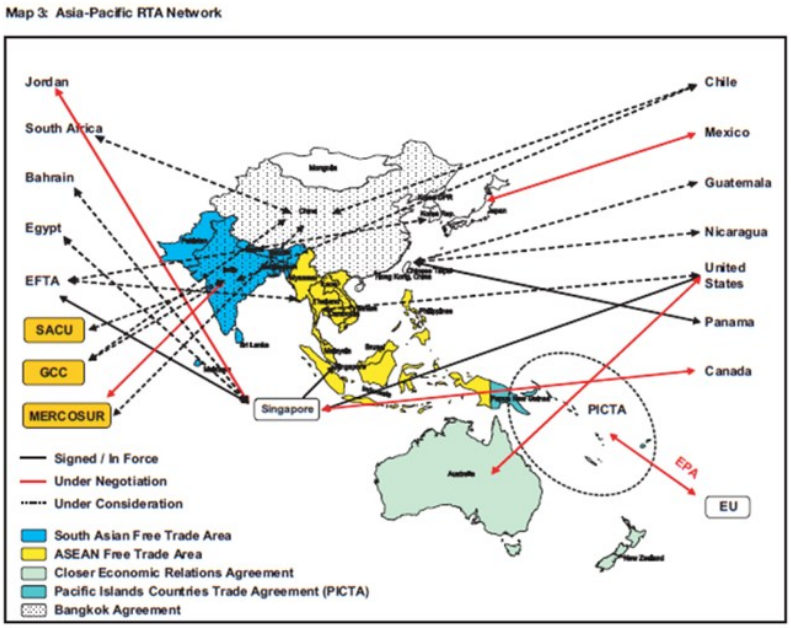

Source: Crawford, J. and Fiorentino, R. V. (2005) The Changing Landscape of Regional Trade Agreements, World Trade Organization, Geneva, Switzerland

Appendix 2 – Universal Declaration of Human Rights14

PREAMBLE

Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people,

Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law,

Whereas it is essential to promote the development of friendly relations between nations,

Whereas the peoples of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women and have determined to promote social progress and better standards of life in larger freedom,

Whereas Member States have pledged themselves to achieve, in co-operation with the United Nations, the promotion of universal respect for and observance of human rights and fundamental freedoms,

Whereas a common understanding of these rights and freedoms is of the greatest importance for the full realization of this pledge,

Now, Therefore THE GENERAL ASSEMBLY proclaims THIS UNIVERSAL DECLARATION OF HUMAN RIGHTS as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction.

Article 1.

- All human beings are born free and equal in dignity and rights.They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

Article 2.

- Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, lan-

guage, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

Article 3.

- Everyone has the right to life, liberty and security of person.

Article 4.

- No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.

Article 5.

- No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

Article 6.

- Everyone has the right to recognition everywhere as a person before the law.

Article 7.

- All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

Article 8.

- Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.

Article 9.

- No one shall be subjected to arbitrary arrest, detention or exile.

Article 10.

- Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

Article 11.

- (1) Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.
- (2) No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.

Article 12.

- No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.

Article 13.

- (1) Everyone has the right to freedom of movement and residence within the borders of each state.
- (2) Everyone has the right to leave any country, including his own, and to return to his country.

Article 14.

- (1) Everyone has the right to seek and to enjoy in other countries asylum from persecution.

- (2) This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations.

Article 15.

- (1) Everyone has the right to a nationality.
- (2) No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.

Article 16.

- (1) Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.
- (2) Marriage shall be entered into only with the free and full consent of the intending spouses.
- (3) The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

Article 17.

- (1) Everyone has the right to own property alone as well as in association with others.
- (2) No one shall be arbitrarily deprived of his property.

Article 18.

- Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

Article 19.

- Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

Article 20.

- (1) Everyone has the right to freedom of peaceful assembly and association.
- (2) No one may be compelled to belong to an association.

Article 21.

 (1) Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.

 (2) Everyone has the right of equal access to public service in his country.

 (3) The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.

Article 22.

- Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.

Article 23.

- (1) Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.

- (2) Everyone, without any discrimination, has the right to equal pay for equal work.
- (3) Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.
- (4) Everyone has the right to form and to join trade unions for the protection of his interests.

Article 24.

- Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay.

Article 25.

- (1) Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.
- (2) Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.

Article 26.

- (1) Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.
- (2) Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and

friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.

- (3) Parents have a prior right to choose the kind of education that shall be given to their children.

Article 27.

- (1) Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.
- (2) Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

Article 28.

- Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.

Article 29.

- (1) Everyone has duties to the community in which alone the free and full development of his personality is possible.
- (2) In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.
- (3) These rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations.

Article 30.

- Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein.

INTERNATIONAL TRADE: ECONOMIC GROWTH AND INTERDEPENDENCE BETWEEN WESTERN BALKAN COUNTRIES

Elhami Shaqiri[1]

ABSTRACT

The goal of this research paper is to illustrate some of the major implications of International trade, economic growth and interdependence between Western Balkan countries. Specifically, I will analyze the economic processes in which investments and production are increasingly integrated across Western Balkan countries. It has been evidenced that an efficient allocation of resources enhances productivity and economic growth in general. The trend with regard to trade liberalisation between Western Balkan countries is leading to the increased productivity, prosperity and collective welfare, and this in turn would lead to the increase of the living standards for everyone. This trend towards trade liberalisation between Western Balkan countries has resulted in the lowering of trade barriers and the elimination or substantial reduction of subsidies as protectionist economic policies of the region have been gradually abolished.

Key words: International Trade, Economic Interdependence, Trade Liberalisation, Investments and Production.

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INTRODUCTION

No country in the world, regardless of its economic and political power and its natural resources, can be self-sufficient and unrelated to the rest of the world. In other words, each country is more or less involved in international exchanges of goods and services, that is, international trade. International trade is based on the principle of Comparative Advantages, which was formulated in 1817 by the British economist David Ricardo. According to this principle, every country has an interest a benefit to specialize on the production of the goods that can produce relatively at a low cost and then export them. On the other hand, every country has an interest, a benefit from the import of those products that it produces at a relatively high cost.

The theory of Comparative Advantages has its limitations, though. The main shortcoming is that it implies smooth functioning of competitive economy with flexible prices and wages, as well as the non-existence of involuntary unemployment. And also, if a crisis occurs cannot be sure which country can benefit from the trade, namely it is not sure that the theory of comparative advantages can apply in every case. For this reason, as an unwritten rule in times of crisis, protectionist policy requirements for foreign trade are significant, but this does not happen in the time of stability and economic prosperity. Also it must be said that the benefit achieved in international trade is not shared equally. There will always be individuals, companies or branches of the economy that will be hit or damaged by the liberalized trade. However, the theory of comparative advantages affirms that the benefits realized from the trade increasingly outweigh the losses that trade liberalization might cause.

Indeed, it is in the interest of the countries of the region of Western

Balkans to promote economic cooperation and trade with each other. It is also in the interest of the regional development and cooperation to go forward with the reforms in terms of regional border issues, such as: laws regarding trade, customs, movements of individuals and merchandise as well as all other methods of cross-border contacts between the peoples of the regional countries. Considering that all the countries of the region aspire for economic growth and development as well as aspire to join the EU, hence it is of great importance to harmonize laws regarding regional trade and economic cooperation in accordance with the EU accession requirements. The importance of regional trade and economic cooperation in accordance with EU standards among the countries of the region is essential to their mutual economic development and prosperity.

2. ECONOMIC AND TRADE RELATIONS BETWEEN THE COUNTRIES OF WESTERN BALKANS

Dynamics of development in the region of Western Balkans is very intense in all its components, such as: political, social and economical ones. The main characteristics can be summarized as follow:

1. First, there is a significant progress in the improvement of the overall political climate of the region, which is expressed both, in bilateral relations and inter-regional cooperation. This is evidenced with the improvement of the security and stability, as well as in the field of infrastructure and economic regional cooperation between the countries of Western Balkans.

2. Second, there is a new mentality, which is taking place in the region of Western Balkans and that is becoming a progressive mentality of teamwork, which contributes enormously to the creation of a positive

image of Western Balkans in relation to our main partners, the EU, the U.S., and in the context of re-dimensioning of global politics.

According to my field research, in terms of economic and trade relations between the countries of Western Balkans one of the principal priorities is further development and growth of regional cooperation. Western Balkan countries relatively have small economies, whose development depends primarily on the effective integration into regional and European markets. For the moment, most of the economies of Western Balkan countries face difficulties in supply as a result of degradation of existing economic capacities and because of the loss of markets for products that constitute the major export base. Although the exports of Western Balkan counties in general are small at present, however their perspective growth constitutes the best alternative not only to finance imports but also to impact positively their economies in general.

Western Balkans countries as neighbors have common interests and problems, therefore, opportunities for cooperation emerge spontaneously. We will find our common interests in the context of cooperation between the countries of Western Balkans as neighbors and we will develop them even further. Earlier, some years ago, perhaps a decade or so, countries of Western Balkans were not able to communicate and cooperate with each other, and this was a major cause of all the troubles that occurred in the last decade in the Balkans. But now we are heading towards regional cooperation, and towards membership in the European Union.

Indeed, we are building the foundations of a democratic region of Western Balkans, whose future is in the EU and in close cooperation among themselves. For the most part, the climate of peace and stability as well as the atmosphere of good neighbor ships and the need for co-

operation in the region remains a high priority. Indeed the region has made significant progress in this direction; however, much remains to be done in terms of establishing trust, tolerance and understanding. The way ahead seems to be long and rough, but it is promising, and it is of great importance that the region is becoming more and more convinced that the best way to overcome complex issues is the way of dialogue.

3. FREE TRADE AGREEMENTS BETWEEN THE COUNTRIES OF WESTERN BALKANS

Free Trade Agreements (FTAs) between the countries of Western Balkans are considered as an important mechanism in promoting to a higher level regional peace and stability, as well as in promoting economic integration and trade. This of course, with the aim of increasing economic benefits for the member countries and their citizens.

Within the framework of the Stability Pact initiative to liberalize the markets, as of to date the FTA member countries are the following: Albania, B&H, Croatia, Kosovo, Macedonia, Moldova, Montenegro, and Serbia. According to the statistical data, in the recent years trade relations between the countries of Western Balkans have increased progressively. A major factor of the increase of trade relations between the regional countries can be explained from the fact that all of them have already signed the Free Trade Agreements (FTA). With regard to the increase of trade relations between the regional countries according to Busek, another major driver of growth is the "cross-border trade which is one of the most vibrant parts of the region's economy, and the implementation of the expanded Central European Free Trade Agreement (CEFTA) which will help cement the gains of recent years." (Busek 2010, p.98)

Many research studies show that the free trade agreements (FTA) between the countries have significant advantages in terms of their trade. This of course has trade advantages as it will create better opportunities for economies of scale, for example. This seems to be the case with Western Balkan countries, as since they have signed the FTA among themselves the economic and trade relations between them have improved. According to CEFTA the main objectives of the FTA are "to expand trade in goods and services and foster investment by means of fair, stable and predictable rules, eliminate barriers to trade between the Parties" and also the FTA is in full conformity with the, WTO rules and procedures and EU regulations. In this respect, considering that Western Balkan countries aspire to join the EU, then if they would effectively implement the FTA, this would indeed provide an excellent framework for them in preparing for EU accession. And with this the tradition of the original founding members of CEFTA who are now in the EU will be continued. Therefore, for Western Balkan countries FTA will not only provide trade advantages, but also it will provide an excellent framework for their EU accession.

Indeed, FTAs between the countries of Western Balkans represent one of the policy objectives of the European Union, and as such, constitute an integral part of the preparations for Western Balkan Countries to integrate into European structures. This is evidenced by the fact that the Stabilization and Association Agreements (SAAs) demands that countries of Western Balkans should among other requirements consolidate their trade systems.

Following are some additional objectives of FTAs between the countries of Western Balkans:

1. The Contracting Parties should gradually establish a free trade zone.
2. The principal objectives of the FTAs are:

a) to expand economic cooperation between the two countries and to raise the living standards of their citizens,
b) to gradually eliminate restrictions on trade in goods and services,
c) to provide fair conditions for competition of trade between the Contracting Parties,
d) to contribute in the way of removing barriers to trade, to contribute to the harmonious development and expansion of trade,
e) to strengthen cooperation between the Contracting Parties;
f) to create conditions for further investment incentives, particularly for the development of joint investments in both countries,
g) to promote trade and cooperation of the Contracting Parties in third country markets.

For the most part, objectives of FTAs between the countries of Western Balkans are to contribute to the creation of liberal trade regime between the countries involved. This of course represents an attempt to ensure positive growth of regional and international trade, which corresponds to the needs of economic development of region, through foreign investment and contemporary modern technologies. Free Trade Agreements aim to reduce and liberalize customs tariffs and other barriers to trade, and above all to eliminate discrimination in bilateral trade relations, as well as multilateral trade relations between the countries.

Free trade agreements represent the orientation of trade and economic relations and have mutual positive purposes as follow:

1. Raising living standards;
2. Provide opportunities for employment growth;
3. Provide opportunities for growth of production and trade of goods, capital and other services;

4. Ensure optimal use of economic resources and revenues in line with the sustainable development of the domestic economy.

In order for the effects of free trade agreements to be positive and not to cause distortions in the framework of the multilateral system of trade, liberalization should be as complete as possible. Indeed, elimination of barriers following trade liberalization will improve the allocation of resources and welfare. Reallocation of resources generated from the trade liberalization process allows the utilization of national comparative advantages. Factors of production will be allocated in sectors where the country enjoys a comparative advantage, while production in other sectors will be stopped or be reduced. Once reallocation is completed, inter-industry trade within the region will increase. Free Trade Agreements in general have pointed at other possible source of gains from trade liberalization deriving from the comparative advantages of gains from trade. The larger the market generated from trade liberalization, it allows firms to realize increasing returns. This leads to further specialization within the same sectors as competition rests both on lower costs deriving from expanded production and on product differentiation. And certainly, intra-industry trade will be generated as well. Welfare gains from trade liberalization will result from lower costs and broader quality ranges as well as from the dynamic returns of economies of scale.

Additional benefits that free trade agreements include are about political benefits. Usually member countries that are admitted to the free trade agreements they share the same political beliefs, for example democratic rules, then, having the same political orientations, such as becoming members of the EU. In fact, so far this element has played a crucial role in the enlargement of the EU.

Furthermore, the demand for trade liberalization between the countries of Western Balkans is indeed evidenced. It is also evidenced that trade liberalization delivers benefits and costs, both economic and political, to the member countries. A given level of trade liberalization will deliver different costs and benefits according to the initial level of market liberalization. Costs of trade liberalization are decreasing, and benefits of trade liberalization are increasing with the degree of trade liberalization. Costs derive from the adjustments an economy has to undergo during the process of trade liberalization. Trade liberalization costs would certainly be bigger the higher the degree of protection and the larger the share of the economy that is not exposed to international competition. On the other hand, benefits increase with the degree of trade liberalization as beneficial effects of international competition spread over a larger part of the economy through a better resource allocation. Benefits will be bigger if members of the free trade agreements are also part of an alliance, or aspire to be part of an alliance, such as becoming members of the EU in the case of Western Balkan countries.

Many researchers of this field of study might raise a legitimate question: under what circumstances would a country find it desirable to become a member of a free trade agreement? A positive answer requires that a positive net benefit from trade liberalization is obtained and should outweigh the costs of trade liberalization. The benefit from trade liberalization is larger the more market-oriented is the economy, and the stronger the trade liberalization process is in place. Whereas, the stronger the outside threats are the stronger are the non-economic ties with the trade liberalization partners. Interactions between supply and demand for trade liberalization has produced circumstances of trade equilibrium and the emergence of free trade agreements, which can be thought of in part as a response to the demand and supply for

international goods and services. Indeed, the liberalization of trade has increased the demand for free trade agreements.

According to Grossman domestic lobbing for domestic liberalization will come from advocates of free trade groups that see domestic opening as a condition of obtaining market access abroad as a result of reciprocal bargaining. In this regard Globalization has also an important role in speeding up the process in the direction of more trade and openness. Indeed, the most powerful forces of global integration are represented by the activities and operations of multinational enterprises. An important characteristic is that these activities and operations of the multinational enterprises increase the level of economic interdependence, and more importantly they might lead to convergence in government's policies of mutual interest. The significance of economic interdependence derives from the fact that multinational enterprises are influential elements for product innovation and their distribution. In a world in which technological progress is the key determinant of the growth and competiveness, the degree of spread of knowledge is a crucial factor for the dissemination of the benefits of growth. In a world of highly mobile capital, activities of multinational enterprises are a typical response to protectionist barriers imposed to protect specific economic sectors.

It is evident that in a world of high mobility of capital new incentives emerge to attract foreign activities of multinational enterprises. This reinforces the incentives of industrial sectors to obtain liberal policies on a reciprocal basis. Increasing capital mobility may indeed represent a powerful element of trade liberalization in the sense that it creates incentives in domestic politics to pursue more open and less protection -oriented policies, which tends to favor more cooperative international policies in terms of trade liberalization. This crucial point derives from the fact that operations of multinational enterprises are global and that

multinational enterprises are in fact less and less considered as a attached to a specific country or region for that matter. This emphasizes the need to reach accords that will facilitate the operation of market forces at a global level, and therefore establishing trade agreements.

