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Dear readers,

The public has almost become a kind of used to the expectation that *Horizons* scientific journal with its every new edition, to trace a new pathway towards its further establishment on the international educational and scientific-research areas.

In its pronounced strive to achieve an increased level of quality, the *Horizons* that we know from before has been transformed and now it is coming out as two separate issues of the same brand name, but with an improved recognizability and an increased particularity in terms of the scientific-research contents it brings.

It is important to stress that, *Horizons* will, for the coming period, just as it did previously, continue respecting the principles of scientific impartiality and editorial justness, and will be committed to stimulating the young researchers in particular, to select *Horizons* as a place to publish the results of their contemporary scientific and research work. Also there is an emphasized need for those who, by means of publishing This is also in line with the need to provide place incorporated within the publishing activity for all those who through publishing their papers in international scientific journals, such as the two new series of our University Horizons, view their future career development in the realm of professorship and scientific-research profession.

The internationalization of our Horizons magazine is not to be taken as the further most accomplishment of our University publishing activity. Just as the scientific thought does not approve of limitations of exhaustive achievements, so is every newly registered success of the Horizons editions going to give rise to new “appetites” for further objectives to reach.

Taken from the aspect of quality gradation, it is well justified if we announce the publishing of the international scientific journal Horizons with a significant quantifier – journal with impact factor. This initiative of “St.Kliment Ohridski” University – Bitola is given a substantial place in the future undertakings outlined in the plan for

increasing the overall quality of organization and functioning of the University.

Las, but not the least, as we have made public our future steps, we would like to express our sincere appreciation for the active part you all took in the process of designing, creating, final shaping and publishing the scientific journal. Finally, it is with your support that Horizons is on its way to attain its deserved, recognizable place where creative, innovative and intellectually autonomous scientific reflections and potentials will be granted affirmation, as well as an opportunity for a successful establishment in the global area of knowledge and science.

*Sincerely,*  
*Editorial Board*

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# **CRIMINAL LIABILITY OF THE PERPETRATORS FOR THE CRIME “MONEY LAUNDERING AND OTHER PROCEEDS FROM CRIME” IN REPUBLIC OF MACEDONIA<sup>1</sup>**

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## *Abstract*

Money laundering is a synonym for a procedure in which criminals, money and other proceeds from any kind are being legalized, i.e. their criminal backgrounds are being hidden by putting it on accounts or using it in the trade of goods and services to make it legitimate, so the money are part of a process that is losing its true source, and seen its final form – the laundering or legality of money. According to the lawmakers, criminal - legal liable offenders are: every natural person, responsible person, official or responsible person in the subject's face that made matters of public interest and legal persons. The successful opposition of this crime is conditioned by the legal incrimination of the crime behavior performed offenders, as well as to define their status, occupational characteristics and of course, taking advantage of certain positions and competences as well as the professional characteristics of the offenders. This paper will analyze the criminal-legal liability of every possible perpetrator of this kind of crime under the Macedonian Criminal Code and the measures and sanctions provided for offenders.

**Key words:** money laundering, offenders, responsible person, official person, legal person.

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<sup>1</sup> professional paper

## INTRODUCTION

Scientific and professional investigation of money laundering is a major contribution to building the strategy for preventing this phenomenon which causes large economic consequences - financial system and its stability, the very entry of unplanned money in the national financial system causing financial consequences, instability of the national currency, destabilization of the economy and so on. According to the latest information in the media, only in the last decade there was illegal siphon from the Balkans of 100 billion dollars. According to Natasha Srdoch, president and co-founder of the Adriatic Institute for Public Policy, 111,6 billion dollars siphoned from the Balkans, the countries from the Former Yugoslavia, Romania, Bulgaria between 2001 – 2010th. According to her, Macedonia had lost 4.6 billion dollars between 2001-2011<sup>th</sup>, or that is 44 % of the gross domestic product for 2011 in Republic of Macedonia from committed criminal acts with elements of corruption and tax evasion committed or aided and enabled by public servants, politicians and officials. The Institute for Public Policy Adriatic, along with the organization Global Financial Integrity in Washington, will begin a new study on the illegal siphoning of money from the Balkans in the period from 1991 to 2011th.<sup>2</sup>

The scientific research on the phenomenon of money laundering and criminal - liability of the perpetrators has certain contribution to investigative and judicial authorities with regard to more information about how the offenders performed the criminal activities. The means and methods of the criminal activity, and most importantly who of the perpetrators and at which stage of money laundering may act and how the criminal acts that way, whether uses only professional knowledge or uses and abuses some official powers, impacts. More should be done on confiscation of criminal incomes and education of law enforcement and judicial authorities in relation to the provision of adequate evidence and conducting criminal legal proceedings aimed at preventing perpetrators or money launderers “to be on safe”, or be free from criminal sanction for their criminal activity.

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<sup>2</sup> <http://www.sitel.com.mk/mk/od-makedonija-nezakonski-se-odleale-46-milijardi-dolari>, takeovers 02.08.2013.



## **CRIMINAL LIABILITY FOR THE CRIME “MONEY LAUNDERING AND OTHER PROCEEDS FROM CRIME” IN REPUBLIC OF MACEDONIA**

Money laundering as a criminal behavior was first criminalized in 1996 with the adoption of the first Macedonian Criminal Code <sup>3</sup> under the title “Money laundering and other criminal proceeds” which provided crimes for which the offender who in banking, financial or other economic activities floats will receive, take, or replace money knows that he obtained the drug trade, arms trafficking or other criminal activity, or otherwise conceal that it comes from these sources. Offender which will go on sale or other sale operations, items of value or other goods which are known to be obtained through narcotics trafficking, arms trafficking or other criminal activity, or otherwise conceal that it is product of such source. During the previous actions, and the offender shall be able to know that the money and other property interest is acquired through criminal activity. A qualified form is when the offence is committed by a member of the group, gang or other community dealing with money laundering and other proceeds, and it is envisaged that the money and other direct and indirect economic benefits will be dispossessed, and if that is not possible because of their transfer in foreign country, the offender will be dispossessed any property that fits the value.

The object of protection is defined as: 1) monetary, financial and 2) legal from the aspect of the acquisition and disposal of property and money in economic performance<sup>4</sup>. As the object of protection in this crime is important: 1) if the money or property acquired by the commission of the crime or there are grounds for suspicion that the money or property are illegal origin – source; 2) to determine the properties, status and role of criminal offenders in the criminal operation; 3) structure and functioning of the criminal gang, gang so detecting whether the money laundering offense is committed by an organized criminal group or gang; 4) determine the involvement of officials, or state clerks; 5) the type and amount of laundered money.

Money laundering is a subsequent criminal activity protecting illegally acquired proceeds. It is the infiltration of money or other proceeds obtained by performing criminal acts in legal businesses, payment, banking and financial operations. The focus of injustice consists precisely to conceal

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<sup>3</sup> Art. 273. of the Criminal Code of the Republic of Macedonia, Official Newspaper no.37/96.

<sup>4</sup> Petrović B., Pranje novca kako savremeni bezbednosni izazov, Faculty of Law, Sarajevo, 2009, p. 810.

the criminal origin and involvement of “dirty money” in legal cash flows . Regularity and reliability of payment operations and business and property in general, assume the money and other property goods that circulate on the market, acquired legally. If, despite this, it pours the fruits of illegal transactions and, the same, in the other multiple transmission (through bank accounts in purchase agreements etc) gains the status of legal capital gain, capital market loses its function and value orientation and becomes a sphere of unpunished termination of criminal activities. Incrimination of money laundering is, therefore, capturing the last stage of previous criminal activity, as well as their material result. <sup>5</sup>

The action of execution is putting into circulation, receipt, acquisition, replacement or breaking money, or otherwise disguise the origin of criminal activity. It's about different modalities to action that allows money from criminal sources can be found in banking, financial or other economic activities. <sup>6</sup> Emphasis is placed on money derived from illicit drug and arms trafficking, and the other criminal act should include a range of criminal behavior of offenders who are gaining money and other property values. As the perpetrator of the crime may be” **each and every person**”, or a perpetrator who any of the aforementioned modes of operation assumed action in the process of laundering criminal money, and it can be a person of, out, or employee banking and financial sector is in a position to., help in the process of money laundering.

With the amendments to the Criminal Code of 2004, it is the name that is changed to "money laundering and other criminal proceeds"<sup>7</sup> and the contents of this incrimination, by accepting the recommendations of international documents that the subject of its money laundering are not only money and property from illegal trafficking in drugs and arms, but the money of any criminal offense as a predicate offense with which was gained the illegal profit. However, the amendments to the Criminal Code of the Republic of Macedonia in 2009<sup>8</sup>, the name remains unchanged, but the essence of the work suffers more amendments, as recommended by the international community and international legal acts ratified, especially the

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<sup>5</sup> Kambovski V. , *Krivicna odgovornost na pravnite lica*, MPKPIK, бр. 2-3, Skopje, 2008, p.. 365.

<sup>6</sup> Kambovski V. , *Krivicna odgovornost na pravnite lica*, MPKPIK, бр. 2-3, Skopje, 2008, p.. 367.

<sup>7</sup> Art. 273 of the Criminal Code of the Republic of Macedonia, Official Newspaper no.19/04 u 114/09.

<sup>8</sup> Art.. 273 of the Criminal Code of the Republic of Macedonia, Official Newspaper no.114/09.

recommendations of MONEYVAL and FATF. While the amendments to the Criminal Code of 2009 there have been substantial changes in the incrimination so that the perpetrator of the basic act money laundering and other criminal proceeds, is again provided, “he”, or any person who would put into circulation or sale, receive, take, replace or change money or other property acquired by the crime or who is known that obtained crime, or convert, change, transfer or otherwise conceal the origin of such source or hide his location, flow or ownership, shall be punished with imprisonment of one to ten years. The same penalty is provided for, “HE”, who possesses or uses property or things that he knows are obtained by running the offense or the falsification of documents, reporting the facts or otherwise conceal the ones that come from such a source, or hide their location, flow and property. As acts of execution includes all modes of criminal activity in the process of laundering money through the three stages of placing, transferring and integration, but the perpetrator is anticipated, **“any entity, who assumes any criminal activity whether ordinary citizen or employee in those subjects”**. In the first state of this crime the prerequisite to go is that “the disputed money”, are of greater value<sup>9</sup>, which would mean that crime exists when the value of money subject to legalization may be smaller, but still limited and the criminalization of previous offense.

In paragraph 3, the law in some way determines the place or location of the felony by defining the legal entities in the banking, financial or other economic activities, and it is precised and the way of doing, which might be,, suggested, by staff person to direct perpetrator or, client, to make splitting the transaction, and with that action, the employee avoids legal obligation to report financial assets over 15 000 euros (legal limit for reporting to the Office of the financial intelligence). In these cases, the perpetrators can be both entities, first as offender, he, and second as an employee of a legal matters, where the split transaction is made and not done reporting, which would mean an offense or crime with elements of abuse of position and authority. Legislator predicts this real crime scenes and in paragraph 6 provides for criminal liability”an officer, person-in-charge in a bank, insurance company, a company that deals with games of chance, exchange, market or other financial institution, attorney, unless act as attorney, notary or other person exercising public powers or matters of public interest, which will allow or permit transaction or business relationship, in violation of his lawful duty or carry out a transaction against the ban imposed by the competent authority or a temporary measure determined by court or failing

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<sup>9</sup> Greater property value according to art. 122 st. 30 of the Criminal Code of the Republic of Macedonia, Official Newspaper no. 114/09

to report money laundering, property or property interest, which revealed in the performance of his functions or duties. Entities (financial and non-financial institutions) have criminal responsibility for crimes done in the process of money laundering (in any of the three phases) and criminal liability when the money laundering process is completed or already certain actions are initiated by the competent authorities and services for checking money transactions and ownership that may be in the phase of checks of the Financial Intelligence or commenced operational checks and take legal measures and actions to clarify and provide evidence for the existence of reasonable suspicion of having committed crime with elements of money laundering and other proceeds from crime. So the Macedonian lawmakers provide a new paragraph which stipulates criminal responsibility for “officer, responsible person in a bank or other financial institution or entity performing work in the public interest, which is authorized by law subject to implement measures and actions to prevent money laundering and other criminal proceeds that will detect unauthorized client or an unauthorized person information relating to the procedure for examining suspicious transactions or the implementation of other measures and actions to prevent money laundering”. This is exactly the attitude that places this action in criminal acts and in criminality with the abuse of official position elements or the so called “white collar” crime. The abuse of official position and powers of officials, the officials and persons performing activities of public interest in some way make insecure established system of prevention of money laundering. The most common motives for these crime actions are, protecting the interests, the legal entities who or which operate, and unlawful acquisition of personal assets from corruption. As a consequence, the legislature provides for criminal actions of cupidity, because of data usage abroad (paragraph 8) or negligence (paragraph 9). In the performance of official duties and powers any non-compliance with laws are active action or omission of taking legal measures and actions, which makes it as criminal conduct that must be proved.

Money laundering by all definitions of the term, and the procedures is secondary crime. Criminal money derived from any form of crime (trafficking in persons, smuggling of migrants, trafficking in drugs and weapons, robbery, receiving and giving bribes, tax evasion, etc..) But in some cases there are factual and legal obstacles in providing evidence for criminal trial or in terms of finding and prosecuting the perpetrators, and the money and other proceeds are found and secured, so a long time people ask the question: Can one enjoy in these money with criminal backgrounds? The Macedonian lawmakers stipulate the criminal liability in paragraph 10, for money laundering and other proceeds for situations when there are factual or

legal obstacles to the establishment of the previous offense and prosecution of the perpetrator, the existence of such an act is based on the factual circumstances of the case and the existence of a reasonable doubt that the property is gained with such act. The knowledge of the offender, or the duty and the ability to know that the property is acquired through a crime can be determined based on the objective factual circumstances of the case, paragraph 11. In 2004, in the criminal law is established liability of legal persons for offenses committed (for economic crimes, and of course for the criminal act of money laundering and other criminal proceeds,,) by officials or employees as legal entities, if the criminal acted in behalf of legal persons (under amendments to the Criminal Code in paragraph 12). Paragraph 13 provides confiscation of proceeds of crime and confiscation or seizure if the proceeds are not possible, consuming other property corresponding to its value.