4. REGIONAL COOPERATION AND INTEGRATION BETWEEN THE WESTERN BALKAN COUNTRIES

Regional cooperation and integration between the Western Balkan countries is indeed an important aspect of economic and trade relations between them. In fact cooperation and regional integration of these countries is considered to be of great importance with respect to their development as well as their security and stability in general. In other words, this can be stated in terms of simple mathematics as follows: say, T=C+I[2], and also, say that, C+I=D+S[3], then in this case we can say also that, T=D+S[4].

Based on many studies trade relations are in direct correlation with political relations between the countries, this partly, but also in correlation with the favourite business environments that countries create. And obviously these are reflected in trade figures that prevail between the countries. In other words, this can be stated as follows: say, T=R+B[5], and also considering the above statements, that is, T=C+I[6], and also, C+I=D+S[7], then in this case we can say also that, T=D+S[8] as well as that R+B=D+S[9], and that R+B=C+I[10].

If we do some strategic analysis and say that for example economic development as well as security and stability (D+S) is the desired result to be obtained. Then we know that (D+S) is in direct correlation with (C+I), i.e. cooperation and regional integration, and so on. And here holds the same logic as above, in order to have a good balance

2. *Where: T stands for Trade; C stands for Cooperation; I stands for Integration (level of regional integration).*

3. *Where: C stands for Cooperation; I stands for Integration (level of regional integration); D stands for development; S stands for stability.*

4. *Where: T stands for trade; D stands for development; S stands for stability.*

5. *Where: T stands for trade; R stands for relations (political relations); B stands for business environment.*

6. *Where: T stands trade; C stands for cooperation; I stands for Integration (level of regional integration).*

7. *Where: C stands for cooperation; I stands for Integration (level of regional integration); D stands for development; S stands for stability.*

8. *Where: T stands for trade; D stands for development; S stands for stability.*

between the components: (D+S) and (C+I), given that they are interdependent and given that they can be changed, then we know that for example if we change (D+S) for one unit, then we have to change (C+I) as well for the same unit in order to maintain the balance and that in order to obtain the desired result. In this line of thinking therefore, it can be stated that positive correlation between economic and trade (ET) indicators will certainly result in obtaining positive relations between regional countries (RC). And here holds the same logic as above, in order to have a good balance between the components: (ET) and (RC), given that they are interdependent and given that they can be changed, then we know that for example if we change (ET) for one unit, then we have to change (RC) as well for the same unit in order to maintain the balance and that in order to obtain the desired result.

9. Where: R stands for relations (political relations); B stands for Business environment; D stands for development; S stands for stability.

10. Where: R stands for relations (political relations); B stands for Business environment; C stands for cooperation; I stands for Integration (level of regional integration).

Again, in terms of simple mathematics an example of a theoretical analysis can be stated as follows:

Following the logic that (Trade relations +Fiscal policies= Regional cooperation): **Tr+Fp = Rc**

Or **(A = B)**

And say that (Regional cooperation=Political stability +Foreign direct investments):

Rc = Ps+Fdi

Or **(B = C)**

Then in this case we can also say that:

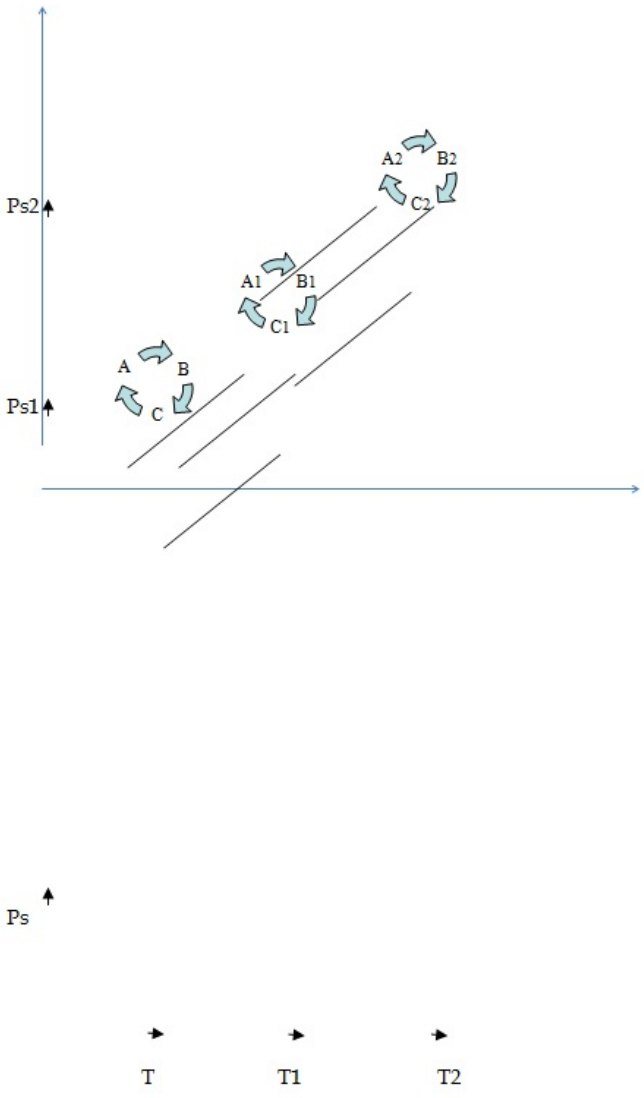
(Trade relations +Fiscal policies= Political stability +Foreign direct investments)

Tr+Fp = Ps+Fdi

Or **(A = C)**

In this regard a theoretical analysis is illustrated by the graph below:

Graph 1. Increasing Political Stability (Ps)



Source: My own analysis.

Given the fact that Trade relations and Fiscal policies (Tr+Fp) are in direct correlation with Political stability and Foreign direct investments. (Ps+Fdi), then in order to obtain a sustainable political stability

we have to intervene on the components which (Ps) is in correlation with. As a result we will have an increase of Political Stability from Ps to Ps1 and eventually to Ps2 within timeframes: T, T1 and T2.

And in order to have a good balance between the components: (Tr+Fp) and (Ps+Fdi), given that they are interdependent and that they can be changed, then we know that if we change (Tr+Fp) for one unit, then we have to change (Ps+Fdi), as well for the same unit in order to maintain the balance and to obtain the desired result.

Economic and trade relations between the regional countries are in general associated with their macroeconomic developments. Many studies have shown that there is indeed a positive correlation between the regional cooperation and trade relations. And there is also a positive correlation between the fiscal policies and political stability on one hand and foreign direct investments on the other. Foreign direct investments are indeed of great importance in terms of economic development, "countries compete for foreign direct investment projects, the creation of the Investment Compact for SEE, under the auspices of Working Table II of the Stability Pact in January 2000, demonstrated that the countries understood the need for co-operation as a condition for success in the highly competitive global market for foreign investment." (Busek 2010, p.128)

With regard to economical reforms, the most important ones are about fiscal policies. Having advantageous fiscal policies as compared to other regional countries would make the domestic country more attractive for the FDI to take place. With regard to political reforms, the most important ones are about the rule of law and good governance. Having good institutional functionality, and in general having a sustained security and stability would make the domestic country more attractive

for the FDI to take place. With the fulfilment of the economical and political reforms not only the environment for the FDI will be improved, but also the competitive position on foreign markets will be improved too.

Regional co-operation is indeed an important strategic approach of building positive relations and henceforth of improving their trade relations. This because both, political understanding as well as economic and social prosperity, depend to a great degree on a close co-operation with the neighbouring countries, within as much as possible ranges. And also considering that all Western Balkan countries aspire to join the EU then, integration into the European Union would be easier if the member candidates prove that they are ready and able to co-operate with their neighbours.

The economic cooperation among the Western Balkan countries even though it has been improved, unfortunately it is not yet optimal. All states of the region are relatively small, underdeveloped and among them have different contested issues. Their public administrations including the tariff and control systems are weak and corrupt. Their markets are characterized by high unemployment and low purchasing power. If regional economic cooperation would be more intensified, then their economic growth would increase. And as a result this could generate more jobs. And as a result this would increase the purchasing power. And this would even more stimulate the economic growth and production. And this as a result would even more intensify their economic cooperation. This positive cycle would impact positively their relations. Therefore, regional countries would reach a higher level of cooperation. And as a result, both their economic and political situation would be improved, and therefore reach a higher level. And this positive cycle will continue.

Regional cooperation thus would improve investment conditions, would increase competitiveness, would promote creation of industries, and in general it would promote their economic development. These outstanding arguments are indeed of great importance with regard to improving economic and trade relations between the countries of Western Balkans.

CONCLUSION

The demand for international goods stimulates further development of regional free trade agreements. Regional free trade agreements are a source of supply of regional goods. In addition, globalization provides incentives for the development of regional free trade agreements based on norms and standards that add value to the regional comparative advantages between the countries of Western Balkans.

Regional free trade agreements increase the demand of trade liberalization because access to a wider market requires new standards for the domestic economy and regional standards are a source of comparative advantages. Domestic adjustments and the demand for regional free trade agreements will respond positively to trade liberalization to the extent that they are not inconsistent with domestic political equilibrium. As a growing number of countries join regional free trade agreements, certainly it provides a new equilibrium in the production of regional goods and services.

Common values needed for political regional cooperation are basic socio-economic values such as liberty, equality and tolerance. For the most part, a successful regional cooperation is based on essentially two

factors: first, major common socio-political core values have to be shared; and second, cooperation. These two factors will benefit all participants in a mutual and fair manner. The interaction of these two ideas can create a sufficient basis of shared interest and feeling of common responsibilities for advancing economic prosperity of the region in general.

Indeed, it is in the interest of the countries of the region of Western Balkans to promote economic cooperation and trade with each other. It is also in the interest of the regional development and cooperation to go forward with the reforms in terms of regional border issues, such as: laws regarding trade, customs, movements of individuals and merchandise. Considering that all the countries of the region aspire for economic growth and development as well as aspire to join the EU, hence it is of great importance to harmonize laws regarding regional trade and economic cooperation in accordance with the EU accession requirements. The importance of regional trade and economic cooperation in accordance with EU standards among the countries of the region is essential to their mutual economic development and prosperity.

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THE IMPACT OF THE HUMAN FACTOR ON THE EFFECTIVE ENVIRONMENTAL MANAGEMENT

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ASBSTRACT

The processes of industrialization and urbanization, which are prominent in the last few years, have actualized the problem about healthy environment. In such a conditions, the issue about effectively managing the environment , by the human factor, is inevitably raised.

The subject of research in this paper is the issues resulting from polluted environment, and the principles of management of human resources within the environment.

The purpose of this research is to evaluate the impact of human factors on the efficient management of the environment, and to recognize and perceive specific opportunities and prospects for improvement of this process.

The results of this research should help future environment managers, how to deal with the problems and challenges caused as a result of the processes of urbanization and globalization, that harm the environment and produce negative effects on human life.

Key words : environment, urbanization, industrialization, environment, industrialization.

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1. INTRODUCTION TO THE HUMAN RESOURCES MANAGEMENT (HRM)

Management as a process is a creation and maintenance of a specific system. The companies managers seek opportunities and set the organization's vision and key objectives. Management as a process that provides efficient realization of the set goals, represents one of the most important human activities in the organization. Management, basically allows you to provide a coordinated approach, taking actions from each individual within the organizational process, so a opportunity will be given for all the participants to give their maximum contribution, and therefore contribute for much more successful execution of a certain group or organization tasks.[4] The Human resources management is part of the management process, as a whole, that is focused on developing human capital in the organizations.

HMR is defined as a process of hiring and developing employees so that they become more valuable to the organization.Human Resource Management includes conducting job analyses, planning personnel needs, recruiting the right people for the job, orienting and training, managing wages and salaries, providing benefits and incentives, evaluating performance, resolving disputes, and communicating with all employees at all levels.[5]

Human Resource Management operates through systems of human resources that are converged in a coherent way:

- Human Resources philosophy
- Strategies for HR resources
- Policies for Human Resources
- Processes for HR

5. *http://www. businessdictionary.com/definition/human-resource-management-HRM.html*

- HR Practices
- Programs for Human Resources

The human resources management should be based on a set of procedures that clarify the philosophy of the organization to its employees. The policies and procedures are formal statements of support and comparing managers mission and goals. Such a procedures should be in correlation with the rights of employees and their expected behavior.[6]

Some of the practices and policies of the management of human resources are:

- *Analysis of work*
- *Scheduling jobs and recruiting job applicants*
- *Selection of job*
- *Streamlining and training of new employees*
- *Evaluation of performance*
- *Manage and pay tolls*

  Providing incentives and benefits for employees
- *Training and development of the employees*
- *Creating commitment among employees*

Table no 1. The basic activities of human resources management [7]

6. *Damjanovski Z., "Human Resources Management", Skopje 2010*

7. *http://www.Yourmomhatesthis.com/human-resource-management-today/human-resource-management-001u1*

The basis of any effective system of human resource management is a set of management functions and tasks. These tasks must be implemented effectively to direct and encourage and paid staff and volunteers in the organization to work effectively with high productivity, commitment and dedication, for a specific time period. As we can notice from the previous graph, there are several important activities that construct the human resource management.

2. THE SYSTEM AND THE RESPONSIBILITIES OF THE HUMAN RESOURCE MANAGEMENT

It is common statement, that the management of human resources is the exclusive domain of the personnel issues managers or directors of human resources in a organizations that are large enough. However, the management of people is actually the responsibility of each manager or supervisor. A guide, and a system for effective human resource management, that should be implemented, is presented bellow.[8]

Human resources refers to a policy, practice and composition of the ethical culture of employees in order to successfully interact and manage within the firm. The practice showed that the management of human resources strategy is common used as leverage for business success with employees, customers, productivity and inventiveness in the enterprise. The success of an enterprise through the application of strategic management of human resources could be analyzed through:

- Planning of human resources
- Data collection
- Selection
- Training
- Remunerationmanaging with success
- Relations with employees

[8] *Sazdovska S, Ciceva V. Dimoska V., "Handbook of Human Resource Management", Skopje 2011*

Table no 2. The system of Human resource management[9]

The HRM system is presented in the previous graph. As we can see, the HRM system is constructed of several important management practices, procedures and operations, that have to be emerged together in order to construct effective managing of the human resources.

3. PRODUCTION SYSTEM AND THE ENVIRONMENT

A thousand years man and nature are developed with mutual influence and respect. Nature helps people to survive, he offered his heritage and he is practically part of nature. Nature has always considered man as his child. In the last 200 years, thanks to the great growth of science and technology, in the race to develop and meet the growing needs of the people, human nature has been downscaled. The human

9. *http://novaterratech.com/asolutions/hrms.html*

takes from the nature more than he gives, on the one hand, and the processes of globalization and pollution additionally ruins the environment, on the other hand. The environmental pollution in last fifty years had dimensions of global catastrophe.

The worldwide concern for non renewable natural resources and concerns about the environment have culminated in the last three decades of the twentieth century. Many conferences have been organized by the United Nations and few declarations have been adopted. Large number of countries, and The Republic Of Macedonia, as well, have promoted a ministry for environment protection that have been established to protect the environment.

The environment effects on the production system. The environment is affecting the organizations, and the production system, under its rules. The effect of the environment on the enterprises, can observed and analyzed, but have to be managed properly and effectively in order the production system to be functioned correctly, without external disturbances. The nature with its rules act upon the organizational system. The climatic conditions, seasons, rains, snows, floods, etc. have permanent effect on the production system, so for some companies managing these conditions is at a crucial importance.

In order to understand the importance of the managing the environment managing, first we have to underline the prime set goals of any industrial enterprise and system, such are:

- *To increase the production*
- *To observe the slightly wider limits*
- *To increase the profit*
- *To protect the environment*

As we can see, the organization pay specific attention to the environment, and they tend to protect the nature, while executing their prime objectives.

The relations between the production system and the environment,

can be observed from several aspects:

- First - in terms of the reproduction process
- Second – with the production exchange, there is a information exchange with the environment, as well
- Third - except material exchange, when the production system receives raw material and delivers the finished product, another kind of system is evident by the process of processing the materials to the environment.

Production systems are part of the industry - urban ecosystem, composited of traffic, as well. There are other parts or elements of the system. Production systems provide people with the necessary products or services. The traffic allows the transportation of people and goods from one place to another, which is a positive fact.[10]

4. ENVIROMANTAL POLUTION AND THE ENVIROMENTAL RISK IN SCOPE OF THE COMPANIES EFFECIENCY AND EFFECTIVENESS

Specific company, part of the input quantity of material converts into usable product, and the other part is turned to waste, so that company is direct participant in the pollution process, that harms the environment. But, as noted, that company, in future, will need the environment, for the next imputes.