The incrimination “money laundering and other criminal proceeds”, in the Macedonian Criminal Code is quite complex and includes multiple criminal behaviors - ways of committing the crime and complex structure of possible perpetrators, and so he actually accepted the recommendations of international legal acts for harmonization of national legislation with the European and world legislation, because money laundering is not only a national problem that needs to be explored in national terms. This crime is of transnational and organized character, because the goal of it is not only criminals to commit crime and gain illegal profit, the goal is harboring a criminal money in safe locations, and their legalization and return to the domestic economy, but as clean money acquired “in a legal way”. What is important in the national legislation is the intervention in relation to the possibility of prosecution for money laundering in cases when there are factual and legal obstacles to obtaining evidence and prosecuting perpetrators of predicate offense. It is no longer need a prior conviction for the predicate offense, it is sufficient evidence that are relating to the actual circumstances of the case and the existence of a reasonable doubt that the money or property subject to money laundering are derived from any criminal activity. The emphasis should be put on the professionalism and constructiveness in the planning of the measurements and activities of the prosecutor, who, in accordance with the amendments to the Criminal Procedure Code, has the lead role in the investigation of a crime.

According to the analysis of the content of incrimination, “money laundering and other criminal proceeds” following categories of perpetrators of this crime are separated as follows:

- **HE** - any person who undertakes any criminal activity in the process of money laundering, according to the ever investigated money

laundering schemes, often as perpetrators in the first stage of placing the input of cash on account or placing the cash account in a different manner or in phase with the preparation of financial documents for the transaction of money transfer from account to account or property contracts on the basis of which a transfer of money or other property is made, in the third stage of course is the very integration of money or commonly known as enjoying the money from crime, which is one of the indices in criminology as the beginning of a criminal investigation criminal situation and determining the existence of crimes in out of which perpetrators gained the “visible wealth”.

- An official or responsible person in a **SUBJECT** - that the use or breach of the statutory duty will act criminal in several ways including: failure of limited or questionable transaction, will enable or allow transaction or business relationship contrary to law, act upon court order injunction or temporary measure transaction or business relationshi. The offender acts criminal within his official duty arising from the performance of function (director, officer) or tasks (treasurer, clerk), a person who performs public interest duties (lawyer, notary) and so on. This category of offenders have criminal responsibility for violations of the laws in their work, especially the law on prevention of money laundering and financing terrorism, and legislator envisages responsibility once it started criminal and financial investigation of criminal cases and certain checks and providing information required for the investigation or checked in the subjects. Disclosure of such data or providing information that the client behavior is under investigation in something you might be found responsible for, because that way they are helping the offenders to react in moments when the court will still haven't made the decision for providing the money and property and their “transfer on a safe place”, certainly with the help of the offenders once again among the officials and officers of entities.

- **LEGAL PERSONS** - It is assumed that criminal liability is based on the attitude that as being real legal person it does not hold only rights, but also obligations, including the obligation to perform their activities without any harmful effects. The legal person shall be liable for the offense of money laundering and other criminal proceeds in cases where an official, authorized person or any other person acting in criminal behalf or on behalf of the legal person crimes in the area of his duties and powers or lack of proper supervision by a collective management body that are is in cause - effect relationship with the criminal action and the consequence occurred. The legal entity is also responsible in the case when the conditions for the other elements of the crime are fulfilled, committed by a person or any other legally prescribed offender, if the reason given is excluded of individual fault (mental disorder, confusion, death of the offender), and the offense is

committed in the name on the account and on behalf of the legal person. It is the basis for a parallel and autonomous responsibility of the legal person. The concept of autonomous responsibility of the legal person is not grounds for rebuke in individual subjective psychological elements (awareness, willingness), but the collective will and conscience of the legal entity (all members of its organs, and all workers are aware of the legal entity that incorporated into a separate legal entity fails to perform crimes, but to carry out economic and other activities). It is assumed responsibility for the organization of the legal entity, such as guilt in a wider sense of social tolerance requirements for proper and legal operation of the entity.<sup>10</sup>

## CONCLUSION

Criminal - legal analysis of liability of the perpetrators of the criminal act of money laundering and other criminal proceeds, has a unique contribution to the law enforcement and judicial authorities in order to accurately differentiate the criminal role of each of the perpetrators in the process of money laundering .Anyone who had a particular role in the crime of money laundering should be held criminally responsible. Especially, it needs to pay close attention to the responsibility of the perpetrators of official status, responsible persons or entities involved in matters of public interest, because without their criminal activity, much harder criminals of the first crime would have laundered their criminal money.However, the degree of corruption in the action is particularly pronounced in money laundering, without corrupting officials and officials of the subjects, the extent of money laundering would be much lower than the real one. Assistance or support, by these people gives, “warranty” to the criminals to protect their criminal proceeds and money and enjoy the fruits of crime. T he Macedonian criminal law defines the possible abuse of officials, the officials and persons performing activities of public interest, but it's only provision in the law, that their operationalisation is in direct correlation with expert and professional knowledge and experience of law enforcement agencies that need to reveal the crime of money laundering and provide evidence for offenders, and judges on the basis of evidence not only impose sentences, but also to impose measures of confiscation of criminal proceeds. The biggest prevention of this crime are well researched criminal - legal events and sentences and measures of confiscation against offenders. Or as the folk proverbs say, greatest punishment is imprisonment, the biggest punishment

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<sup>10</sup>Kambovski V. , *Krivicna odgovornost na pravnite lica*, MPKIIK, бр. 2-3, Skopje, 2008, p. 339

is hitting to the pocket of the perpetrators (or confiscation of money and property).

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**POSITIVE DISCRIMINATION OF THE MINORITY  
IN THE REPUBLIC OF MACEDONIA AND THE  
CAUSING OF DIRECT DISCRIMINATION OF  
MAJORITY, RESULTING WITH FORCING AND  
PRODUCING OF UNPROFESSIONAL AND BAD  
QUALITY PUBLIC ADMINISTRATION<sup>11</sup>**

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**ABSTRACT**

Discrimination as a concept incorporates three elements: Activity (manifested as: distinction, exclusion, limitation or preference (providing greater opportunities), Causes for the specific activity (personal characteristics of a person) and Aim or effect of the specific activity (preventing a person to practice his rights and freedoms in the same way as others). The subject of this paper is the positive discrimination (affirmative action of the state) on the minority, precisely "justified" deviation from the basic principle of formal equality in Macedonia and how this positive discrimination causes direct discrimination on the majority of citizens in the Republic of Macedonia later resulting with a forcing and employment of an inappropriate and unprofessional cadre in the public administration (law enforcement agencies). Special accent is placed on the instructions from The Ohrid framework Agreement concerning non-discrimination and equitable representation of minorities in the Republic of Macedonia and analysis on the quality of the first four generations of students at the Faculty of Security – Skopje from the very entrance enrollment through graduation finally to employment in the public sector based on ethnic affiliation

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<sup>11</sup> review scientific paper

**Key words:** Direct discrimination, Ethnic minority, Human rights, Positive discrimination, Public administration.

## INTRODUCTION: THE MEANING OF DISCRIMINATION

Being born anywhere in the world means having basic human rights and freedoms that every country has an obligation to guarantee to every citizen of its own. Beside all the other human rights, every human being has a right of not being discriminated by any basis. The term discrimination has Latin roots and its original meaning was “making distinction”. But through the times, this word was not used as neutral word anymore and today when the term discrimination is used it is understood as “non-permitted distinction”.<sup>12</sup> The two, maybe, most important international documents, The Universal Declaration of Human Rights and the Convention for the Protection of Human Rights and Fundamental Freedoms, also have given an important place to non-discrimination. The first one, the Universal Declaration of Human Rights, in its article 7 says that *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.*<sup>13</sup> The Convention for the Protection of Human Rights and Fundamental Freedoms in article 14 prohibits the discrimination. This article says that *the enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.*<sup>14</sup> The European Commission and European Court of human rights have interpreted Article 14 from the European Convention of Human Rights which contain non-discrimination provisions. This article is not framed in general terms of equality before the law or equal protection of law, i.e. it does not guarantee

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<sup>12</sup> Renata Deskoska. “The right of non-discrimination and affirmative action” *Iustinianus Primus Law Review Vol. 1:1* (2010): 1

<sup>13</sup> Article 7, Universal Declaration of Human Rights, available at

<sup>14</sup> Article 14, The Convention for the Protection of Human Rights and Fundamental Freedoms.

the general right not to be discriminated against. It guarantees only non-discrimination in enjoyment of the rights set in the European Convention. Compared with other international documents, as are Universal Declaration on Human Rights and International Convention on Civil and Political Rights, Article 14 of the European Convention of Human Rights regulated equality and non-discrimination in a very restrictive manner. It does not create a separate “right to equality”. Because of that the right of Article 14 is called “parasitic right”. In the interpretation of the Commission and the Court the principle of non-discrimination could not be construed to operate independently but only in relation to the violation of one of other rights. But, they do not maintain this as consistent view. Later, they recognized that the insistence upon the specific violation of another article before Article 14 could be invoked deprived the non-discrimination provision of practical value and they held that there could be a violation of Article 14 in association with another Article of the Convention, even where the other Article had not itself been violated.<sup>15</sup> Also the Constitution of the Republic of Macedonia contains a guarantee about the equality of citizens in rights and freedoms regardless of the sex, race, and color of the skin, national and social origin, political and religious belief, property and social status. In its core this words contain the prohibition of discrimination.<sup>16</sup> Because of the main goal of this paper, is the positive discrimination of minorities in Macedonia, first we’ll explain in a few words what does this term means. Affirmative action or positive discrimination means leading of the governmental policy in which directly or indirectly the members of certain usually racial or national groups are given preference in employment, enrollment in the universities or in distribution in certain social goods. At the beginning affirmative action was justified with the need to give to those groups compensation for the discrimination on which they were exposed in the past. Later affirmative action was justified with the social benefit of creation of integrated society, i.e. the need to find most rational method for distribution of the limited recourses in the community. Affirmative action is carried through the principle of proportional representation and introducing of the quota for certain groups.<sup>17</sup> When positive discrimination is used in a society than the equality of opportunity is turned into equality of achievement. The first one means that every member of a group competes under equal opportunities. The second one demands intervention from

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<sup>15</sup> Renata Deskoska. “The right of non-discrimination and affirmative action” *Iustinianus Primus Law Review Vol.1:1* (2010): 2

<sup>16</sup> Constitution of the Republic of Macedonia, article 9

<sup>17</sup> Renata Deskoska. “The right of non-discrimination and affirmative action” *Iustinianus Primus Law Review Vol.1:1* (2010): 7

society to obtain “wanted” results. Also, sometimes this affirmative action is seen by the other groups as a direct discrimination to them.

### **REPUBLIC OF MACEDONIA: THE INDEPENDENT LIFE, THE CONFLICT AND THE OHRID AGREEMENT**

Republic of Macedonia started its own path on the 8<sup>th</sup> of September 1991, when Macedonian people choose to continue in their own country outside the Yugoslavian Federation. From the start, the independent republic recognized the entire national minorities and guaranteed them legal equality politically, economically, socially. Its protection of their cultural and educational rights went beyond the requirements of either the UN or the European Union charter. In fact, its policies, which were more liberal and tolerant than those of other multi-ethnic states in Eastern Europe, contrasted sharply with no recognition of Macedonians in the neighboring Balkan states.<sup>18</sup> With a population of around 2 000 000 inhabitants from which 1 200 000 Macedonians and more than 500 000 Albanians, Republic of Macedonia is an example of multicultural, multi religious and multilingual society. Living in a same country, minorities and Macedonians lived peacefully and conflicts were avoided on this soil only till 2001. Ten years after the birth of the new country, Macedonia felt the long hand of war. The conflict in Macedonia in 2001 was between an armed guerrilla group on one side, National Liberation Army (NLA), and the Macedonian security forces, police and army, on the other side. The NLA was mostly comprised of Albanians, and claimed to be fighting for the improvement of the rights of this minority population, while the Macedonian security forces were comprised mainly of ethnic Macedonians. Thus the conflict had a strong inter-ethnic dimension.<sup>19</sup> The “naive” provocations along the border with Kosovo till the middle of 2001 were close to become a new civil war in the Balkans. The conflict was spread into the western and northern part of Macedonia with a potential to become even worse. The result was an international political intervention. Obviously the international community has learned from its own mistakes during the war in Yugoslavia and then on

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<sup>18</sup> Andrew Rossos. *Macedonia and the Macedonians: A History*. (Stanford: Hoover Institution Press, 2008), p.278

<sup>19</sup> Nenad Markovic, Zoran Ilievski, Ivan Damjanovski, Vladimir Bozinovski. *The role of the European Union in the democratic consolidation and ethnic conflict management in the RM*. (Skopje: Iustinianus Primus Faculty of Law). p.5

Kosovo, and this time entered into “the game” earlier than usually. In July 2001 under the pressure of the United States and the European Union, a governing coalition of all Macedonian and Albanian political factors was formed and on 13<sup>th</sup> of August 2001 the Ohrid Agreement was signed, which step marked the beginning of the end of the bloody conflict. The Framework Agreement signed in Ohrid on 13 August 2001 proposed a series of constitutional and institutional reforms designed to reduce power asymmetries between the Macedonian majority and the Albanian minority in the field of language, representation in the public sector and the political process, decentralization and education. In exchange for these, the Agreement reaffirmed the territorial integrity, state unity and the sovereignty of the Republic of Macedonia, and federalization was explicitly excluded. In addition, NLA fighters committed themselves to giving up their weapons and returning to civilian life.<sup>20</sup> The implementation of the FA was guaranteed through a military and civilian international presence. A NATO mission, Essential Harvest, was deployed to oversee the disarmament of former Albanian rebels and destroy their weapons. It was followed by two other NATO operations that focused on preventing clashes in the former crisis areas, and providing military advice to security sector reform activities. As the security environment improved, the EU took over from NATO and deployed its first ever military mission, Concordia, in March 2003, followed on by civilian police missions. The civilian/political side of post-Ohrid crisis management was placed in the hands of the Office of the EU High Representative in Skopje with a strong involvement on the part of the OSCE.<sup>21</sup> The Ohrid Agreement called for constitutional and legislative changes to expand civil rights for minority groups. Such rights included greater representation in the civil service, the police, and the army; official use of Albanian in districts with an ethnic Albanian majority; and stronger local self-government. It also provided for deployment of 3,500 NATO troops to disarm the rebels (the National Liberation Army) who instigated the conflict.<sup>22</sup> The international mediation resulted with a document that mainly focused to: 1. Basic Principles: rejection of the use of violence for political means, reaffirmation of the sovereignty, integrity and unitary character of the Macedonian state, preservation and reflection of the multiethnic character of the country in its public life, and commitment to