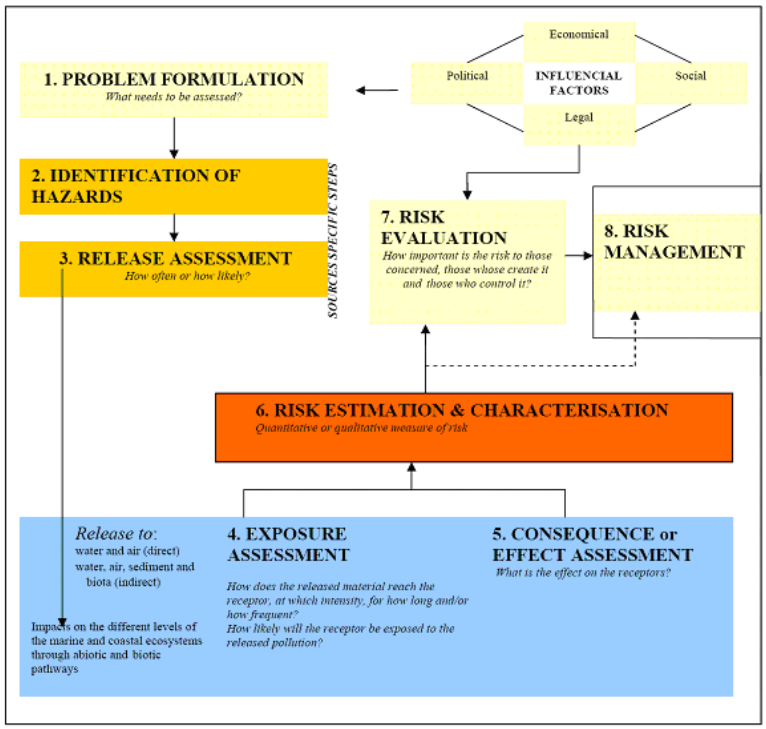
The assessment of the risk in terms of financial responsibility has became increasingly important for the financial institutions, and this is partly due to the increased insurance claims, arose from the pollution and partly from the growing tendency among financiers to avoid projects with the potential to enter into conflict with regulators. The relationship between environmental risk assessment and financial respon-

[10] *Kralev T., Kraleva N –“ Fundamentals of Management”, Skopje, CIM 2007 PAGEEEE*

sibility is complicated by its terminology and practice, and increasingly important tool in the assessment and management of financial responsibilities arising from issues related to the environment. But the definite financial responsibility is hard to be identified, because more factors are included in the pollution processes as well. In order, some environment risk to be correctly assessed, the following actions have to be made:[11]

- *identify the problem,*
- *developing the conceptual model,*
- *building the scenario,*
- *planning the assessment,*
- *screening the risks,*
- *prioritising the risks.*

Table no 3 . Environment risk assessment process[12]



While the principles of risk assessment for the environment are useful for checking the environment, they are only part of a much wider as-

11. *Áine Gormley, Simon Pollard, Sophie Rocks, "Guidelines for environmental risk assessment and management", Granfield University, 2011, pg 9 -18*

12. *http://www.vliz.be/wiki/Environmental_risk_ assessment_of_marine_activities*

sessment of regulatory and other pressures that influence the contentious business.[13]

The management of the natural materials can be understood in terms of ecological importance and modernization of the economies. In the past decades, the basic ingredients of the managing of the natural materials hasn't changed significantly. The only opponents of the rules of the environment are simply the bureaucratic factors and slow legal interpretation of the protection principles.[14]

5. THE IMPORTANCE OF ENVIROMANTEL PROTECTION

Protecting and preserving the environment is one of the most significant problems and a major preoccupation of the modern world. The human living space is permanently decreasing, and more becoming more uncomfortable and threatening, so it loses its basic properties for quality space. The pollution of the environmental have to be understand as a permanent process, caused mostly by human factor, which in its natural riches greed seeks to exploit for their own interests. Environmental protection represents a system of scientific, social, political economic, health, hygienic, technological and other technical measures, that have to be implemented in certain regions of the world or international scale, in order to protect and preserve the environment.[15]

The environmental protection is important for several reasons:

- To control the evrionmental pollution resulted from prosuction and life activity includes controlling the" three wastes"(waste water, waste gas, waste residues), dust and radioactive substance as well as noise, vibration, rancidity and electromagnetic radiation resulted from industrial production.

13. *Callow P," Manual assessment of risks to the environment", Institute of Biology, Department of flora and fauna at the University of Sheffield, 2009 PAGEEE*

14. *Fischer F., Martin A. "Hire Living with Nature", Tabernakul 2009 PAGE !!!*

15. *Dimovski I, "Dynamic balance in Nature", Ministry of Science Macedonia 1994 PAGE !!!!!*

- To prevent environmental damage caused by the construction and development activities includes the prevention of environmental pollution and destruction caused by large-scale water conservancy, railways, highways, major ports, airports and large industrial projects and other projects. To prevent the destruction and influence of land reclamation and reclaiming land from lakes and the development of offshore oil field, coastal zones and wetlands, forest and mineral resources. To prevent the environmental damage, pollution and impact of the new industrial area, new construction of urban settings,etc.
- Protection of special value to the natural environment includes protecting rare species and their living environment, the natural history of specific sites, geological phenomena and landscape. Besides, the content of environmental protection also includes urban and rural planning, control of water and soil loss as well as desertification,forest planting, control of population growth and distribution, rational distribution of productive forces. Environmental protection has become the world's governments` and people`s common action and the main tasks. Countries have formulated and promulgated a series of environmental protection laws and regulations to ensure its implementation.

CONCLUSION

As we can conclude, the processes of globalization and industrialization promote the worldwide pollution problem. These processes strike hard the environment and the nature in all the countries, so the problem goes from national to global. The human is the factor that produces these problems, but the human has to be the factor that can decrease and eliminate these problems, as well, because there is no bigger force than him, as a ruler of the world. The human force is effectuated

through the practices and the policies of the human resources management – HRM. The human resource managers, have to assess the environment risk, define the pollution problem, determinate the financial responsibility and, what is the most important task, make definite actions for decreasing the worldwide pollution and promoting the environment protection everywhere. The human factor is crucial for effective environmental management, so there has to come to developing the awareness of the human resources managers, how to take their future actions, that have to be focused, on the environmental management and reducing the pollution, as well. Although some managers, are implementing these policies, we have to notice that, environmental management, isn't important for the most human resource managers.
In future these problems have to be overcame, in order to increase the production and effectivity of the organization and the management process, worldwide.

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THE GLOBAL FINANCIAL CRISIS HIGHLIGHTS THE SHORT COMINGS OF FISCAL TRANSPARENCY

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ABSTRACT

Economic prosperity is the primary goal of any government. Economic trends in the last decade contribute to the fact that governments started reviewing seriously their fiscal policies. The financial crisis and the European debt crisis have forced governments to fully comply with the fiscal rules and to pay more attention to fiscal transparency.

The financial crisis has brought to surface all the inconsistencies that governments had in managing public finances and deepened it. Many countries are struggling with high public debt and budget deficit and because of poor governance of public finance are trying to overcome this problem by further borrowing, which only deteriorates the situation.

For these reasons good governance of public finance is the foundation for the economic sustainability of the country.

Keywords: financial crisis, fiscal transparency, budget deficit, public debt, economic sustainability

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ВОВЕД

Фискалната транспарентност претставува отвореност кон јавноста за структурата и функционирањето на владата во

определување на фискалната политика и нејзиното спроведување во минатото, сегашноста и идните планирани активности. Ваквата транспарентност предизвикува подобра информирана јавна дебата, како и подобра ефикасност и кредибилитет на владата. Со примената на препораките на ММФ и ОЕЦД за отворен буџетски процес се овозможува зголемување на фискалната транспарентност на државите.

Транспарентноста (или отвореност) е суштински аспект на плуралистичката демократија. Таа осигурува граѓаните да ги имаат потребните информации за да можат ефективно да учествуваат во политичкиот процес и да бараат отчет од државните власти за нивната работа. Правото на пристап до документите овластува граѓаните да имаат увид во протокот на информации. Тоа им овозможува да преземат иницијатива за да се добијат информации, во нивниот оригинален контекст, додека сè уште не се ставени во јавниот домен.

1. ФИСКАЛНА ТРАНСПАРЕНТНОСТ

Квалитетното менаџирање на јавните финансии се остварува преку фискалната транспарентност, што претставува клуч за доброто управување со јавните пари. Фискалната транспарентност овозможува поотворени дискусии на институциите вклучени во изготвувањето на буџетот и јавноста, со цел за изработка на прифатлив и реален буџет и успешно спроведување на зацртаните буџетски цели, како и поголема разбирливост на макроекономските процеси од страна на јавноста и можностите кои се нудат.

Фискалната транспарентност претставува отвореност кон јавноста за структурата и функционирањето на владата во определување

на фискалната политика и нејзиното спроведување во минатите, сегашните и идните планирани активности. Ваквата транспарентност овозможува пристап на јавноста до сите информации и отвора простор за јавна дебата за сите аспекти од буџетскиот менаџмент, како и подобра ефикасност и кредибилитет на владата.

Регулативите на ММФ за добро работење се базирани на четири принципи:[1]

- *Јасно дефинирани одговорности и делегирање на задачи.* Треба да постои јасно разграничување помеѓу владата и останатиот јавен сектор и јасна правна рамка и институционална одговорност во управувањето на фискалната администрација. Политиките и менаџерските улоги во јавниот сектор мора да бидат јасни и достапни на јавноста;
- *Отворен буџетски процес*. Информациите во врска со буџетот треба да бидат достапни за анализа. Буџетската документација треба да ги прецизира целите на фискалната политика, макроекономските предвидувања потребни за изготвување на буџетот и идентификување на најголемите фискални ризици;
- *Јавна достапност на информациите за јавните финансии*. На јавноста треба да ѝ бидат достапни информации од минатото, тековните активности и проектираните идни фискални активности на владата. Овие извештаи треба да се дадат во точно дефиниран временски период и формат;
- *Обезбедување на интегритет на податоците и информациите*. Фискалните податоци треба да ги задоволуваат стандардите и треба да бидат предмет на разгледување на независна ревизија.

1. *Посетено на* http:// www.elibrary.imf.org/

Многу земји постигнале поголема фискална транспарентност со примената на регулативите за финансиска транспарентност. Но секоја земја, во зависност од своите технички можности, ефикасноста на административниот апарат и правната рамка на делување, различно напредува во имплементирањето на регулативите на фискалната транспарентност.

Вистинска отвореност на буџетскиот процес бара отворени јавни дебати за фискалната политика и неговите резултати. Ова прашање е од посебно значење за земјите во транзиција и земјите во развој. Парламентот и надворешните ревизорски тела треба да ја имаат клучната улога. Парламентот има формален авторитет како и капацитет за одржување на јавни дебати за приоритетите на фискалната политика, спроведувањето на буџетот и оценка на резултати од истиот. Надворешната ревизија на буџетот треба да биде направена професионално, објективно и независно од извршната власт.

Јавната достапност на информациите претставува споделување на фискалните информации со медиумите и јавноста, што дава можност за јавна дебата и оценка за истите. Освен општите информации за буџетот, јавноста треба да биде информирана за постоечките потенцијални обврски кои може да ја поткопаат фискалната стабилност и да ја нарушат распределбата на јавните средства. Ова овозможува јавноста да се спротивстави на неодговорното трошење на буџетските средства. Обезбедување на интегритет на податоците и информациите претставува гаранција за веродостојноста и квалитетот на фискалните податоци кои ги публикува власта.

Во развиените западни демократии контролата на трошењето на

буџетските средства е вградено во системот на управување, како негов суштински дел и е основата за доброто управување со буџетските средства. Граѓаните и приватниот сектор континуирано се залагаат во изготвувањето и контролата на трошењето сè со цел правилно да се насочи потрошувачката на буџетските средства. Ова насочување е во правец на развој на економијата и овозможување на поповолен развој на државата, подобро функционирање на приватниот сектор и крајно задоволни граѓани, односно задоволно гласачко тело.

Унапредуваањето на доброто финансиско управување не е ограничено само на развиените економии. Тоа е глобална потреба која сè повеќе се наметнува на земјите во развој. Неквалитетното управувањето со јавните финансии има влијание врз секоја економија независно од степенот на нејзината развиеност. За разлика од развиените земји, земјите во развој сè уште се борат со незадоволителни и често пати дисфункционални државни системи, ориентирани само кон собирање на данок, неправилно алоцирање на ресурсите, индиферентни кон резултатите и со лоши услуги на јавниот сектор.[2]

Вклучувањето во глобалните економски текови носи со себе ризици кои влијаат и врз управувањето со јавните финансии.

Овие проблеми најчесто се резултат на:

- Финансиската криза која ги потресе светските економии;
- Брзите промени и нестабилноста на цените на стоките пред сè на цените на нафтените деривати;
- Климатските промени и природни катастрофи, вклучувајќи ги тука и заразните болести кои бараат издвојување на поголеми средства од буџетот за нивно надминување;

2. *Посетено на http://siteresources.worldbank.org/WBI/Resources/WBInewsSummer02.pdf*

- Основните демографски трендови, процесот на стареење на населението кое со себе носи зголемени трошоците за пензии, социјална помош и здравствена заштита и
- Нестабилност на приходите од меѓународната трговија и тековите на капиталот.

Стабилноста и долгорочната одржливост на буџетите и јавните финансии се клучни барања за менаџирањето со јавните финансии, поради нивното константно изложување на овие ризиците. Успешноста на буџетскиот процес во голема мера е детерминиран од дефинирањето на среднорочната фискална политика, чии цели треба да се реализираат преку соодветно планирање и извршување на буџетот. Притоа, целите на фискалната политика опфаќаат три области:[3]

- *Тековна фискална позиција* – утврдување на буџетскиот суфицит или дефицит и обезбедување механизми и начини за неинфлаторно финансирање на буџетот, со истовремено задржување контрола над јавниот долг.
- *Фискална одржливост* - Фискалната одржливост претставува солвентност на една влада, колку таа е во состојба правилно да ги предвиди идните движења и да ги реализира зацртаните цели со фискалната политика.
- *Фискални слабости*. Фискалната слабост се однесува на сервисирањето на јавниот долг, доспевањето на обврските по основ на јавен долг, расположливиот обем на девизни средства и сл.[4]

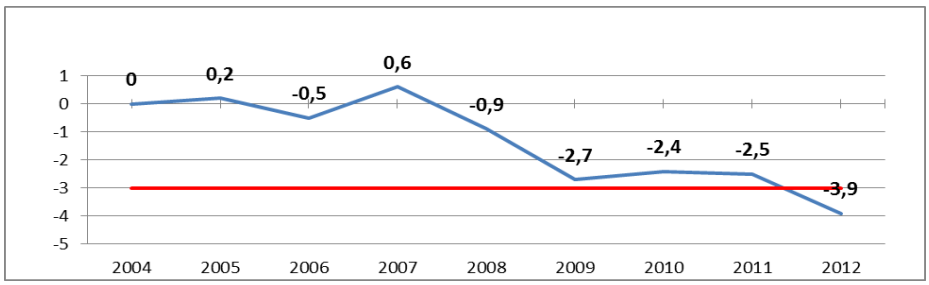
Сите овие сегменти се нагласија со Финансиската криза и со европската должничка криза. Тековната фискална позиција во Република Македонија е во рамките предвидени од ЕУ. До 2012 година македонскиот буџетски дефицит не надминува 3% од БДП

3. *Јовановски П.: „Јавни финансии“, Магна Секн, Скопје, 2006, стр. 265;*

4. *Мониторинг на примената на принципите на доброто управување со јавните пари -извештај, Фондација отворено општество – Македонија (ФООМ), декември, 2007 година, стр.7*

и јавниот долг е помал од 30%. Но со рецесијата во втората половина на 2012 година работите се менуваат. Буџетскиот долг за 2013 ја надминува границата од 3%, а јавниот долг по првиот квартал е 33% од БДП.

Графикон бр.1 *Буџетски биланс на Република Македонија 2004-2012 (салдо на централен буџет и фондови, % од БДП)*



Извор:НБРМ www.nbrm.mk

Ваквото поместување дава силен сигнал за внимание на власта, иако буџетскиот дефицит не надминува многу од рамката на 3%, а јавниот долг е далеку од црвената линија на 60% од БДП.

Графикон бр.2: *Структура на Јавен долг на Република Македонија*

Извор: Годишен извештај 2012 година, Народна банка, Скопје, 2013 година, стр.17

Но и покрај очекуваниот слаб раст на економијата, власта се одлучува за дополнителни позајмувања, со што јавниот долг

прави дополнителен притисок на слабата економија. Земајќи предвид дека моменталната финансиска состојба на земјите од ЕУ, посебно примерите на Грција, Италија, Португалија и Исланд, требаше да бидат пример и предупредување за последиците кои презадолженоста може да ги направи но, сепак, одлуката се направи за дополнително задолжување. Иако нашиот долг како % од БДП ни од далеку не е како долгот на овие четири земји, ние, исто така, не сме членка на европското семејство, кое прави напори за нивниот излез од оваа состојба.

Исто така, потребно е континуирано да се дава извештај за јавниот долг. Оваа слика за задолженоста на државата потребно е да биде комплетна, односно да се наведе поединечно долгот на владата, на единиците на локалната самоуправа и на јавните претпријатија, како и на изворите на финансирање. Вака ќе се има појасна слика за задолженоста на државава. Долгот на владата може да се следи во извештаите на Министерството за финансии, но долгот на другите два сегменти, во вкупни и поединечни износи, министерството не ги објавува во извештајот.

ЗАКЛУЧОК

Со глобализацијата на економијата, националните финансиски системи станаа сè повеќе зависни. Стабилноста и долгорочната одржливост на буџетот и јавните финансии се главните барања на менаџирањето на зголемените ризици во јавното финансирање. Од тие причини сè поцврста станува поврзаноста на доброто управување со јавните финансии и подобрувањето на економската и социјалната клима. Потребата од добар менаџмент со јавните финансии ги вклучува сите аспекти на тоа како да се води државата, вклучително и економската политика и правната

рамка. Ова е од витално значење за остварување и одржување на макроекономската стабилност и економскиот раст и развој. Фискалното управување претставува процес на донесување одлуки и процес со кој овие одлуки се имплементираат. При анализата на фискалното управување, фокусот се насочува кон актерите инволвирани во донесувањето на одлуките, имплементацијата на нивните одлуки и на формалната и неформалната структура низ која треба да се помине при нивното имплементирање.