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<sup>20</sup> Glenny Misha. Denisa Kostovicova. Nicola Mai. Nadège Ragaru. Fabian Schmidt. and Miranda Vickers. *Is there an Albanian question?* Chaillot paper, 2008, p.43

<sup>21</sup> Glenny Misha. Denisa Kostovicova. Nicola Mai. Nadège Ragaru. Fabian Schmidt. and Miranda Vickers. *Is there an Albanian question?* Chaillot paper, 2008, p.43-44

<sup>22</sup> Andrew Rossos. *Macedonia and the Macedonians: A History.* (Stanford: Hoover Institution Press, 2008), p.280

enhancing the local self-government; 2. Cessation of hostilities and agreement for voluntary disarmament and disbandment of the —ethnic Albanian armed groups under NATO supervision and with its assistance; 3. Development of a decentralized government; 4. Non-discrimination and equitable representation; 5. Special parliamentary procedures: these procedures, i.e. the —Badinter majority, are to be used for adopting a number of constitutional amendments, the Law on Local Self-Government as well as laws that directly affect culture, the use of language, education, personal documentation, the use of symbols, laws on local finances, local elections, the city of Skopje and boundaries of municipalities; 6. Education and the use of languages: state funding for university level education in languages spoken by at least 20% of the population of Macedonia and **the principle of —positive discrimination in the enrolment at state universities of candidates —belonging to communities not in the majority in the population of Macedonia.** Regarding the use of languages: any language spoken by at least 20% of the population is also an official language in Macedonia, and it may be used in: 1. municipalities where at least 20% of the population speaks that language, 2. communication with a main office of the central government and 3. Regional offices of the central government if they are located in —a unit of local self-government in which at least 20 percent of the population speaks an official language other than Macedonian; 7. Expression of identity: next to the emblem of the Republic of Macedonia, local authorities will be free to place on front of local public buildings emblems marking the identity of the community in the majority in the municipality.<sup>23</sup> What is important for our paper, of course, is the part of non discrimination of minorities in every area of social life. After the Agreement was signed, changes were made into the Constitution of the Republic of Macedonia and many laws. With respect to the recommendations of the Agreement, every subject had an obligation to take concrete actions for increasing the number of staff from minority groups into the public administration, the military, the police, and public enterprises.

One of the obligations was the one that asked from authorities to make changes into the Macedonian police which till 2004 had to be a “mirror” of the composition and distribution of the population in the Republic of Macedonia. Few thousand new police officers from minorities in Macedonia were trained from 2004 till today. These years the newly employed people

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<sup>23</sup> Nenad Markovic, Zoran Ilievski, Ivan Damjanovski, Vladimir Bozinovski. *The role of the European Union in the democratic consolidation and ethnic conflict management in the Republic of Macedonia.* (Skopje: Iustinianus Primus Faculty of Law). p.5-6

from Macedonian ethnical origin into the police were minimal. Even best students from the Police Academy (today Faculty of Security) from Macedonian ethnical origin still are unemployed, unlike the minorities student's with low average grades.

### **POSITIVE DISCRIMINATION IN THE FIELD OF EDUCATION: CASE STUDY GRADUATED STUDENTS AT THE POLICE ACADEMY - SKOPJE**

As we previously mentioned in this paper, the positive discrimination which is implemented in Macedonia affects many areas of social living. In this part from the paper we'll set focus more at the positive discrimination in the field of education and training programs, which should ensure participation of people from ethnic minority, as long as these measures are necessary (especially the quotas of the faculties). For the purpose of this paper and proving the main hypothesis that: The positive discrimination of the ethnic minority in education and employment in public administration causes direct discrimination against the majority of citizens (ethnic Macedonians), later resulting in an unprofessional and unskilled public administration (and law enforcement agencies), we conducted a research at the Faculty of Security – Skopje (former Police Academy – Skopje). The Police Academy – Skopje was established in 2003 by the law<sup>24</sup> on Police Academy (Official Gazette of the Republic of Macedonia no. 40/03 on June 23, 2003) as a higher education state institution in the field of security. The Police Academy primarily educated cadres for the needs of Ministry of Interior, other state authorities as well as other organizations, institutions and legal entities operating in the area of security<sup>25</sup>. The Law on Police Academy stipulated that on studies for obtaining higher education may enrol a person who has completed four years of secondary education and fulfils the requirements and criteria announced by the Academy for that year in the open bid. In that announcement the Academy was required to stipulate criteria for adequate and equitable representation of citizens belonging to all communities (this very section we consider the dispute and the main topic of paper). After the dissolving of the Academy in 2008, legal successor of this

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<sup>24</sup> Official Gazette of the Republic of Macedonia no. 40/03 on June 23, 2003. (Not in use since 07.07.2008).

<sup>25</sup> Ibid.

institution is the Faculty of Security – Skopje.<sup>26</sup> The empirical research for the needs of this paper covers representative sample from the students of the first four generations of the Police Academy, more specifically: 4 students from the first generation enrolled at the Academy in the academic 2004/2005 and 5 students from the third generation enrolled in the academic 2006/2007. We should mentioned that back in those years the Police Academy was one of the most attractive colleges where for studding applied huge number of candidates from which by strict and rigorous selection were enrolled only the very best, in that figure depending how much earlier the Minister of interior had approve. Applied candidates to become students at the Police Academy in the academic 2004/2005 had to pass five levels of selection: 1. Starting points (calculated from the High school grades); 2. Constitutional law exam; 3. Physical testing; 4. Psychological testing and 5. Medical exams. The candidates from the given tests could win maximum of 100 total points. It would had been chosen the best candidates if it was not the positive discrimination which predicted a separate quota for the ethnic minorities. So the minorities had two chances of enrolment. At the main list with all of the applicants and at the separate list for ethnic minorities. Generation of enrolled students in the academic 2004/2005 graduated in the academic 2008/2009. From this generation for the purpose of this research we choose representative sample of four (4) students: two (2) ethnic Macedonians (student named in the paper as Macedonian2 was the best student of the generation graduated students in the academic 2008/2009), one (1) Albanian and one (1) Bosniak. Students with Bosniak and Albanian nationality were enrolled in the special quota. The comparative analysis follows the students from the very entry at the Police Academy in 2004, trough the education process until this very day.