Нагласената потреба од примената на принципите на добро управување со буџетските расходи се обезбедува преку слободниот пристап до информации од јавен карактер, континуирано следење на сите учесници во буџетскиот процес и воспоставување на ефикасен механизам на известување, а со тоа и преземање на одговорност за потрошените пари. Нетранспарентноста во трошењето на буџетските средства води кон социјална неодговорност и конфликти и ја доведува во прашање легитимноста на некои национални кампањи.[5]

Транспарентноста станува неопходен дел од доброто управување со јавните финансии. Државите се обидуваат фискалното менаџирање да го темелат врз постулатите на транспарентноста. За да се овозможи транспарентност потребно е отвореност во подготовката, спроведувањето и известувањето за буџетот да биде на највисоко ниво. Ова се овозможува со достапност на јавноста до информациите во секоја фаза. Колку што е потребно јавноста да биде известена за буџетот кој е изготвен од страна на Министерството за финансии и донесено од страна на Парламентот на Република Македонија, потребно е јавноста да биде во тек и со подготовките на истиот.

5. 2010 progress report on the former Yugoslav Republic of Macedonia, Посетено на http://www.europarl.europa.eu/sides/getDoc.do?type=MOTION&reference=B7-2011-0225&language=EN

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IMPACT OF GLOBALIZATION ON THE CONVERGENCE OF THE MODELS OF CORPORATE GOVERNANCE

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ABSTRACT

The process of globalization, the joint action of the entire international community, the increase in the number of multinational and multicultural companies developing international trade relations affect the process of convergence of corporate governance models and creating a common framework of good corporate governance. The creation of a common corporate language understandable and applicable to all market participants is mutual interest globally.

Placed high standards and effective quality guarantee system of corporate governance is necessary and industrialized countries and developing countries and small and poorly developed economies. The promotion and strengthening of corporate governance is a priority issue in national economies and the activities undertaken at the international level.

Keywords: globalization, corporate governance, convergence, international standards, developed countries and developing countries.

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ВОВЕД

Корпоративното управување, во најширока смисла на зборот, се однесува на начинот на воспоставување рамнотежа на интересите меѓу сите засегнати страни во компанијата, како што се: акционерите, менаџерите, вработените, потрошувачите, добавувачите, потенцијалните инвеститори и општествената заедница во која компанијата ја врши својата дејност. Корпоративното управување како систем на активности вклучува постојани иновации во својот концепт. Тоа се менувало низ времето и опфаќало различни аспекти како економски, правни, така и општествени и политички што ја истакнувало неговата многудимензионалност. Многу автори се обиделе да дадат дефиниција за корпоративното управување, сите тргнувале од различни аспекти за кои сметале дека се приоритетни и различно го дефинирале. Сепак постои една дефиниција која е најшироко прифатена бидејќи ја отсликува системската, но и структурната содржина на поимот корпоративно управување. Дефиницијата ја дале експертите на Организацијата за економска соработка и развој (ОЕЦД)[1] која ги поставила и универзалните принципите за добро корпоративно управување. Според нив "корпоративното управување е систем со кој деловните компании се насочуваат и контролираат. Структурата на владеење ги определува правата и одговорностите меѓу различните учесници во компанијата, како што е: одборот на директори, менаџерите, акционерите и другите стејкхолдери[2] и ги дава правилата и процедурите за донесување на корпоративните одлуки. На овај начин се обезбедува структура преку која се поставуваат целите на компаниите, средствата за нивно остварување и за набљудување на извршувањето". [3]

Во компаративната литература за право и економија, голем број

[1] *Organizaton for economic cooperation and development (OECD), меѓународна владина организација, основана 1961 година со седиште во Париз, цели: помагање на економскиот просперитет и финансиската стабилност на државите.*

[2] *За стејкхолдери се сметаат индивидуи, групи на индивидуи, институции, правни лица кои имаат интерес во успехот и целокупното работење на компанијата.*

[3] *Проф. д-р Бобек Шуклев и др, Корпоративно управување, Економски факултет – Скопје, 2008.*

на експерти се занимаваат со систематизирање на основните карактеристики на националните модели на корпоративното управување, настојувајќи да ги согледаат нивните заеднички карактеристики, но и посебности кои ги прават различни. Секој национален модел на корпоративно управување е директна рефлексија на економските и политичките потреби во една конкретна економија. Тој се заснова на специфична трипартитна правна структура, односно претставува меѓузависна комбинација на домашното компаниско право, регулативата на пазарот на капитал и трудовото право. Со ваквата поставеност се уредува модусот на распоредување на моќта на одлучување во компаниите кои се основани, функционираат и престануваат во рамките на одреден правен систем.

Разликите меѓу националните модели на корпоративно управување се резултат на различните клучни институции во секоја земја и тоа: легислативата, даночниот режим, третманот на сопственичките права, финансискиот систем, институциите на пазарот на труд и културата. Секоја влада има слобода во конципирањето на националниот модел на корпоративно управување, но таа слобода не е нелимитирана. Како и за се друго така и во овој случај постојат ограничувачки фактори присутни во самиот правен систем и во неговата историја.

Во теоријата и праксата на глобално ниво издефинирани се два модели на корпоративно управување: англо – американски (отворен) модел и германско – јапонски (затворен) модел кои се карактеризираат со свои специфики и обележја. Ако направиме компаративна анализа на англо – американскиот и германско – јапонскиот модел на корпоративно управување ќе забележиме дека разликите произлегуваат од улогата што ја имаат органите на управување во компанијата, од начинот како се утврдуваат и

поставуваат целите и како се спроведуваат и искористуваат механизмите за нивно остварување. Различните начини за корпоративно финансирање исто така претставуваат битен фактор кој детерминира различни варијации на корпоративно управување. Постојат различни традиции кои се однесуваат на односите долг/капитал и во која мера врските со банките претставуваат партнерство или класичен договор меѓу купувач/ продавач на слободниот пазар. Во САД и Велика Британија комерцијалните банки ги обезбедуваат фирмите со должнички капитал, а додека во Јапонија и дел од Германија банките често имаат значајни удели во одредена компанија. Моќта на заемодавачите во овие два екстреми е многу различна и се манифестира на различен начин. Американските и англиските банки може да ја спроведуваат својата моќ преку излез (повлекување на средствата) не водејќи сметка дека со тоа го доведуваат во прашање опстојувањето на компанијата, додека јапонските банки како вложувачи на капитал се повеќе мотивирани за спроведување на долгорочни стратегии на компанијата и нејзино успешно функционирање.

Многу е битно директорите/менаџерите да разберат како овие облици на корпоративно управување ќе влијаат на целите и стратегиите. Присутни се и значителни разлики во самите извештаи кои ги објавуваат компаниите, во САД и Велика Британија тие се многу подетални, наменети за ситните акционери, додека во Германија и Јапонија површни, поради присуството на главните инвеститори во одборот и нивната одлична информираност за работењето на компанијата.

Во табелите е прикажана компаративна анализа на суштинските карактеристики на двата доминантни модели на корпоративно

управување: англо-американскиот и германско-јапонскиот модел:

Табела бр.1

	Англо-американски (отворен) модел	Германско-јапонски (затворен) модел
Сопственост	Дисперзирана	Концентрирана
Контрола и спственост	Раздвоена	Поврзана
Инструменти на корпоративно управување	Претежно екстерни	Претежно интерни
Улогата на сопствениците во корпоративното управување	За поголемиот број мала, поради free rider проблемите	Голема како резултат на нетранспарентноста

Табела бр.2

	Англо-американски (отворен) модел	Германско-јапонски (затворен) модел
Моќ	Менаџмент	Доминантните акционери и банки, поврзани компании и вработени
Интереси на стејкхолдерите	Не се застапени во голема мера	Застапени во голема мера
Конфликт на интереси	Акционери – менаџери	Доминантни-малцински акционери
Клучни проблеми	Менаџерите приоритет им даваат на сопствените интереси, наспроти ефикасност и профитабилност	Остварување на интересите на доминантните акционери и другите интересни групи, наспроти интересите на малцинските акционери

Табела бр.3

	Англо-американски (отворен) модел	**Германско-јапонски (затворен) модел**
Концентрација на гласачката моќ на акционерите	Слаба	Посилна
Идентит на акционерите	Институционални инвеститори примарни, а потоа поединечните акционери	Компании, финансиски институции, па поединечни акционери
Пазар на капитал	Добро развиен, со примарна улога	Развиен на средно ниво, има секундарна улога
Пазар на корпоративна контрола	Постои со присуство на висок степен на непријателски превземања	Нема релевантна улога, непријателските превземања се ретки

Моделите на корпоративно управување имаат многу повеќе допирни точки од тоа што може да се забележи на прв поглед, посебно во делот на инвеститорите и правната регулатива која ги штити правата на оние кои го вложуваат својот капитал. Развојот на меѓународниот пазар води кон конвергенција на моделите на корпоративно управување. Разликите во моделите на корпоративно управување кои се развиваат во различни земји не се забележуваат во начинот на користење на финансиските системи и финансирањето на компанијата, туку во начинот на организација на сопственоста и контролата во компанијата. Притисокот од конкуренцијата кој е резултат на глобализацијата и јакнењето на позицијата на здружените инвеститори, води кон конвергенција. Тренд кој што е присутен

на глобално ниво е се послична структура на финансирање: повисок е процентот на вложување по основ на задолжување, отколку по основ на сопственички капитал. Зајакнување на улогата на неизвршните директори, односно надзорниот одбор со нормативни акти и создавање универзална правна рамка, која ќе претставува супранационална регулатива.

На светско ниво одамна била призната потребата од конвергенција на моделите на корпоративното управување, а светската економска криза значително го забрзала остварувањето на овај процес. Глобализацијата и бришењето на границите во меѓународната трговија водат кон приближување на моделите на корпоративното управување и поставување на универзални принципи и стандарди за добро и квалитетно корпоративно управување.

Кога зборуваме за конвергенција на различните модели на корпоративно управување, треба да потенцираме дека се разликуваат два основни вида на конвергенција: функционална и формална. Општо прифатен став е дека функционалната е побрза и поедноставна за имплементација, додека формалната е потешка за постигнување. Функционалната конвергенција не се фокусира на правно – историското потекло, додека формалната акцентот го става токму на потеклото и историјата.

Формалната конвергенција претставува изедначување на материјалните и на процедуралните правни правила на една или повеќе правни гранки меѓу различни земји. Овај вид на ковергенција по пат на законодавно приближување и хармонизација е подобар и посигурен, но од друга страна потежок и побавен за остварување.

Многу автори, сосема исправно, заклучиле дека прво ќе дојде до функционално приближување, односно конвергенција, а дури потоа ќе следи формално правна конвергенција на моделите на корпоративно управување. Прво пазарот го пронаоѓа својот пат за соработка, а правото следи дополнително.

Процесот на глобализација, тенденциите за создавање единствен светски пазар, новите пазрни законитости и предизвиците кои ги донесе 21 век докажаа дека функционалната конвергенција е неопходна и се остварува. И покрај тоа што не постои формално – правно усогласување, компаниите кои припаѓаат на еден модел на корпоративно управување, на еден или на друг начин прифаќаат и имплементираат правила на деловно однесување инхерентни за друг модел на корпоративно управување. Тоа всушност е функционална конвергенција. Таа се јавува кога индивидуалниот инвеститор или компанијата, го унапредува своето ниво на корпоративното управување и покрај недостатоците во правната регулатива. Инвеститорите секогаш одлучуваат да инвестираат средства во компании кои функционираат и градат модел на управување кој повеќе е ориентиран кон инвеститорите и нивните права.

Конвергенцијата создаде услови на глобално ниво да се постават универзални принципи и стандарди за добро и квалитетно корпоративно управување. Секоја компанија која сака да биде конкурентна на светскиот пазар, да постигнува резултати и да остварува економски раст и развој на долг рок неопходно е да гради модел на корпоративно управување кој почива на овие принципи.

ЗАКЛУЧОК

Кога настапува криза доброто корпоративно управување им овозможува на компаниите ефикасно да извршат распределба на јасно дефинирани улоги и одговорности и да воспостават ефикасна стратегија за комуникација. Превземањето на вакви активности и мерки им помага на компаниите брзо да се опоравaт од последиците од кризата и штетите во своето работење да ги сведат на минимум.

Ако глобализацијата се дефинира како процес со кој се поврзуваат различни локални економии, култури и компании, преку глобални комуникациски, транспортни и финансиски средства, тогаш кризата навистина создаде услови вистинската глобализација да започне

Без оглед на голем број на противници на глобализацијата, присутни како во развиените, така и во неразвиените земји, процесот на глобализација незапирливо оди напред, па компаниите и државите треба да се прилагодат за да се искористи дел од економскиот колач. Глобализацијата доведува до различни неправди, но сепак иднината и мирот на цивилизациите зависи од разбирањето и соработката меѓу политичките, духовните и интелектуалните водачи на важните светски цивилизации и компании.

Ова е светот во кој што живееме, луѓето и во развиените и во неразвиените земји треба да вршат притисок, процесот на глобализација да не биде премногу суров и експлоатирачки, туку да се потенцираат и развиваат колку што е можно повеќе добрите страни на глобализацијата и придобивките од неа.

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QUALITY MANAGEMENT FOR THE COLLECTION AND REDEMPTION OF MEDICINAL AND SPICE PLANTS IN MACEDONIA

Jugoslav Ziberoski[1]
Dragan Jovanov[2]

INTRODUCTION

The natural resources of the Republic of Macedonia is one of the most important components of economic development of each local community . The state institutions as regulatory authorities for this area are responsible to protect natural resources . In that way , Ministry of Environment and Physical Planning established a legal framework for sustainable systems by using natural resources . Here in Macedonia , in order to collect the plants they must be grown naturally , minimum three years without using prohibited means and in areas which reproduction is allowed . Although this collection area is in state property , she is owned by a private company . If we want to keep to quality way of production , first we should to grown and reproduce the plants naturally ,without any agrochemical interventions (fertilization , transplanting , watering and care) , then to collect the plants . Only the plants which are collected from approved area can be certified , the same area from which the plants are collected isn't subject of certifying.

Documents which are needed for organic certification procedure :

- Confirmations
- Interfaces
- Allows
- Certificates

In order to keep to the traceability , the certificate must to pass all anticipated procedures .

Three main actors

- Gatherers

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[2] *Dragan Jovanov, PhD candidate, Assistant at the faculty of management of ecological resources, at the MIT University, Skopje, The Republic of Macedonia*

- Buyers
- Processors

All of the products should to pass across this operations

- Collection
- Purchase the collectors
- Warehouse
- The main processing plant
- Final packaging
- Transport
- Sale

Critical points sustainability

- Quantity
- Transport

Risk of contamination

- Settlements
- Agriculture
- Industry
- Landfills and dumps
- Roads
- Radioactivity

Traceability / transparent

Rules for collecting and handling with collected material :

According to the requirements of the organic production , we will present you basic principles for collecting of spices and medicinal species . This principles are named for successive procedures that should be filled by the collectors and buyers and for accomplishing the basic requirements for certification of organic products .

Rules for collecting and handling with collected materials are in the following :

- Collection
- Drying and preparations
- Purchase points
- Storage and processing
- Sales and Marketing collection

The process of collection must be in correlation with existing laws , also is needed to be provided all legal documents . The company which is concessionaire and company which is buyer, are responsible to provide all documents that are needed . The agreement is concluded by two sides , on the one side there is concession of land in state property and on the other side there is company that organizes the assembly and sets redeemed point for the ground . The agreement must contain the names of plants that are planned to be collected in one season , amount per type , time for collecting, location of purchase and the person who will be responsible for all needed things in the station . The whole process of collection must be in correlation with existing laws .

System of agreements and permits

- Contract for collection of amonicant plants
- Permission to collect and protected medicinal and spice plants
- Gathering card
- Assessment of resources
- Confirmation of sustainable collection
- Monitoring

Areas of collection

- Interfaces
- Locations not suitable for collection
- Confirmation of untreated areas

Plants for collection

- Wild plants
- Plants that Clean the region
- Plants that are legally allowed to collect
- Plants with low reproducibility can be collected in limited quantities for a predetermined area

Information about the plants that are collected and methods for performing

- Every year before the collection, the list of all plants that will be collected from different areas of collecting and the quantity too , should be submitted to the certification body .

- The specification for each collection must be completed separately.
- Every collector should to know the way of collecting for each plant described in the monograph .
- In order to ensure sustainability in the collection all the plants shouldn't gather all the plants from a particular location. The places of collection should to be rotated in different locations , in margins of collection area . With all this we leave space and time for renewal .
- The collection of one plant should not injury the other plants . And also the collection of one plants should not create conducive space for erosion on the land.
- There is need always to choose the the best , adequate method for collection, with which you will provide the best quality for plant material that collected .

Allowable percentage for collecting

There are general rules about how many in percentage is allowed to be collected from a particular population, of one whole plant or parts of the same plant as an individual.

underground parts

Only 20 % of the total population sheets

From one tree or bush only 30 % flowers

70 % of flowers on a plant

80 % of the flowers of the population

Complete data for each collected plant

- Botanical name
- National , local name
- What part of the plant is collected
- At what time of year is collected
- The area can be found
- In what areas can be found
- Description of the method as collected

Gatherers training

- A company that makes a purchase
- Concessionaire
- Local government
- Association of collectors locally

Official list of collectors

- A company that makes a purchase
- Families collectors
- Individuals

Agreements

- Rules for collecting
- Accessibility
- Sanctions

Drying and preparation

Hygiene - risk of contamination

Quality - organic and conventional

Transport - from collector to purchase Station

Redeemed places

Storage (identification , warehouse books for daily evidence for entry and exit of goods , marking the repository , physical separation of organic and inorganic products , all entries for sanitary treatment , transport documentation , etc.).

Processing (checking feedstock , ingredients and auxiliary materials , detailed prescriptions for the final organic products , separation and identification , pattern of movement , etc.).

Sales and Marketing

Every product that is labeled and declared as organic must have a certificate. The certificate must be issued by an authorized certification body that guarantees for the origin and method of production. During the sale to another company or exporter , the certificate the documentation must be detail , also like the documentation which is taken by manufacturer of organic products . During the finalization of the product which is preparing for direct marketing is investigate by the product page of the certificate , which affirms the meet-

ing, the structure of the product is analyzed and examined by the certificate which confirm that the needed conditions are successful accomplished and in accordance with relevant regulations .

Use of medicinal and spice plants

Medicinal and spice plants are product of nature , product of the most perfectly lab ,and all this we can see that is located in themselves . The drug which is derived in that way is accepted the best by the side of the human organism , because human is an integral part of nature. We should to know to use the things which the nature gives to us , and use them on the most useful way . Since ancient times , people taken natural therapy , by using medicinal plants . Today people are more and more interested for plants which exist in nature , which can be eaten or used to improve and maintain the health.

Basic rules for the collection and drying of medicinal plants and spiced plants in Macedonia.

Macedonian plants are harvested only when the time is nice, when there isn't any dew. It should be specified on harvested in rural settlements and cities, roadside, railway, besides factories and wherever there are chimneys. It is best harvested when it rains, but the flower of the plant should not be wet.

From perennial plants only the ones with very large developed roots should be collected. A person or a clique should collect daily, only one kind of plant. Plants should be dried in the shade with a draft, and not on the sun. They can't be in a pile, bit in thinner layers леси или на сури, paper, boards, etc. but not on nylon.Best for drying are covered with metal roofing. During the drying plant should be ventilated. Flowers leaves and other gentle overhead parts should be dried in the shade, naprovev and not under the sun. Where there are thermal dryers for plant or fruit and other agricultural products, they need to be used them because the drying in them works best. In the dryers there should be a thermometer for temperature regulation during drying, because each plant or group of plants have their optimum temperature to which you can go. You have to work cleanly and carefully, in order not to damage the plants or to spoil and lose their natural colors.

The distribution of medicinal plants in the country

Macedonia is one of the few countries that is rich with medicinal plants . Of the approximately 1,000 different plants of which over 500 are medicinal , it

means that domestic mountains , valleys , meadows represent natural pharmacies . The affirmation of the use our medicinal plants that science told that are useful , effective treatment against diseases gives a chance for our people on the one hand, and secondly from material aspect , these plants are full of many medicinal substances. And for that they and so much requested in the Western European market . Also It's a good opportunity as resource of existence for many families . Although the country has great potential , every year tons of medicinal plants remain unused . Citizens say they are aware of the healing properties of herbs , but despite that they are rarely collected.

In this paper here is a concrete conclusion . We all know about hugely gullibility and credulity of the plants , nonetheless some of that plants are used and some of that plants are not used because they are collected in inadequate way and they are destroy by man. That's why I also insinuate the meaning of the steps in the procedures and same with documentation that should have one person. The inappropriate collection of medicinal and spice plants here in Macedonia, brings to vandal destruction of the natural treasure and if we keep in that way , for soon some species of plants will be endemic . With help of experts from the scientific and educational institutions by the Ministry of Environment of the Republic of Macedonia Fifty- six plant species are already listed as endangered species, which with the help of . The list of endangered species is still open and there is possibility to be amended . In the last ten years in our country started to open factories for drying and processing of spicy herbs, teas and essential oils .Instead of caring for educating the population on how to collect the plants so they can be replenished resources, owners of factories and other purchasers are satisfied just rubbing their hands of earnings. But if this devastation continues, in ten years we will have to close down factories because there won't be anything left to be picked. Collectors destroy medicinal and spice plants because they do not take into consideration whether a particular form is required only flower or tree, and they are picking the whole plant . Thus preventing them to give a new fruit to rebuild their fund in nature. Appeal to all, not to harvest the plant root, give it a chance to multiply.

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ISSUES IN AGRICULTURE INSURANCE IN MACEDONIA

Katerina Ivanova Anastasova[1]

ABSTRACT

Agriculture differs substantially from other industries and sectors of the national economy and it is associated with hard work and investment of significant funds. Agrarian business continues to occupy an important place in the economic structure of the country and in some regions of Macedonia at the moment this is the only option for livelihoods for the majority of the population.

In recent years we have witnessed unfavorable climate impact, as a result of which the agricultural entrepreneurs suffer huge losses. The risk occurs as a part of the agricultural production and it may be reduced or increased, but the great capacity of Macedonian agro- complex forces us to think about the importance of his insurance as one of the most essential measures for risk management in agriculture. This is a problem not only in Macedonia, but nearly in all countries in the European Union, because the climate in general suffers a huge change. Therefore is good for the agricultural entrepreneurs to think how to protect their production from the whims of weather.

The insurance is an essential tool for risk management in the agriculture.

The purpose of this paper is to analyze the reasons for the low level of agriculture insurance in Macedonia and consequently to motivate the farmers and the insurers in participating and developing a new directions in this field. As a whole, the insurance culture in Macedonia is at a very low level and

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with low intensity. This shows the long habit of the farmers - for all incurred damages, they are requiring compensation by the state. Each year from the Macedonian budget are allocated about two million euro's renewed to cover damages caused by natural disasters.The problem with agriculture insurance in Macedonia is not recent and unfortunately it not only affects private owners, but the state too.

The agriculture insurance in Macedonia has the prospects to grow and spread if properly be created the development policy of the factors that determine this sector. This applies to the subjects on which depends the development of the sector, such as, insurance companies, farmers and government.

Keywords – Agriculture insurance in Macedonia; Issues; Reasons; Funding; Directions.

INTRODUCTION

For introducing the reader to the issues in this paper I present the object and aim of research.

The Republic of Macedonia has practically no effect on the agrarian insurance, for increasing its effectiveness and efficiency. We cannot say that this sector in the European Union has reached its maximum, but each state offers different insurance protection through managing the risk. Macedonia strives for entering the EU, but in the national strategy should be included the guidelines for the development of this sector.

From here we define the object of the research, which is the field of agriculture insurance in Macedonia.

Subject of research are the factors that determine the sector.
The main goal is to show the problems i.e. reasons for the low level of agricul-

tural insurance in Macedonia, its importance as a measure of risk management and consequently to propose guidelines for the development of this sector .

This is a very low rate that will hopefully serve as a basis for further great strides in research and in creating a stable policy of insurance of agriculture in Macedonia.

The paper is structured by three heads attached with each other and presents a global picture of the Macedonian agriculture, including:

Chapter I. Types of risks in agriculture

The first chapter defines the types of risks in agriculture, the sources of risk in agriculture and the factors that cause risks like climate i.e. natural disasters.

Chapter II. Funding and subsidies of agriculture insurance

The second chapter is dedicated to funding and subsidies of agricultural insurance. Here is presented the way of funding or financial support to the sector, the role of the state and its policy of subsidizing.

Chapter III. Problems of agricultural insurance market

The third chapter elaborates the problems of the agricultural insurance market. This chapter highlights the reasons and factors that hinder the development of this sector and affect its efficiency and effectiveness.

Chapter I. Types of risks in agriculture

In order to understand the need and benefits of insurance in the agricultural economy, we need to consider the dangers that lurk.
Agricultural risks are presented as a danger that may occur in crops, fruits

and animals, and appears influenced by certain objective and subjective factors.[2]

The risk occurs as part of agricultural production and it can be reduced, mitigated or increased. There are five major sources of risk in agriculture:[3]

- *Production risks* – connected with the possibility that your income or the final product will be lower than expected. The main sources of these risks occurs from adverse weather conditions (such as drought, frost or excessive rain during harvest), but may occurred as a result to damage caused by insects, pests and diseases;
- *Marketing risks or price risks* – the possibility that bound to lose the market for our products and the resulting price will be lower than expected. Common sources of risk include lower marketing cost - due to the increasing supply or reducing demand among customers , loss of access to markets and lack of market power because of the small number of agricultural vendors compared with other marketers;
- *Financial risks* – associated with the ability to have enough capital to meet anticipated debt, lower -than-expected earnings and loss of net value. Sources of financial risk emerge as a result of production and market risks, as described above. In addition , financial risks can be caused by an increase in basic costs , rising interest rates , excessively large loans , lack of adequate reserves in cash or with credit and changes in exchange rates;
- *Legal and environmental risks* - one of the legal risks connected with the implementation of trade agreements and treaties. Another major source of legal risk is civil liability, i.e. causing damage to another person or property, which is due to negligence. The other part of the legal risks is connected with environmental responsibility and concern for water quality, erosion and use of pesticide;
- *Risks of Human Resource Management* - refer to risks associated with individuals and their relationships to each other, their families and their farms. The sources of this risk include divorce, death or injury to the owner, manager, employee or family member in the business. Also in-

2. *D-r Tihomir Jovanovski „Economy of Insurance"page.54 , EMK, 1997year.*

3. *http://www. nevegetable.org/index.php/riskmgt/big5*

cluded are the risks arising from insufficient and poor-quality communications and practice for managing people.

Risks in agriculture subject of insurance, must meet the following requirements: a possibility for the emergence of possible damage to agriculture, the damage should be of economic nature, to show the uncertainty of the risk occurring with crops, fruits and animals, without influence of the will of the insured, not to always occur at the same time and space, the same risk to be repeat and be able to track statistics.

Independent risk we can differentiate in more groups:

According to the characteristics, risks are divided into:[4]

- *Permanent risks* that appear consistently each year at appropriate times , as early autumn and spring frosts, hail , etc. ;
- *Variable risks* that appear from time to time as risks are risk to animals. The intensity of their occurrence depends from the agreed terms for insurance, the amount of the premium and termination.

Depending on the impact of risk factors, can divide into:

Objective risks (natural disasters)

Subjective risks (technical and physical deficiencies or other factors and etc.)

Chapter II. Funding and subsidies of agricultural insurance

It is known that insurance is associated with other financial institutions in each country.

It should be noted that the system of subsidizing agricultural business in Macedonia has a program of state support to the sector, which was introduced in year 2008.[5] Then the working name of the program was: “Payment for insurance of primary agricultural production," and today is “Help on insurance premiums".[6] The main objective of the program is to motivate the agricultural economy for voluntary insurance of agricultural production

4. *D-r. Trajan Dojchinovski „Agricultural Insurance”page.1, Ohrid,2007year.*

5. Official Gazette of the Republic of Macedonia num.30/08,changes num.37/08.

6. *Official Gazette of the Republic of Macedonia num.22/12*

against adverse weather conditions, through partial reimbursement of the cost of making the insurance policy.

The program is direct, i.e. - under certain conditions, enterprises in the agricultural sector receive compensation for their costs, in connection with insurance prevention.

Basic losses caused by adverse weather conditions, which may be equivalent to natural disasters and insurance costs for which prevention is supported as follows:

- Hail
- Fire
- Lightening strike

Users of state aid are agricultural economies that meet the criteria of the program and have the following maximum capacities:

a. Vineyards and orchards to 5ha
b. Vegetables to 2ha
c. Tobacco to 1ha
d. Cereals to 10ha
e. Beehives to 100ha

Also here can be supported, producers who grow wheat, barley, corn, grapes, tobacco, tomatoes, peppers, cucumbers, melons, apples and peaches.
The payment of funds for the program is made for the benefit of farmers who ensured its production in the amount of 60% of the insurance premium, unlike in 2008 when the amount was 30%. Holders of financial upholding can ensure its agricultural capacity in any insurance company.

By 2010, three insurance companies offer this type of insurance, as shown in the table:

Table 1. Review of the number of policy holders of insurance companies in 2008, total value of the policy is 60% (in mkd)

	Insurance company	Number of beneficiaries of government subsidies	Total value of the policy	Paid 60%
1	WINNER	33	/	235.846
3	VARDAR (TRIGLAV)	120	/	2.739.639
4	INSURANCE POLICY	/	/	/
	Total	**153**	/	**2.975.485**

Source: Agency for Financial Support of Agriculture and Rural Development - AFPZR 2012 year

Table 2. Review of the number of policy holders of insurance companies in 2008, total value of the policy is 60% (in mkd)

	Insurance company	Number of beneficiaries of government subsidies	Total value of the policy	Paid 60%
1	WINNER	263	/	3.491.483,40
3	VARDAR (TRIGLAV)	788	/	14.165.199
4	INSURANCE POLICY	94	/	965.136
	Total	**1145**	/	**18.621.818**

Source: Agency for Financial Support of Agriculture and Rural Development - AFPZR 2012 year

Table 3.

Review the number of policy holders of insurance companies in 2010, total value of the policy is 60% (in mkd)

	Insurance Company	Number of beneficiaries of government subsidies	Total value of the policy	Paid 60%
1	WINNER	388	6.291.068	3.774.641
3	VARDAR (TRIGLAV)	854	14.976.571	8.985.948
4	INSURANCE POLICY	20	310.463	186.278
	Total	**1.262**	**21.578.102**	**12.946.867**

Source:ASO –Insurance Supervision agency for 2012

Table 4. Review the numbers of users per city, per program, help on insurance premiums for 2010 in mkd

	Cities (municipalities)	Number of beneficiaries of government subsidies	Total value of the policy	Paid 60%
1	BEROVO	10	67.818	40.693
2	BITOLA	24	258.141	154.886
3	VALANDOVO	43	1.079.591	647.753
4	VELES	32	634.872	380.922
5	VINICA	2	18.773	11.264
6	GAZIBABA	2	7.564	4.538
7	GEVGELIJA	29	917.418	550.451
8	DELCHEVO	2	5.465	3.279
9	DEMIR HISAR	2	6.143	3.686
10	KAVADARCI	274	5.854.567	3.512.742
11	KOCHANI	3	42.960	25.776
12	KRATOVO	4	10.854	6.512
13	KRUSHEVO	5	27.711	16.627
14	KUMANOVO	4	22.322	13.393
15	NEGOTINO	214	4.024.138	2.414.489
16	PRILEP	97	1.137.767	682.657
17	PROBISHTIP	7	125.903	75.543
18	RADOVISH	185	1.922.559	1.153.536
19	RESEN	46	1.342.052	805.231
20	SVETI NIKOLE	144	1.542.049	925.223
21	STRUMICA	112	2.313.528	1.388.121
22	CHAIR	1	3.934	2.360
23	SHTIP	20	211.973	127.185
	Total	**1.262**	**21.578.102**	**12.946.867**

In 2011 joined Albsig and insurance company, but the data have not been processed AFPRZ.

As shown in the table below, each year a certain amount separates of funds for the measure Help for insurance premiums.

Table 5. Amount for insured assets for Help for insurance premiums

Years	2008	2009	2010	2011	2012
Insured assets (in mkd)	70 000	25 000 000	35000 000	35 000 000	35 000 000

From previously mentioned we may conclude that despite increasing financial subsidies for insurance protection, response of agricultural producers is an unenviable level.

Then, the question is - What is the relationship between bank lending and whether the economic crisis, which caused a decline in lending activity will affect agricultural protection insurance?

In 2009, the Law on the Macedonian Bank for supporting the development (MBPR), and in 2010 credit line Agricultural Credit Discount Fund (ACDF) is applied within MBPR with the Administration Agreement between the Ministry of Finance and MBPR. Financial institutions that fund these loans are nine banks and two savings banks.

Table 6. Number of approved loans and refinancing

Year	2003	2004	2005	2006	2007	2008	2009	2010	2011	total
Number of approved loans	18	400	761	1.131	435	1.183	513	387	18	**4.846**
Amount of approved refinancing (in million euros)	0,3	2,1	2,6	4,5	2,0	12,2	10,5	3,8	0,2	**38,2**

The fact that most of the number of credits as a result of the economic crisis has decreased in the last two years , the average size of a loan is 10 302 euros . It largely shows that despite the financial and economic crisis in the country, agriculture as a sector of the economy stand a relatively stable market of credit resources and largely retains confidence in itself.

The total approved loans: 94 % are loans for primary production to 100,000 euros , 5% loans to small and medium enterprises that perform processing of agricultural products to 300,000 euros and 1 % in loans to support the export of agricultural products to 200,000 euro.[7]

Because of the low profitability of the industry, lack of capital in finance production and investment makes companies in the sector to seek external sources of finance. In this sense, bank credit appears as the main source of external financing of the agricultural sector, but prevail claiming credit with low scale.

Commercial Banks and Bank Savings activated in financing farmers receive state aid and funds programs of the European Union, so that the conditions for improving the liquidity of companies in the sector with relatively lower risk for the banks themselves.

7. *Ministry of agriculture, forestry and water economy. Annual Report for Agriculture and Rural Development 2010*

Over time, most banks establish serious and lasting credit relationships with most customers - farmers and enable them to reduce credit risk.

So far, we can say that the fall in demand for large investment loans for the agricultural business is among the main reasons for the decline in demand of insurance policies related to agriculture itself, and emphasize that large banks do not approve loans without previously concluded insurance contract.