**Table No.1**

<i>I – generation 2004/2005 – 2008/2009</i>						
<b>Nationality</b>	<b>Enrolment year</b>	<b>Prelim. list</b>	<b>Final</b>	<b>GPA</b>	<b>Grad. year</b>	<b>Employment status</b>
Macedonian1	2004	85	85	9.90	2008	Unemployed

<sup>26</sup> Law for establishing of higher education institution Faculty of Security in composition of the university "St. Kliment Ohridski" – Bitola, Official Gazette of the Republic of Macedonia no.81/08 on July 07, 2008



Macedonian2	2004	93.5	93.5	9.97	2008	Unemployed
Bosniak1	2004	81.54	81.54	6.56	2008	Employed
Albanian1	2004	79.8	79.8	7.35	2008	Employed

Because maximum points that could be scored at the enrolment in that academic year were one hundred (100) and grade point average maximum is ten (10), for greater clarity at the chart we multiplied the grade point average with ten so the maximum become one hundred (100). Status-unemployed takes value zero (0) and status-employed takes value one hundred (100). From the analyzed data we can conclude that if there was not a positive discrimination in the education (the process of enrolment), these two members of ethnic minorities wouldn't have been listed in this elite institution where other candidates Macedonians with much greater final points from the tests could not enter because literary a quarter of points decided someone's faiths. But so the irony could be much bigger these less qualified students who through the process of studding showed less success and final results than theirs Macedonian colleagues, again because of the positive discrimination in the process of employing are now employed in the public administration. While the Macedonians, although with better skills, work quality and higher point grades, in their mother country suffer from direct discrimination on account of unskilled and unqualified cadre.

From the Third (III) generation 2006/2007 enrolled students at the Police Academy – Skopje, for the needs of this research through process of analysis and comparison were subjected five (5) students: Macedonian, Albanian and three (3) Turks. Applied candidates to become students at the Police Academy in the academic 2006/2007 had to pass four levels of selection: 1. Starting points (calculated from the High school grades – maximum 100 points); 2. Physical testing (maximum 15 points); 3. Psychological testing (maximum 15 points) and 4. Medical exams. Maximum total points that could be won in that year were 130. These students were enrolled in the academic 2006/2007 and graduated in the academic 2010/2011 with the exception of the Macedonian student (Macedonian3) who was enrolled in the academic 2006/2007 but graduated *one year earlier* in the academic 2009/2010 as the best student in the generation of graduated students on Faculty of Security - Skopje in the academic 2009/2010.

**Table No. 2**

<b>III – Generation (2006/2007 – 2010/2011)</b>						
<b>Nationality</b>	<b>Enrolm. year</b>	<b>Prelim. list</b>	<b>Final</b>	<b>GPA</b>	<b>Grad. year</b>	<b>Employment status</b>
Macedonian <sup>3</sup>	2006	100	125.75	9.85	2009	Unemployed
Albanian <sup>2</sup>	2006	96.98	108.88	7.45	2010	Employed
Turk <sup>1</sup>	2006	99.49	115.49	7.55	2010	Employed
Turk <sup>2</sup>	2006	97.21	112.71	6.75	2010	Employed
Turk <sup>3</sup>	2006	56.43	75.18	6.47	2010	Employed

At the preliminary list maximum points that could be won were 100 and at the final list 130 points. Status-unemployed takes value zero (0) and status-employed takes value one hundred (130). From the available data we can again as previously conclude that in Macedonia because of the positive discrimination qualified and professional cadre cannot come to light and it's directly discriminated by the account of less qualified and less skilled cadre. If we want society to develop and to stop the trend of young people leaving the home country, affirmative action of the state Macedonia must be legally ended, because since 2001 and signing the Ohrid Framework Agreement onwards, systematically and piece by piece, fragment by fragment, on a daily basis Macedonian society is being decomposed. This research must not be understood in a negative connotation, because the objective is not to attack the ethnic minorities in Macedonia, but to point the need of equalization of the starting position at the open labour market when it comes to ethnic question, in order that qualified students which are produced by the universities (doesn't matter from which ethnic provenances) can have some chance when apply for a job position.

## **CONCLUSION**

After the disintegration of ex Yugoslavia, Macedonia became an example of a multicultural, multilingual and multi religious common life. But in 2001 this common, non problematical life, became something totally different. Today, 11 years after the Ohrid Framework Agreement, our country is still

an example of how tough common life can be, but also an example of how minorities can have equal and in some areas even greater rights than the majority. This paper should not be seen as a provocation or in negative connotation. Not in a word or in a sentence we do not have any intention to make difference between people that live in our country in any basis, including the ethnic origin. Our intention is, using an example from the institution where we graduated, to show how positive discrimination in some areas may cause a production of inefficient and unprofessional public administration. Peace is, maybe, the most important part of the puzzle for a prosperous life of a country and its people, but experiences in Balkan countries are clear examples how expensive peace can be. At the end we'll use one of the most famous quotes of all from the satirical novel "Animal farm" written by George Orwell that has a great allegorical meaning for the conditions in the world: *All animals are equal but some animals are more equal than others.*

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**ASSESSMENT OF LATENT STRUCTURE OF THE  
PSYCHOSOMATIC CHARACTERISTICS WITH  
THE MEMBERS OF THE SPECIAL POLICE UNITS –  
SIGNIFICANT FOR THE PROFESSIONAL POLICE  
STATUS<sup>27</sup>**

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**Abstract**

Starting from the complexity of the professional tasks, which with no doubt are quite extensive and specific, it is very significant if the approach for their solving is completely serious and professional. It understands including well trained police members with quality psychophysical potentials and abilities. However, due to achieving favorable effects in the professional tasks it is necessary previous scientific determination of the condition and the structure of those psychosomatic characteristics which are dominant and relevant for achieving success in those activities. To achieve that goal, in the thesis by using standardized instruments and by using complex statistical analysis in manifested and latent space are tested the anthropometric, biomotor and psychological characteristics of the members of the special police units.

**Key words:** police member, special police units, psychosomatic characteristics, factor analysis, latent factor

**INTRODUCTION**

The authority of the police structures (units) in the democratic social living is to implement the constitutional and the legal duty and to prevent all security threats and dangers towards the state. For implementation of that strategy, it is obvious that there is need for preparation of specially trained and organized units which will be prepared to prevent such actions by usage

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<sup>27</sup> original scientific paper

of repressive actions, methods, and means and with minimal force and minimal consequences will perform the predicted tasks. However, taking such actions by the police units is quite delicate because the high degree of organization, readiness and efficiency are obligatory. In order to achieve this, the security institutions (Ministry of Internal Affairs) should find a solution to construct solid police apparatus for efficient implementation of all types of security tasks. In context of this necessity, the Ministry of Internal Affairs has made a strategic plan which is completely put in function for improvement of the efficiency of the fight against terrorism and protection of the national security and also direct management with the endangerment factors of the state security. In order to reduce the police response time and successful implementation of the complex and specific tasks, most of this program shows the maintenance, the training and the correct usage of the organizational units. The part of the program which refers to the special police units, the emphasis is on the receiving highly dedicated and highly trained professional, prepared to act in any security conditions.