After this point ask question to individual farmers whether practice to ensure its production and property? The answer was positive for only about 3 % of potential borrowers, but insurance is not just about being able to get the loan.
On the other hand, if we consider that:

- There are expectations for expansion of financial intermediation of commercial banks to farmers and improving their access to financial markets;
- Banks begin more active to work with farmers to service the current financial problems ;
- Elements of marketing policy of banks providing credit products tailored largely to the requirements and characteristics of farmers ;
- In Macedonia is expected to have a restructuring of agriculture to produce higher value products. This will increase the demand for insurance protection in agriculture - first because the bank will require insurance contracts and secondly - because the farmers themselves loaded with loans and interest will prefer opportunities for diversification of risk that insurers provide.

It should be noted that in Macedonia basic insurance protection to agricultural production and anima, l acts and offers from four insurance companies: AD Insurance Policy Skopje, Vardar (TRIGLAV) AD., ALBSIG AD. and WINNER (WINNER-Vienna insurance group).
Insurance, offered by these companies is divided into two basic types - Insurance of crops and fruits and insurance of animals and their general conditions were almost identical between all four companies.

Agricultural economies use also agricultural mechanization that is also subject to insurance but this type of insurance is not typically agricultural insurance and therefore is not an object of research.

Chapter III. Problems with Macedonian agricultural insurance market

The basic problem, according to the research conducted so far on the insurance market, is a lack of sufficient initiative to agrarian or agricultural insurance. The general plan is well known that natural disasters - especially in large scale - can lead to bankruptcy of agricultural enterprises in a remarkably short period of time.

In total, the insurance culture in Macedonia is very low and with low intensity. This shows the long habit for all damages incurred to seek compensation from the state. Each year the budget allocated in Macedonia is around 2mln.euros renewed to cover damages caused by natural disasters. [8]

The problem with insurance is not new and unfortunately not only involves the private owners but also the state.

For example, state and municipal facilities in Macedonia are insured by balancing value because it is based on their accounting documents. Another option is to perform an expert evaluation of the property, which actually makes it rare. It is recommended that property ensure the real value, so that in case of partial compensation for damage is not considered under insurance and in the situations of total damage to pay full compensation to the amount of the sum insured.

Agricultural insurance in Macedonia is among the least developed in comparison with the countries of the European Union, according to farmers and the basic reason for this is lack of insurance culture and resources for smaller manufacturers. Farmers show interest to ensure its production, but since this interest is connected to financial assets, some of them do not have the interest and automatically declines in most cases. It often require policyholders crops

8. *www.finance.gov.mk/ Ministry of Finance of Republic of Macedonia*

and fruits and lower interest and to ensure domestic animals. Mainly ensured are the major manufacturers and producers participating in European projects, where it is required.

The fact is that the insurance contracts in agriculture often getting called under insurance - signing the policy for a fraction of the real value of production. So producers receive less money than their losses and cannot receive full compensation for the damage and it leads to their departure from the insurance provider.

In a business such as agriculture, this is directly dependent on natural conditions, insurance influences. In developed countries are all aware of it, but unfortunately Macedonian farmers are still not convinced of the benefits of insurance and remain too skeptical, that will be cheated by insurance companies.

For example, a flood in scores of companies can go as heavy rainfall, and the policy does not cover such insurance event. It is awkward because in a situations of 100% damage, farmers are obliged to recover and subsidies that have used the program for subsidies. If not they do not receive your premium, and expenditure will be high and unavoidable.

Another reason is the high cost of service and the reluctance of insurance companies to ensure agriculture. Do not neglect the fact that there are areas that is hard to insurers or they do not agree to cover, because they know that there is inevitably of disaster happened.

Problem arises because of the small amount of risk that companies offer. Some of the risks that endanger agriculture are not included in insurance as freezing, sleet, suppression and drought.
According to the company about 10% of agricultural production in Macedonia is insured. Most ensures grapes, apple, tobacco, but the highest percentage takes grapes.

The low percentage is justified by changes in land ownership, incurred over the years. About 20 years ago, agricultural insurance was mandatory in the early change when created cooperatives, farmers continued the tradition to be insured. Since cooperatives are demolished, land is divided and there were many owners. This period of change has lost the thread of insurance, because the number of insured drastically reduced.

In the time after the appearance of consolidators which consolidated much of the land. According to insurers, with some of them currently working is extremely hard - they are of the opinion that after having many lands, distributed in different regions, and even to some disaster happens; the loss will be seriously affected. Consolidators with the most difficult areas of land conclude insurance contracts, and if you sign, make only certain areas

Another group today are small producers who handle difficult, because the edge of existence. These manufacturers save the soil, and quality seeds, and insurance. Experience suggests that insurance premiums are rising every year and the insurance range is constantly decreasing.

Another problem is that not complying with the deadline for payment of damages where the time between the occurrence of the disaster and the payment of damages becomes unacceptable long and not practicing discounts and incentives for long-term customers for the incurred insurance case.

Another question is the objectivity of committees review and assessment of damages.

For individual farmers dissatisfaction increases because the vagueness of insurance contracts and policies.

An important development for the market is the fact that to obtain funds from European programs, farmers need to ensure adequate investment, whether is to be technique, production or livestock. Farmers are generally aware of what disasters often subjected in their fields and choose the relevant risks.

Determining the cost of the insurance premium is made by universal mechanism, which is calculated based on the probability of achieving a natural disaster and its impact on different types of crops. The risk is different for different regions of the country. For example, in Macedonia, Prilep region is endangered threatened at least that Tetovo region. The most serious risk to the state remains the risk of hail.

Different is the ratio of the insurance premium for the various types of risks, as well as packages that are offered. The percentage of compensation paid by the insurer complies with the scale of the damage, the agreed amount for the unit acres and actual losses of production.

The insurance amount for each crop is arranged conforms of producing capacity of the region and purchase prices of agricultural products. It is important to note that insurance, which is subsidized by the state, only covers losses caused by natural disasters, which destroyed over 30% of the average annual production of the farmer.

Drought in the category of so-called catastrophic risks i.e. can cover a very large area and many different cultures.

Drought is not covered by the Macedonian insurance companies, even though this disaster is frequently attend and act on the Balkan Peninsula. In Europe also there are not companies that insure against drought. For now, this risk is covered in the U.S. with many risk insurance contract crops, which are offered by the U.S. Department of Agriculture. Ministry also financially assists farmers who enter into this very expensive policy.

In Macedonia is very difficult to introduce similar insurance, because agriculture is not well enough developed. In our country, not excluding cases where farmers do not have enough funds to water their crops with appropriate preparations. As a result, plants are affected by diseases or pests and provide some kind or completely destroyed. In such cases, the manufacturer may not have done the work or not following the technology for growing crops, insurance companies do not pay fees anywhere in the world.

Currently, that insurance in the agricultural sector is still voluntary and incentive for its functioning is absent, state aid may not be redundant. On the other hand there are high expectations for the expansion of financial intermediation of commercial banks to farmers and improving their access to financial markets.

Banks begin active work with farmers to service the current financial problem. Element marketing policy of banks providing credit products tailored largely to the requirements and characteristics of farmers. Macedonia is expected to have a restructuring of agriculture to produce higher value products, and this will increase demand for insurance protection - first because banks require of their users and the second - the fact that farmers themselves loaded of loans and interest on them - would prefer opportunities for diversification of risk that insurers will have to offer.

However for aid to become effective, farmers should insist to insure farmer production, which provide insurance companies signed an agreement with state funds, to be exempt from tax.

Business agriculture differs from all others in that, it was under the rule of nature. At the same time climate change in agriculture insurance is becoming more dangerous. Practice shows that there are farmers, for whom there was no year to insure. Insurance of crops was an integral part of their business plan. But there are farmers who are not ensured even one time. Others are ensured barely twice the period when started farming. Unfortunately much of the branch underestimated issue.

The idea of introducing mandatory minimum thresholds to ensure agricultural production has its supporters and opponents, and it is quite normal. Supporters of this idea say that to begin mass farmers to ensure their production should be re-introduced compulsory insurance with a minimum threshold premium of acres.

In Macedonia, the crop insurance was compulsory until the early 90 - is of the last century.

Currently mandatory policy required only when farmers apply for loans. Banks in turn require high reliability; in most cases tend to be mortgage property because people rarely have village bank loans. Compulsory insurance is required for loans from the state agency for direct payments. Among them are required mortgage guarantee is only policy.

Recently noticed is another trend. Great consolidators that processed tens of thousands of acres in and suffer from serious financial problems also begin to skip insurance. According to them the motives of these customers, the fields are scattered in many places and cannot suddenly suffer from a disaster. But not neglect that large and strong city can hit almost the entire territory of the country - such cases are known to practice. A similar event may lead to large consolidators and bankruptcy.

Opponents of mandatory policies believe that the moment in which one thing is introduced as mandatory, it people begin to see it as a kind of tax, respectively respect, but only to respond to the request, not because they expect real benefits from him. As a result insurance starts making only formally lost the true meaning of insurance. Others occupy an intermediate position on this issue and believe that it is good to have compulsory insurance at a reasonable value for the strategically important crops like wheat and corn. For other crops producers should overestimate yourself whether you will protect production through insurance or otherwise.

CONCLUSION

Insurance is an essential tool for risk management in agriculture. Another issue is that insurance as a tool is still poorly spread in Macedonia - only ten percent of the total arable land in the country are insured against natural disasters. They become catastrophic and the damage is greater. However this situation is not encouraging for farmers so they have to think how much lost they would save with insurance.

Experience shows that insurance companies conclude the insurance contracts

performed only major manufacturers, as well as those who have suffered damage, natural disasters or fires. Insurance begins to speak in years with large natural cataclysms, like drought, flood, hail, etc..But in times of economic crisis, the tendency is to reduce the concluded insurance contracts.

The problem in Macedonia is statistical - data that insurance companies do not disclose are not from the specific type and rarely vary as insurance to domestic animals or crops and fruits. They are included in the total income premium in property insurance.

Macedonia as a "candidate" for entering the EU is influenced by European agricultural policy. Decisions on adaptation of agriculture to current climatic conditions are identical. The impact of European programs for insurance and reinsurance in our stretch through the project "Europa Re".

After Albania, Macedonia is the second country into the region to adopt the project "Europa Re" for the development of markets for insurance of risks of natural disasters in Southeast Europe, and in 2011 began proceedings to initiate it. With the introduction of the Law on loan to fund the project are met all conditions of Macedonia to sign a shareholders' agreement, which in 2012 officially became a shareholder of the specialized company for reinsurance of risks from disasters "Europa Re", which will be owned by the region and operated by international experts.

This project is realized with the support of the World Bank, with a tendency to develop modest insurance market in the country, and the benefit to the user experience and the state. The company will operate in accordance with the legislation in Switzerland and will operate in the markets in the region, which will introduce new products appropriate for each country. Macedonia contributes the project with 5mln.euro.

Agricultural insurance has prospects to develop and expand only if proper policy-development factors that determine this sector.

Recommendations for successful development are related to the subjects from which depends the development of this sector as insurance companies, farmers and government. From analyzes of the problems facing the insurance of agricultural production we can summarize the recommendations to increase the insured farms as follows:

- Into the Law on Agriculture and Rural Development, should propose a solution to protect the insured farmer in fulfillment of the requirements for crop insurance, fruits and animals and to regulate improper valuation of the damage and repayment of the damage.
- Ministry of Agriculture, Forestry and Water Management should establish agency for risk management, which through quality solutions for risk management (insurance) will strengthen the economic stability of the Macedonian farmers.
- Into the state subsidy, i.e. the "Help insurance premiums", despite the major risks it should include at least two types of risk in additional insurance.
- Insurance companies should extend the program, which will offer more coverage of risks and products within the scope of insurance.
- Insurance contracts and policies should be - less complex to the insured or to be simpler.
- Organizing debates and campaigns at the regional level, which will refer the importance of insurance as a unique tool for risk management by introducing the models and the requirements for insurance in agriculture, as well as state aid, which is available to potential contributors. At these discussions should include representatives of various associations of farmers, farmers, representatives of insurance companies and representatives of state institutions such MZSV to raise awareness of the need for this type of insurance especially in the coming years.
- The agricultural production should be insured through various forms of association of farmers, in order to benefit from the favorable insurance services and promotions.
- Considering the drought years, that will follow during the summer, an

alternative approach is to develop a collective system for compensating, and where compensation payments will be based on an external index intended to reflect the losses of farmers. Such schemes are known as insurance-based index. "Area-yield" – is an insurance program where the index represents the overall profitability in a particular geographic region. Insurance contracts are based on an index of weather conditions, where the index is based on some synoptic parameters (eg, precipitation, temperature).

Of great importance is Macedonia as a country to participate in such programs funded by the World Bank and European Union for agricultural insurance based on indexes or indicators of weather. Insurance-based indexes, based on cumulative rainfall, cumulative temperature, average revenue per region, livestock mortality and indicators associated with them can be a solution for uninsured losses caused by various natural disasters in countries with lower incomes as Macedonia.

Unlike traditional insurance, which represent paid compensation in respect of individual losses, insurance-based index of the payment based on the realization that the primary objective measurement of the index (i.e. the amount of cumulative rainfall or temperature over the whole period or in a particular area, the average mortality rate of animals by species), which is strongly associated with the loss of the insured.

For example, the insurer will propose an agreement that will determine the index (eg, rainfall), during which and where it will be measured, rate, insured sum and limits of compensation. If rainfall is less than the index of a particular point of measurement for the period specified in the contract, the insurer will pay the amount under the contract, regardless of the actual losses of the policy. The amount of payment is determined in accordance with the provisions of the contract.

A basic payment may be total insured amount in the contract. Insurance-based index has three main components. First, requires a well-defined index

and level of damage that will trigger payment under the policy. The index should be strongly correlated with the total insured sum of loss and is based on the data sources that can be easily manipulated by the insured or insurer with adequate historical data to estimate the probability of occurrence and distribution of Index for proper formation of prices and risk exposure. Second, it requires a well-defined formation of prices specific to a particular place and time. Third, the agreement clearly required to specify the time period for payment of compensation and the structure of all customers, depending on the index of the specified level of damage reached an agreement.[9]

The benefits of this insurance is suitable for rural regions in Macedonia, where the risk varies and high transaction costs make conventional insurance contract commercially unfavorable. Besides insurance contracts based on an index to avoid hidden information and moral hazard (hidden behavior), because indexes are not individual, they categorically determine the risk of shifting and insurers under contract with place and time. Insurance companies and insured clients only need to follow the index, to know when to be paid. Finally, it is important that the insurance of agriculture, the greater the likelihood of getting easier for small farmers with low administrative costs and pay the fee once.

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ANALYSIS OF THE ORGANIZATION OF THE NARCOTICS CRIME, WITH SPECIAL EMPHASIS ON PENAL POLICY IN MACEDONIA

Stefan Budjakoski[1]

ABSTRACT

The narcotics crime exists in a complicated criminal environment characterized with certain legalities, principles, and with a certain organizational set up. The particular set up means the organizing of all the links which, make the chain of production (secret fields and workshops) to the final destination (the consumer) in the big consumption centres. The members of the chain of contemporary organized narcotics crime are well -trained and organized people following the principle of collective working and connection in the organization. During the production and trading of narcotics they apply examined methods and resources which, they keep advancing. All members of these criminal organizations know their role and obligations coming out of the regulations which rule within the organization, they know their duties from different aspects, such as production, organizing a transport channel, storing, finding a market, drug dealing, and so on. In theory the set up of the organization of the people involved in the narcotics crime according to their roles are presented in a pyramid scheme or in chain. The internal structure and connection of these people in the criminal organisation is founded on a system of protective measurements, which means: on every link of the chain, the people involved in the crime have data of the other person involved only as much as it is necessary for their obligations within the criminal organization; for

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every member conspiracy is the main duty, that is why there is a controlling system through which they observe each-other; they receive their duties through intermediates or in a another way through coded expressions or similarities. At the top of the pyramid or chain is the financer of financers who invest in this business because they know their return of the investment will be multiple. Politicians who win elections, whose campaigns are financed from criminal organizations make it possible for the financers to reach the top of the government. In every continent in the world there are international criminal organizations whose main activity is production and trading narcotics, which is closely linked with money laundering and corruption.

Keywords: narcotics crime, criminal organizations, penal law regulation.

INTRODUCTION

In the social pathology and criminology, it is usual to make typologies of individual phenomena, mainly phenomenological features of the phenomenon. So in the social pathology we are talking about sociopaths. They also include all kinds and forms of addictions (alcoholism, drug addiction, and others), and in criminology we are talking about certain types of crime: property crime, tourist crime, crime of violence. The type of crime is determined by embattled facility or characteristics of the wearer of the appearance. When it comes to drug abuse, which is based on the widespread various forms of drug crime, in our opinion there are many elements that justify the establishment of a specific type of crime, with special phenomenological characteristics imposing the need of special methods and means for its prevention. That kind of crime is named as "narcotics crime" which covers the emergence of

production and trading of drugs, psychotropic substances and precursors. That thing which every time stimulates this crime is disproportionately high profits which they acquire with the production and trade of drugs and thereby enable continuous improvement of means and methods of production and ways of selling and distribution, as well as major investment funds in the protection box persecution, reducing the risk of being caught and detected by the police. What makes this crime particularly difficult is its organization and transnationality. The organization of this crime is conditioned by the fact that the production of drugs is a complex process that requires the involvement of many people from different professions. Even more complex is the process of transporting and selling, deliver of drugs, which include many professions, different vehicles to dealers who deliver drugs. It requires great organization, professionalism and skill. On the other hand protection of production and transport, delivering of detection also requires a special organization that thrives on work and functions over the strict discipline, over the law of "silence", hierarchy and other features which brings the organized crime. Special importance and weight of this crime, as no other, gives the characteristic of transnationality. Using the politics of globalization which involves the spread and development of free trade, this crime has a wide area of distribution on all continents with strong professional ties to criminal organizations and groups in a common activity. All these elements justify the introduction of a new type of crime as we call "narcotic crime". In addition to this insistence goes the UN Convention on Transnational Organized Crime adopted in Palermo, also signed by our country.[2] The narcotics crime exists in a complicated criminal environment characterized with certain legalities, principles, and with a certain organizational set up. The particular set up means the organizing of all the links, which make the chain of production (secret fields and workshops) to the final destination (the consumer) in the big con-

[2] *UN Convention against transnational organized crime and, Assembly of the United Nations, New York, 11-15. 12th 2000 Palermo Italy.*

sumption centres. The members of the chain of contemporary organized narcotics crime are well trained, and organized people following the principle of collective working and connection in the organization.

During the production and trading of narcotics they apply examined methods and resources which, they keep advancing. Every member of these criminal organizations know their role and obligations coming out of the regulations which rule within the organization, they know their duties from different aspects, such as production, organizing a transport channel, storing, finding a market, drug dealing, and so on. In the initial destination, in the countries where drugs are produced, initially is funded in fields of poppies, coca or cannabis. Here, the drug is produced as a raw material, intermediate (coca paste, morphine base, etc.),[3] or finished products, and then in an organized manner is placed in countries where is processed or sold, mainly in Western Europe or America. In the production of drugs are hired experts who know the technology or pharmacology. With the development of the chemical industry, such experts are hired in the manufacture of synthetic drugs, as well as finding new types of drugs obtained by chemical way.

In the production of drugs are engaged experts who know the technology or pharmacology. With the development of the chemical industry, this kind of experts are engaged in the production of synthetic drugs, as well as finding new types of drugs produced by chemical way.[4] The production of drugs so far is performed in clandestine laboratories which are placed in different regions, cities, villages, forests and in inaccessible desert parts. Stationing of laboratories depends of the climate where natural drugs are cultivated, of the type and quantity of drug, which is produced, the state etc. There also exist primitive laboratories mostly hidden in houses and other ancillary buildings in the

3. *Each member of criminal organizations dealing with drug crime is subject to checks.*

4. *In Poland, professors of chemistry are included in the process of illegal production of ecstasy.*

5. *Therefore on the market can be found same drugs but with different shape, color, chemical structure and other characteristics.*

settlements, which are designed for production of small quantities of drugs.[5] Both types of laboratories in the production of drug use chemicals and adequate equipment that can serve as an indicator in the process of revelation. In its hierarchical, organizational structure, in fact, the people involved in drug crime, according to the theory of role association, are displayed in pyramid or in chain. The internal structure and connectivity of these individuals in the criminal organization are based on a system of protective measures: in all links in the chain, the people involved in this crime for the other person, know as much data as much as necessary for its obligations in the criminal organization, the conspiracy of all members is the most important task, therefore there is a control system and monitoring; they receive the tasks directly or with the use of coded expressions etc. On the top of the pyramid or in the highest link of the chain, there is a financier or financiers who invest in this business, as they know that the invested funds will return to them multiplied. The prosecution authorities reach these people with a great difficulty, because of the principles and legalities that govern in this organized crime. The practice has shown that the number of financiers who ended up in prison is very small, such as those Colombian and Bolivian bosses who are caught by the U.S. DEA and FBI. Due to the tough detection of the financiers, drug crime in the last years has prospered a lot in the world.[6] The motivation of those involved in the narcotic business, especially those in the higher scale, to invest in the narcotic business means an easy and comfortable life, with lots of money that forced them to stay in the business. Some experts call this crime "crime of greed, fear and corruption"[7] as the main weapon of the financiers is the corruption of top officials and civil servants working in the police, customs, judiciary etc. In some countries there is a complete criminalization (Columbia, Bolivia, Peru and other countries), which means that the state authority is in the hands of the criminal organizations dealing with drug crime. Those are peo-

6. *More about the world trends of the organized crime see on: Encyclopedia of organized crime. Doc. 13*

7. *If the person who is deprived of liberty doesn't reveal the most important information about criminal organization, he will be rewarded with wealth, his family will be supported etc. otherwise the person will be brutally punished.*

ple who have been brought on authority by the criminal organization in the pre-election campaign. In this way, the financiers have reached on the top of the country. They are the law, doing their business freely, and they are protected from the measures of other agencies of the countries where drug is distributed. On every continent, there are international criminal organizations dealing with production and drug trade, which is closely related to money laundering and corruption. In the last decades, these criminal organizations started to link themselves in the production and drug dealing.

1. ORGANIZATION OF THE NARCOTIC CRIME ORGANIZATIONS

The best known criminal organizations: Colombian "Cali" and "Madeleine" cartels, the Russian mafia in the Eurasian region; Asian: China, Japan and Korea; middle eastern Nigeria, Egypt, South Africa, Iran, Iraq and Pakistan, American, Italian, Turkish and other minor criminal organizations in Western Europe. They all deal exclusively with drug trade, especially with street sales.[8] In fact, all criminal organizations dealing with drug crime, in theory, nevertheless they are in pyramid or in chain of related people, they are all the same or similar. As a typical example of the highest form of organized crime associated with the production and drug dealing is the Colombian mafia organized in two criminal organizations "Madeleine" and "Cali" cartel. These two criminal organizations are the largest producers and sellers of cocaine in the world. Besides the transformation of coca leaf into coca paste from their own production, they repurchase coca-paste from Bolivia and Peru and refine into cocaine. Due to the similarity of the organizational structure of all criminal organizations that are dealing with drug crime I will show the organizational structure of the Colombian "Cali" cartel. At the top there are financiers (leadership). People who can maintain contacts with them are the financial consultants;

8. In America, the street sales of drugs are in the hands of the black criminal organizations.

people who mediate and keep trade and transport companies all over the world (the drug is transported through them) and directors of cells. Each cell is divided into two sub cells, led by a sub cell leader. With the director of the cell can only contact the sub cells leaders. These sub cells serve for further sales of drug. The division of a cell into two is for security from disclosure. Each sub cell managed by a leader consists of bookkeeper, chief (responsible) chairperson in the house, employee who investigates with whom to collaborate in drug dealing, finding new markets; an employee who pays debts, bring the money in banks; maintainer of motor vehicles and other personnel. Within this organizational structure there are people who perform the transportation, storage, sales and payment. Every criminal organization that deals with drug trade has its well developed roads, and canals to transfer (transport) the drug, from production region to consumers, from one continent to another, from one country to another, up to the street sales. In this process are involved more people from lower scale: conveyors, market researchers, organizers of canals for supplying that market, researchers of the methods and the manner of operation of the police and customs, their weaknesses, and the possibility for corruption. In that way the criminal organization creates a worldwide distribution network of drugs. That network is expanding continuously because of the increased interest for opening new markets.

1.1. The road to drugs

The drug market is divided in wholesale trade and retail trade. The wholesale trade is consisted by taking over the drug from production, distributing and storage on a specific places in a larger quantity. From these warehouses the drug is resold to other criminal organizations, taking it as retailed trade also known as a “street sale”. The wholesale drug trade is helped by trading companies who smuggle the drug cov-

[9] *Discovered case of Ohrid airport, while attempting to face Albanians plane to deliver a kilogram of heroin hidden in his clothing.*

ering it by the legal business. The drug transport is done in several forms: waterway; by ships, airway[9]; by aircrafts, on land; by vehicles and by railway, while smaller packages of drug are distributed by postal order and special couriers. The drug transport and establishing transport channels depends on the area and the country where the drug is required. Manufacturers of drugs are usually the developing countries and the biggest customers are the industrially developed countries that have higher living standard. Lately, the drug industry has spread also in the less developed countries such as the communistic and so on.

The first point for drug transport are the countries of Southeast Asia, so called "The Golden Crescent"(Pakistan, Afghanistan, Iran);"The Golden Triangle" (Laos, Thailand, Burma); countries manufacturers of synthetic drugs (The Netherlands, Poland, Bulgaria) and other countries where is produced small quantity of drugs. Turkey is the biggest crossroad for drug smuggling in Europe, by the report of the American State Department. According to the same report, 70% of the confiscated quantity in Europe either has only passed or has been processed in this country, which in the last years has gained twelve times more of the poppy production. There is an information, that "Kurdistan Worker's Party" is involved in drug production and the drug market. As a consequence of the natural connection with Republic of Macedonia with the countries of Southeast Asia,(through Turkey) with the countries of West and Middle Europe, through our country are passing thieves of the drug transport for these countries, so called "The Balkan Road". In our country have been registered a small number of drug cases transported by aircraft, railways and the post office. For efficient discovery of the narcotic crime, the customs and the police should be more familiar with the forms of drugs,[10] what transport is being used, where the drug is hidden, where does it come from, what type of drug

10. More for ways to hide drugs in land vehicles, see: DEA, RD-01-90 of 11.15.1990.

has been transported, which ways are being used, the time and place of passing, the final destination, people who transport the drug people who will follow the package and so on. The narcotic criminals in the drug trade are implementing elaborated methods and means for drug transport and their storage and for successful discovery is needed their good knowledge.[11] Very often, during the drug transport, narcotic criminals are implementing additional methods for package protection depending on the value, emergency, quantity and so on. These kind of packages are often controlled by other people who have the task to follow the road of the package and make choice when is the best time for crossing the border. The road of the package is followed all the way to its last destination. People who have this type of assignment are usually capable for establishing fast communication, they are cagey and capable to bribe a duty officer or a policeman if they notice is needed to do so. We can make a conclusion that every participant in the narcotic criminal knows his role in modus operandi that is applied during the drug transport of all his links in the chain. If it comes to mode debunk for delinquent tactic and the technical implemented by the narco criminals, what they first do is change people and if this is without success, they change the way of the drug transport. If still exists danger for discovery they change the stations and the place of the organization. In these situations they boost the caution methods and self-control, they also input perfidious examinations of the suspicious members by announcing important information where they also send a vehicle with a suspect that is transporting drug towards searching the leaker. These people are strongly punished. In the practice narcotic criminals imply trap tactic for the agents of the persecution; they send a vehicle with a small quantity of drug ,so called, “scapegoat” for what they announce a certain description of the vehicle. Once this vehicle is discovered, they pass the border with a bigger quantity of drug as long as it lasts the panic on the border with the “scapegoat” drug

11. *Convenience for the police to throw such changes his man.*

founding. When the drug is being transported to its final destination, there are smaller criminal organizations that are delivering it to the street market through their own dealers or dealers – drug consumers, who, to sell it again are buying it from people who keep it and packing it in a smaller quantities. These people- dealers are implying special tactics and techniques for drug selling. The narcotic crime in Macedonia can't actually be identified with the criminal model that is implied in other countries in the world. At the moment, in our country has not been found criminal organization, but there are identified that some of our citizens are involved in the international narcotic crime from a lower scale.

According to the roles, they use specific delinquent tactics and techniques that apply to:

- founding importing model and drug transit;
- ransport organization;
- keeping, stashing and drug packing;
- repacking in a smaller quantities;
- drug selling (smaller and bigger quantity, street sell);
- tactic for gaining new drug consumers and
- producing certain type of drug.

1.2. Narcotic – criminal in Republic of Macedonia

The complexity of the narcotic crime and perfidy of the narcotic criminals all over the world are saying enough for its organization. Narcotic criminals that are involved in the narcotic crime in our country are implying the tactics and techniques that have learned it from the foreign countries in the segments mentioned above.

Despite this character and structure of drug delinquents in Macedonia,

you cannot say that there are professional groups in the style of "Kali" and "Madeleine" cartels, but there are beginnings of organized groups that spread the drug market in the northwestern part of the country. The main task of drug-delinquents is to obtain larger number consumers, and to conquer new markets. Some consumers appear as drug dealers who sell in order to provide the required quantity of consumption for themselves. These two categories of people in each case's are drug consumers, and in some cases they appear as executors of criminal acts related to drug abuse. Drug dealers are people who sell drugs at retail, so-called "street selling", where they use special tactics and technique of storing, packaging the drug in small quantities (gram dose line (slash), etc.) and selling drugs. As a final step in drug crime, drug dealers are in direct and close connection with consumers and consumers-dealers of drugs. The sale applies various ways that often change, but most drug sales are carried out in their homes, on the street, through intermediaries or drug consumer, who supply the more consumers. The stretches of this branch of international drug crime fits perfectly in complicated delinquent tactics and techniques that drug-delinquents apply. In all this our citizens, who are involved in this crime, have a significant impact. In addition to the people in the country, involved in drug crime, follows the absence of implementation of modern methods of detection of this crime, which legally are not yet regulated.

2. CRIMINAL LAW REGULATIONS OF DRUG CRIME IN REPUBLIC OF MACEDONIA

The nature of drug abuse is such a phenomenon that is characteristic for the whole world and it is therefore necessary internationalization of measures at international level and in relation with this there are made several international conventions and other international acts[1].

The regulation of this material stems from ratification of these regulations and the obligation for its criminal legal regulation. According to criminal law, drug abuse opens a series of questions with the object of protection, legal entity, subjects, the case, basic elements and actions of enforcement of offenses. In our legislation are provided two offenses covered by Articles 215 and 216 of the Criminal Code of the Republic of Macedonia (the major offenses against public health).[12] In Article 215 is covered unauthorized production and sale of narcotic drugs, psychotropic substances and precursors. This offense, in its basic form, consist in the unauthorized production, processing, sale or offer of sale or purchase of selling, holding or transferring or facilitating the purchase and sale or the other way unauthorized release of narcotic drugs, psychotropic substances and precursors. This offense appears in two forms.[4] The first form includes the unauthorized production and processing of narcotic drugs, psychotropic substances and precursors and the second form includes selling, selling or offering for sale, purchase, hold or transmit, or broker the sale or purchase, or in other way placing on the market narcotic drugs, psychotropic substances and precursors. According to this article, the executor will be punished who unauthorized makes, procures, mediates or gives for use equipment, precursors, material or substances known to be indented for production of narcotic drugs and psychotropic substances and precursors. According to this article of the Criminal Code, Narcotic drugs, psychotropic substances and precursors, and the substances of their making, transmission and distribution are deducted. Due to the weight of the section they predict offender, except the organizer, who will unveil crime or contribute to its disclosure would be exempt from punishment. The law provides penalties if the offense is committed by a legal entity. In the article 216 is covered another indication of enjoyment narcotic drugs and precursors or giving other people narcotic drugs and psychotropic substances to enjoy or making available facilities for enjoy-

[12] *Marjanovic George, Macedonian general criminal law section. Skopje: Prosvetno act 1998:82-89.*

ment narcotic drugs, psychotropic substances or in other way to enable others to enjoy narcotic drugs, psychotropic substances. This offense is provided as a separate criminal offense, and according to legal incrimination it consists in stating someone else enjoying narcotic drugs, psychotropic substances and precursors or giving narcotic drugs, psychotropic substances and precursors to another person enjoy it or making available facilities for enjoyment narcotic drugs, psychotropic substances and precursors and in other way allowing others to enjoy narcotic drugs, psychotropic substances and precursors. There is also an aggravating form if the crime is committed against a minor or against several persons or caused particularly serious effects. While performing this criminal offense there are more types of actions of execution, stating the enjoyment and giving to another narcotics, and provide available space for enjoyment narcotics. And in this criminal offense narcotic assets are taken away. Both criminal offenses are provided in chapter XXI from the Criminal Code of the Republic of Macedonia, in the group of crimes against health.[13] The object of protection during criminal offense of "unauthorized manufacture and sale of narcotic drugs, psychotropic substances and precursors" is human health, and the effect consists in endangering the health. The subject of the crime is the narcotic drugs, psychotropic substances and precursors. The material to determine the narcotic drugs, psychotropic substances and precursors are regulated by the Law for production and trade of narcotic drugs. As criminal behaviors with less significant social threat can appear other crimes that do not belong in the criminal acts, but belong in offenses. According to current legislation in the Republic of Macedonia, at least for now, drug abuse is sanctioned under Article 23 of the offenses against public order and peace[6] and Articles 40 and 45 of the production and trade of narcotic drugs. Article 23 provided that the offense represents using drugs and psychotropic substances. In the penalty provisions of Articles 40 to 45 are provided offenses related

13. *Kambovski, V., Organized Crime, 2nd August S, Skopje, 2005, p. 363*

14. *Marjanovic, G., Macedonian general criminal law section. Skopje: Prosvetno act 1998:167-210.*

with the conditions of production, distribution and evidences for production and trade of narcotic drugs.[14]

CONCLUSION

There are different types of illegal conduct that directly threaten democracies, and narco - trafficking is one of them. It mostly affects democracy through blackmail, corruption, and the use of violence, and it works against the institutions of the state, by undermining public authorities and agencies, and also against the electoral process. Its intimidating effects gravely influence those in different sectors of civil society, especially journalists who investigate the problem. To the degree that narco-trafficking spreads to different countries, the growth of corruption and violence around the world threatens to debilitate the spread and growth of democracy. Big profit margins resulting from the process of drug production and distribution are invested in arms to meet the demands of terrorists, organized crime, or armed groups that seek to seize power through violence. It is recommended to: establish a network to enable civil society organizations and government offices fighting narco-trafficking to exchange information on their work; every country in the world should have an office that investigates corruption undermining democracy, and particularly the electoral process; develop new economic alternatives to illegal drug cultivation, which provides profits at least equal to legal cultivations and thus tends to undermine the process of bringing the business of narco-trafficking to justice; present serious cases of narco-trafficking corruption, abuses of human rights, and other attempts to undermine democracy to the international courts, not only when such activity affects a particular country but also when it affects international relations and democratic agreements among different countries.