Due to this commitment, the problem of quality installation and coordination of the individual and the group psychophysical potentials and abilities of the units' members is emphasized. Taking into consideration the specific tasks and the high risk level, special level of physical and mental fitness and special performance in the concrete cases is obligatory for every member. This is understandable, because, the mere conditions of the high risk situations require increased demands for possession of proper psychophysical qualities by the members.

In function to that, previous scientific determination of the condition and the structure of the psychosomatic characteristics which are dominant and relevant for achieving success in the professional tasks are necessary.

#### PSYCHOSOMATIC CHARACTERISTICS AND THEIR SIGNIFICANCE IN THE PERFORMANCE IN THE EVERYDAY POLICE WORKING

It can be said that the basic psychosomatic characteristics take significant place in the complex human system, because they provide conditions for its complex study, especially in the part of the internal functioning and managing. For efficient management with the human it is essential to be familiar with the structure of the separate subsystems (dimensions) and their interrelations. The determination of the existence of the human subsystems is basic condition and imperative for its successful managing in the different everyday life and work activities.

According to the theory of integral personality development, all subspaces – constituencies of the psychosomatic space are in mutual connection and influence. It means that, a random psychosomatic dimension has no personal value, but it depends on other dimensions from the mutually organized system. When talking about the psychosomatic status of the human, it refers to the set of different characteristics and abilities of the individual (anthropometric biomotor, psychological, social etc.). Each of the mentioned psychosomatic characteristics has its own contribution in the definition of the general psychosomatic status of each individual; therefore it is good they have a wider range of knowledge.

Due to the special meaning of the mentioned psychosomatic characteristics, it is very important they are accordance with the necessities of the police profession i.e. with the defined police goals. In order to maintain the general working ability of the police members, the stabile function of the psychosomatic characteristic is curtail, because the contribute directly to the total (final) effects which will be achieved during the everyday police working, and especially during the performance of the most complex police actions. Because the structure of the police working is such dynamic system in which the psychosomatic characteristics are directly connected with the working space, the level that each police member should have must be such that will provide efficient physical and mental behavior in the widest spectrum of different types of security tasks and working activities. In other words, the mere structure of the work which is performed may have positive or negative influence over the psychosomatic status and to cause changes among the police members and the work environment. Therefore, the most important characteristic in the system of efficient performance of the police work is proper individual with the necessary psychosomatic characteristics.

In that direction the numerous performed researches and studies for the psychosomatic characteristics, show direct positive connection of the psychosomatic characteristics such as dimensions of the individual, intellectual abilities, stress level, status of development of the basic and specific biomotor abilities, status of anthropometric characteristics, health status etc.; with the successful and efficient performance of the professional police tasks. By these researches most often are tested the basic psychosomatic characteristics which provide conditions for efficient functioning of the police members during the task performance. It means that generally, the goals of these researches are directed towards study and determination of the hierarchical structure of the psychosomatic dimensions, towards study and determination of their relations, towards determination of the most suitable structure and composition of the psychosomatic

characteristics, towards definition of the most rational system for observation and control of the psychosomatic characteristics, towards determination of psychosomatic norms and criteria for the selection procedure etc. In most of the conducted researches, and especially in the latest ones are used modern experimental and statistical multivariate methods for study of the mentioned psychosomatic significances.

### SUBJECT AND GOALS OF THE RESEARCH

Subject of research are the psychosomatic characteristics of the members of the special police units, i.e. their anthropometric characteristic, basic biomotor abilities and psychological characteristics and abilities.

Basic goal of the research is to do scientific description of the psychosomatic structure of the analyzed population. In order to realize the basic goal, separate goals are set and are directed towards determination and description of the external psychosomatic look, determination and definition of dominant latent factors, determination of developing tendencies of manifest variables which are with highest level of influence over the latent psychosomatic dimensions.

### METHOD OF OPERATION

#### Sample of respondents

The research is made over sample of respondent composed of police members form the special police units in Republic of Macedonia. Exactly, the sample of respondents in the research is from the two special units, the rapid deployment unit (Rdu) and the mobile unit for fight against crime (Alpha). For the necessities of the research were included 80 respondents form Rdu and 80 respondents from Alpha, on age among 22 and 46 all were male. Due to the specific and difficult operational tasks and activities, as well as the specific entrance selection, the police members from both special units are defined as selected sample of respondents. During the composition of the subsamples it was taken care for the manner in which the respondents were chosen, i.e. it was taken care the selection to be accidental.

#### Variables sample

The variable sample for assessment of the psychosomatic status of the special police units members in the research is divided on:

1. Variables for assessment of the anthropometric characteristics: Body weight (BW); Body height (BH) and Body mass index (BMI).



2. Variables for assessment of the basic biomotor abilities: Abdominal exercises, raising the body from a lying position in two minutes (ABS); Pushups on flat surface in 2 minutes (PUSH); Running 3200 meters (R3200m) and Running 20 meters (R20m).

3. Variables for assessment of the psychological characteristics and abilities: Intelligence (IQ), measured by the general intelligence test Raven progressive matrices; Extraversion – Introversion (E), Emotional stability – Lability (N), Rigidity – Leniency (P), Honesty – showing yourself in “perfect” mode (L), measured by Eysenk personality test; Stress level (RAXE), measured by Holmes – Rahe stress scale; Symptoms of reluctant imposing of impressions connected with trauma (IES), expressed by Intrusive scale of event influence and Symptoms of avoiding everything that reminds of trauma (IES-IZ), expressed on the avoiding scale of event influence.

#### Instruments

In this research are used standardized measuring instruments for implementation of the procedure for measuring of the variables from the anthropometric, biomotor and psychological space. In the anthropometric space the measuring of the body weight and body height is made according the recommendations of the “International biologic programme”– IBP, and the calculation for the body mass index (BMI) is made according the formula of Carrow J. 1985, (Baik I., at al. 2000). For the variables of the biomotor space the measurements are made according the recommendations given in NATO handbook of physical fitness, except for the (R20m) test, which is measured according the recommendations from the research of D. Metikosh ad the coworkers. In the psychological space for measuring of the psychological characteristics and abilities are used the following instruments: Raven’s Progressive Matrices for measuring the basic intellectual abilities, Eysenk Personality Questionnaire– EPQ for measuring the basic personality dimensions, Holmes and Rahe stress inventory for stress measuring caused by stress events in the everyday living and general and Impact of evernt– scale IES for stress measuring connected with traumatic events in the profession.

#### Statistical methods for data calculation

The received data from the research are calculated with descriptive and multivariate statistical procedure. In the space of the descriptive statistics, for the two subsamples for every applied variable are calculated the basic measurements of the central tendency and dispersion: arithmetic mean (X), standard deviation (SD), minimal (Min.) and maximal result (Max.),

variability coefficient (KV%), symmetry (Skewness) and curvature (Kurtosis). In the multivariate space is used factor analysis (orthogonal Varimax rotation) for determination of the latent structure of the analyzed psychosomatic spaced with the both subsamples.