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THE STATUS OF ORGANIZED CRIME IN THE PROCESS OF GLOBALIZATION - SPECIAL FOCUS ON DRUG TRAFFICKING

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Natasha Todorovska[2]

ABSTRACT

The process of globalization has brought many benefits in all areas; overcoming national borders, free exchange of goods, services, ideas and communications, free movement of people. It has also contributed to the improvement of the world, cultural understanding between people and a capital increase. When we talk about globalization, it is primarily referred to the economic globalization, but later, this term gains other meanings, i.e. it is contemplated and correlated with other aspects, such as cultural, political, legal etc. All this has led to a new understanding of the entire world as one big global village, and the inhabitants of earth as world citizens. But the benefits of globalization are not felt in each and every country in the world, nor are they felt by each and every human being. The biggest benefit and management of this process are in the hands of the most economically, politically and militarily powerful countries in the world. Yet, from this process many negative effects have derived, above all is the fight for taking control over the capital by multinational corporations and creating a monopoly in the world trade. The rapid development of technology has contributed to the reduction of the workforce which resulted in people being made redundant, hence increasing the poverty. This has widened the gap between the extremely rich and extremely poor. In the end, the free exchange of goods and services, free flow of ideas, information and people, and crossing the national borders led to increase in crime. Criminal groups have become more organized, linked to various criminal groups beyond national borders, and easily adaptable to new criminal activities that bring huge profits. In short, crime has become transnational,

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exceeding local, regional and national borders. This particularly applies to organized crime, especially human, drugs and arms trafficking, and terrorism -based activities that are most likely to feel the benefits of trans-nationality and profit. This means that the criminals have also felt the benefits of global values, because in that way, opened are the borders for their business and their rapid enrichment on illegal basis. Specifically for drug trade, creating new routes, new markets, increase the need for producing and selling drugs, but on the other hand, the impatience among drug mafias and their fight for supremacy on the black market is also increasing.

Keywords: *globalization, organized crime, drug trafficking, drug mafias*

INTRODACTION

Globalization is a process that involves surpassing national borders and free diffusion of goods, services, information and people. This process began in the late 19th century, but culminated in the 20th century and brought different consequences and effects. First of all, this process is associated with the economy, after that it is associated with politics, culture, security, technology, so that in the end it encompasses all segments and aspires for equality and unification of social relations. According to some points of view it is believed that globalization in largest part brings benefits in all spheres of the society. Another point of view is that the process of globalization brings benefits for certain individuals, companies or countries that have the biggest part of the economic power in the world at their disposal, whereas for others the consequences of this process are negative. In this context, if we take the crime as a starting point, we can conclude that the process of globalization has a double effect. The first effect is negative which means that crime is the result of world globalization, which allows criminals to cross national boundaries, to connect with criminal groups from other countries and other criminal activities and to make high profits. The growth of crime and its development presented in this

way indicate the negative effect of the process of globalization. On the other hand, the possibility of criminal groups to network with other groups from various countries around the world, the ability to alter the activity of action in order to gain great financial benefit, for criminals brings benefit and hence the double effect (positive) that the globalization entails. The process of globalization in terms of crime reflects and can be greatly felt through the organised crime, particularly in terms of the final result, and it is gaining high profits based on various illegal activities that receive foretoken of trans-nationality and organization. Precisely due to the above mentioned, a matter of primary interest of this paper is organized crime as a negative effect of the process of globalisation, especially drug trafficking as the most widespread form of organized crime that covers the largest percentage of the structure of organized crime and gains new features and forms in conditions of globalizing the society. This is the starting point for the assumption that globalization enables the development of new forms of crime and modernization of existing ones, by crossing national boundaries, quickly adapting to new social conditions and achieving high profit and domination in criminal circles. Therefore, the aim of this paper is by analyzing the current state of the connection of the globalization to the organized crime to devise appropriate measures and to take action to prevent and suppress the growth of organized crime, especially drug trafficking, i.e. by reinforcing the fight against organised crime and sharpening the repressive measures, to act preventively in the field of preventing and combating of this crime. The goal will serve, on one hand, to be able to practically implement the proposed measures , on the other hand can be used for theoretical explanation and upgrading the knowledge about the relationship between the process of globalization, organized crime and drug trafficking.

1. DEFINING THE GLOBALIZATION

If we look back over the years we can see that globalization as a new form of regulation of international relations had been present long ago in the past. History shows that certain relationships between small tribal communities operated in a similar way to what is now called globalization. This leads to the fact that globalization is not a new topic, especially if we have in mind all

attempts at economic and political unification of the world in the past 5000 years. These attempts that closely resemble today globalization in history are known as ancient globalization, and in the second half of the twentieth century sets in a new wave of economic relations known as globalization.

In the past, the term globalization is connected with colonization and industrialization, but today the term globalization is associated with various areas of social life, and therefore there are multiple definitions. But what is characteristic is that this concept has no precise, nor there is a generally accepted definition. In this context, it should be noted that although the term globalization is introduced in the sixties, the end of the Cold War, or the beginning of the nineties of the 20th century could be marked as the beginning of the real debate about globalization. For all this, undoubtedly, theorists of international relations have merit, who when faced with the disappearance of the block division of the world, directed their attention towards the internationalization of the world political events.[3]

Given that there are different opinions and views for globalisation, there are also different definitions. Thus, broadly speaking, globalization can be defined as the process of economic, political, social and cultural actions of supranational level that alter the established political, economic, social and cultural relations on a global level. An important determinant of this process is developing technology that allows spatial and timely shrinkage of the world.[4] According to this definition the process of globalisation has 5 dimensions, and these are: society, politics, economy, culture and environment. Globalization leads to the creation of world society i.e. sees the world as a global village, and the inhabitants of the planet as global citizens. This means that there should be no barriers to the movement of people and capital, to freedom of markets and all other liberties, to the broadest exchange of ideas and values of science, culture and creativity.

Furthermore, globalization implies increased international diffusion of market goods, services and production factors, including development of institutions that bridge over national boundaries - enterprises, governments, international

3. *Tripunoski, M., Globalization, Grafos Kumanovo, Skopje, 2007, p. 28;*

4. *Tihomir Gligorić (2007): Characteristics of people, BINA, Banja Luka, p.95;*

institutions and non-governmental organizations.[5] World Bank defines globalisation as a freedom and opportunity for individuals and companies to self-initiate exchange with citizens and businesses in other countries.

No matter what definition would be taken as the most accurate, in literature and science there are two routes that interpret globalization. Thus, for some, globalization is global planetary process of integration and civilization progress, whereas for others, is a project of domination of Western countries, especially the U.S., i.e. it is a destructive force that leads to increasing the social and economic inequalities.

In the large number of different approaches, there are generally two streams: the stream of hyper-globalists who claim that a unipolar world without wars and conflicts is being created, and the stream of sceptics who consider globalization a myth and a project of Western countries oriented at dividing the civilisational blocks. In this context there is a stream, so called current critical theory of globalization which perceives and analyzes both advantages and disadvantages of globalization.

Based on this, it can be determined that the process of globalization opens a lot of discussion, dilemmas and they all lead to the creation of different opinions, beliefs and views. But what is beyond doubt is that this process carries some positive and negative effects. As a meter of fact those effects for certain individuals, groups or countries are positive, where as for others are negative.

2. EFFECTS OF GLOBALIZATION

From the above one can see that the views of globalization in the world are different, and even go from one extreme to the other, i.e. they are diametrically opposed. Initially, the emergence of globalization has brought a series of positive reviews, but today it is impossible not to mention the negative aspects of this process. However, not only for the term, but also for the effects and impacts of this process, there are many different beliefs, so depending on that not always the same positive or negative effects are in question.

5. *Deardorff, Alan; Stern, Robert. What You Should Know about Globalization and the World Trade Organization. Review of International Economics, 2001. p. 415.*

Given that globalization is primarily associated with the economy, from its perspective, the positive effects of the process of globalization are: a general equalising of the conditions of production; equalising the conditions and regulations of domestic and foreign investment; increasing employment opportunities and opening of new facilities for economic development of countries and regions; greater freedom of movement of goods and capital; modernized and globalized economy that requires higher skills and qualifications levels and restructuring of non-profitable economic enterprises; specialization of the individual economies and countries etc. Negative effects, however, include imposing models and plans for economic development by international institutions and multinational corporations; bringing the market of cheap labour the underdeveloped countries; elimination of non-profitable enterprises by foreign investors and the release of surplus labour, opening social problems; profits from the production moves to foreign countries and financial centres, so what remains in the country is just the infrastructure; conditioning the membership in international, economic and political organisations.[6]

However, how this process evolves and gains new dimensions, the effects have impacts on them as well. Therefore, examining the process of globalization generally, as positive effects occur: countries connection, the opening new markets, getting acquainted with new cultures, important decisions made by international organizations, fighting against slavery, fighting against poverty, technology development , anti-nuclear, chemical and biological weapons and the free flow of goods, people and information. Despite the number of positive effects, there are many negative that might exceed the positive impact of the globalization process such as: increasing and widening of the gap between rich and poor, the monopoly of large corporations, the transfer of capital in Asia and Africa where the labour is cheap, increased migration and the emergence of xenophobia, dominance of the spiritual over material values, due to the rapid technological development employees are being fired since they become redundant which increases the unemployment problem, the Internet is the primary means of communication for purchase and sale, environmental pollution, global warming and a rise in crime and its advancing.

6. *Tripunoski, M., Globalization, Grafos Kumanovo, Skopje, 2007, p. 56-59;*

3. ORGANISED CRIME AS A NEGATIVE EFFECT OF GLOBALIZATION

The key organs of the process of globalization are the economic, political and militarily powerful countries in the world. Due to this, the globalization is often associated with power, and power brings profit. Thus, if we take profit as the starting point, its quick and "easy" acquisition is possible by committing criminal activities. The free flow of people, goods, services and information and technology development, allow the criminals to move freely, to associate with other criminal groups and to change their activities where the biggest profit is. On the other hand, the differences between rich and poor, unemployment, low labour costs and other similar negative effects of globalization also lead to an increase in crime, primarily in order to satisfy the existential needs. For this reason, nowadays the crime is rightly considered a negative effect of globalization, but what is interesting is that the process of globalization provides benefits for the criminal gangs.

As a new form of crime that is a result of the development of society and where, on one hand the benefits of globalization can mostly be felt, but, on the other its negative aspects too, is the organized crime. This term has been talked a lot in literature, but what is interesting is that a few years ago, many countries neither mentioned nor knew about the existence of this kind of crime. Because of this, and despite intensive discussions, there is no unified definition for this term, definition that would be universally accepted. Analyzing the organized crime in many respects, it is defined by a group of authors as a crime committed by a group of people (at least three), by other group through standardization listing of completed offenses and by a third group through determining the minimum statutory sentencing. However, in their own legislation, the countries, and the international community are united in their view of what components the definition of organized crime should contain, i.e. what are its features:

- Organization of group for committing the offense;
- Hierarchical relationships in the group which allow its guide to control it;

- Violence, intimidation and corruption as a tool/device for making profit or controlling territories or markets;
- Laundering of illegally acquired benefit? and infiltration into the legal economy;
- Ability for expansion in any new activities beyond national borders;
- Cooperation with other organized transnational groups.[7]

Thus, organized crime is commonly manifested by committing heavy offenses that provide high sentences, through which high profits are realized in a very fast way. However, in order to define any illegal activity as part of organized crime, there must be an organized group of at least three people, where there will be a division of roles and establishing a hierarchical relationship. In this respect, as an illustration one could take the actions of drug trafficking where in most cases it is a chain of participants who performed the relation: production - transportation - sale. Today, due to globalization, organized crime has diversified, gone global and reached macro-economic proportions: illicit goods are sourced from one continent, trafficked across another, and marketed in a third. Mafias are today truly a transnational problem: a threat to security, especially in poor and conflict-ridden countries. Crime is fuelling corruption, infiltrating business and politics, and hindering development. And it is undermining governance by empowering those who operate outside the law: drug cartels are spreading violence in Central America, the Caribbean and West Africa;

- collusion between insurgents and criminal groups (in Central Africa, the Sahel and South- East Asia) fuels terrorism and plunders natural resources;
- smuggling of migrants and modern slavery have spread in Eastern Europe as much as South-East Asia and Latin America.
- money-laundering in rogue jurisdictions and uncontrolled economic sectors corrupts the banking sector, worldwide.[8]

Finally, according to its features the organized crime can be said to be a result of globalization, but of course, along with terrorism and corruption is an actuality that prevents the process of globalization to improve. In fact, terrorism

7. *Kambovski, V., Organized Crime, 2nd August S, Skopje, 2005, p. 22*

8. *The Globalization of Crime, A Transnational Organized Crime Threat Assessment, UNDOC United Nations Office of Drugs and Crime, Viena, 2010 p. 6*

disputes the omnipotence of globalization and undermines its authority, the organized crime makes profits through illegal flow of money, whereas corruption prevents the power of multinational corporations to come to the fore.[9]

4. DRUG TRAFFICKING AND GLOBALIZATION

Drug trafficking is emerging as one of the most profitable forms of organized crime and one of the ways where the effects of the globalization process can easily be felt. Illegal drug trafficking is distinctive in that it allows the creation of disproportionately large profits, and nowadays appears as a phenomenon which in worldwide proportions is a serious threat to mankind and its development, since this type of crime has no geographical, national, racial or other restrictions and a growing number creates economic, social, health and political problems . The international drug trade is now worth an estimated $400 billion annually. Only the arms industry has a higher turnover than this. Like car making, pharmaceuticals or even banking, the drug trade has become a truly global industry: it knows no frontiers and has no particular national identity. It “is an organized business being carried out ... with the support of huge capital, manpower, means of transportation, expertise, influence and power. Trafficking organizations are being run like multinationals” - sums up Interpol.[10]

The expansion of drug crime internationally is prompted by more factors including: constant trend of the development of the economic plan of the international community; increasing international traffic of people, goods and information; international trade disintegration of the socialist bloc and the creation of so-called "Countries in transition" with a large presence of legal, political and value vacuum; existing differences in the approach to the problem between national legislation and international law, as a result of different legal systems, which prevents the efficient performance of international cooperation in combating drug crime.[11]

In conditions of society development, drug crime becomes transnational, which means it passes all boundaries and levels. In order to exist and pursue its biggest goal - achieving extremely high profits, a well- organized and specialized criminal network t is necessary, and therefore this type of crime is

9. *Simeunovikj, D., Nation and Globalization, Zograf, Nis 2010, p. 111*

10. *http://www.unesco.org/most/sourdren.pdf*

11. *Gogov, B., The routes of drug crime in the Republic of Macedonia, Security, no. 3, Skopje, 1998, p. 325*

now placed within organized crime. The organization of this crime is conditioned by the fact that the production of drugs is a complex process that requires the involvement of many people from different professions. Even more complex is the process of transporting and selling, dismantling of drugs which include many professions, and different modes of transport to dealers who deal drugs.[12] If we add to this the positive effects from the process of globalization such as increased frequency and mobility of people, improved communication and transport links, higher living standards and the opening of borders, it also enables the sale of drugs to see growth through internationalization and transnationality of this type of crime.

Furthermore, with the effects of globalization and drug trafficking new markets and new ways of transport are being opened. For example, there are three routes to transport the heroin, originating mainly from Afghanistan, Iran and Pakistan, and those are: north route, Balkan route and southern route. The very existence of these three known routes indicates that for the heroin trade there are no national boundaries, nor are there unreachable places and markets. Columbia, on the other hand, has the primacy in the production of cocaine, and once again the process of globalization facilitates the transportation and the worldwide sale.

Drug trafficking, i.e. its expansion is in relation to culture, economic development, human rights, migration, international law, environment, health, investment, technology and terrorism. These areas are associated with the process of globalization, so through their analysis, mutual connection between globalization and the drug trade can clearly be seen.

CONCLUSION

If, on one hand, globalization in its negative effects has the growth of crime, for criminals on the other hand, the globalization process brings its own benefits that are particularly reflected in the forms of organized crime. In fact, the main features of globalization are power and profit, and they have characteristics related to organized criminal groups. Only those who have power endure on the market, the power allows making profit and managing the global

crime scene on one hand, and opportunity for infiltration and control of legal processes in the countries, on the other.

Drug trafficking as a specific type of organized crime is an excellent example of the benefits of the process of globalization, in the first place through organized action chain (from production in one country, transport through other countries and sale in third), and then through the possibility of acquiring huge profits.

Hence our assumption that globalization allows growth of crime and its development and networking of criminal groups from different countries and adaptation of activities that bring the greatest profit, is confirmed. Based on this, countries should jointly cooperate in the fight against this type of crime, particularly by studying the weak points of the positive effects of the process of globalization, because they are easily abused by criminal groups, and then by studying the negative effects that also stimulate the growth of crime. In this way, the countries would overcome these problems and would manage to find an appropriate framework for preventive action for the protection from organized crime and its forms and features in the future, i.e. would be able to cope with this negative situation which is a result of the development and internationalization of society.

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