## RESULTS AND DISCUSION

The basic statistical parameters for the psychosomatic characteristics of the members from the two special units are shown in tables 1 and 2. Following the mentioned indicators in the tables, clearly can be determined the general manifested condition of the members in the entire psychosomatic space. Quantitatively comparing the values of the measurements for central tendency and dispersion for the examined variables with the two groups, it can be noted that the psychosomatic condition is on satisfactory level. It can be clearly seen in the average values that the largest number of tests (except with N, P and RAXE) show high level of homogeneity and grouping of the individual results of the respondents, mainly, around the personal average values. In accordance with these conclusions are the received values from the calculated measures of variability which are in the frames of the accepted limits.

Table 1. Basic descriptive parameters of the psychosomatic characteristics with the Rdu members

Variables	N	X	Boundary value	Min.	Max.	SD	KV%	Skew.	Kurt.
<b>BW</b>	80	87,51	/	61,00	120,00	11,77	13,44	0,24	0,35
<b>BM</b>	80	1,80	/	1,60	2,00	0,06	3,33	0,36	2,04
<b>BMI</b>	80	27,04	/	20,00	34,22	2,89	10,68	0,10	1,05
<b>ABS</b>	80	56,86	/	23,00	100,00	13,63	23,97	0,78	2,81
<b>PUSH</b>	80	47,33	/	20,00	101,00	13,54	28,60	0,79	2,89
<b>R3200m</b>	80	15,99	/	12,48	28,00	2,74	17,13	1,04	5,51
<b>R20m</b>	80	3,05	/	2,65	3,94	0,23	7,54	1,03	1,92
<b>IQ</b>	80	106,56	90	86,00	124,00	10,11	9,48	-0,19	-0,80
<b>E</b>	80	15,65	12,35	9,00	20,00	2,54	16,23	-0,44	-0,37
<b>N</b>	80	7,02	10,24	1,00	17,00	4,09	58,26	0,23	-0,85
<b>P</b>	80	4,23	6,67	0,00	12,00	2,21	52,24	0,79	1,42
<b>L</b>	80	14,91	11,95	7,00	20,00	3,04	20,38	-0,61	-0,08
<b>RAXE</b>	80	134,33	149,00	12,00	403,00	101,69	75,70	0,90	0,01
<b>IES</b>	80	9,82	21,02	7,00	21,00	3,47	35,33	1,46	1,64
<b>IES-IZ</b>	80	14,54	20,80	8,00	27,00	5,52	37,96	0,75	-0,51

This ascertained manifest condition is due to the fact that the structure of the population from which is taken this sample was on anthropometric, biomotor and psychological selection, upon the admission in the unit i.e.

upon establishing the employment in the Ministry of Internal Affairs. Basically, due to the nature of the profession, the maintenance of the psychomotor condition of the special units' members is necessary because only in that way they could successfully and smoothly complete the professional operational tasks. According to that, the biomotor (general and specific) and tactical (antiterrorist and specialist) training which is realized with the members of the units is directed towards development and maintenance of those psychosomatic characteristics which come to the fore in the professional operating. Hence, it is real to expect that only the adequate anthropometric constitution, the high level of biomotor and intellectual abilities, the stabile manner of behavior and acting and the high level of stress resistance will provide quality performance of the professional tasks

Table 2. Basic descriptive parameters of the psychosomatic characteristics with the Alpha members

Variables	N	X	Boundary value	Min.	Max.	SD	KV%	Skew.	Kurt.
BW	80	91,08	/	62,00	118,00	11,00	12,07	0,27	0,33
BM	80	1,79	/	1,68	1,95	0,06	3,35	0,47	0,00
BMI	80	28,34	/	18,73	35,49	2,85	10,05	-0,13	1,12
ABS	80	41,14	/	20,00	74,00	12,51	30,40	0,68	-0,04
PUSH	80	40,60	/	20,00	80,00	11,31	27,85	1,05	2,02
R3200m	80	17,02	/	13,50	21,04	1,71	10,04	0,18	-0,89
R20m	80	3,09	/	2,61	3,53	0,19	6,14	0,37	-0,21
IQ	80	103,36	90	76,00	125,00	11,75	11,36	-0,21	-0,46
E	80	15,19	12,35	8,00	21,00	3,02	19,88	-0,40	-0,48
N	80	9,41	10,24	1,00	16,00	3,92	48,51	-0,21	-0,65
P	80	4,51	6,67	0,00	10,00	2,29	50,77	0,34	-0,53
L	80	14,31	11,95	5,00	20,00	3,61	25,22	-0,62	-0,18
RAXE	80	151,71	149,00	13,00	529,00	107,38	71,06	1,09	0,99
IES	80	12,01	21,02	7,00	22,00	3,81	31,72	0,70	-0,17
IES-IZ	80	17,41	20,80	7,00	30,00	5,10	29,29	0,45	0,16

The received results from the factor analysis of the psychosomatic characteristics of the members of the special units are shown in tables 3 and 4.

Table 3. Factor analysis of psychosomatic characteristics with the Rdu members

Variables	Factor 1	Factor 2	Factor 3	Factor 4	Factor 5	Factor 6
BW	0,03	<b>0,87</b>	0,02	0,03	0,07	0,46
BM	-0,03	0,20	0,06	0,10	0,16	<b>0,87</b>
BMI	0,05	<b>0,97</b>	-0,02	-0,03	0,00	-0,01

ABS	<b>-0,87</b>	0,12	0,08	0,15	0,03	0,04	
PUSH	<b>-0,85</b>	0,09	0,06	0,05	-0,15	-0,25	
R3200m	<b>0,76</b>	0,29	0,03	-0,07	-0,03	-0,16	
R20m	<b>0,57</b>	0,17	0,08	0,40	-0,02	-0,28	
IQ	-0,04	0,06	0,03	-0,18	-0,27	<b>0,50</b>	
E	-0,06	-0,13	-0,32	0,17	<b>-0,77</b>	0,07	
N	-0,03	-0,08	-0,03	<b>-0,78</b>	0,04	0,12	
P	0,11	-0,10	0,20	-0,42	<b>-0,45</b>	0,20	
L	-0,14	-0,15	0,03	<b>0,77</b>	0,01	0,13	
RAXE	0,05	-0,12	-0,44	0,06	<b>0,69</b>	0,15	
IES	0,14	0,04	<b>-0,88</b>	-0,02	0,02	-0,04	
IES-IZ	-0,08	-0,03	<b>-0,90</b>	-0,03	0,01	-0,06	
Eigenvalue	2,57	2,24	1,92	1,70	1,29	1,14	Cum.(λ)=10,86
%	17,14	14,94	12,83	11,33	8,57	7,57	Cum.%=72,37

From the received results in the tables can be seen that the applied system of tests with the two groups of respondents formed identical number of significant main components. Each component takes small percentage of the total variance which is proof for the heterogeneity of the received latent factors. This diversity, practically shows the complexity of the internal structure of the psychosomatic space which is composed of many human characteristics and abilities. Furthermore, from the individual analysis can be noted that the members of the special units the latent psychosomatic structure has different look, and that means that the extracted factors have different dominant significance and strength. In that context in the entire researched psychosomatic space of the Rdu members, the defined factors have the following look and order: 1. general biomotor factor, 2. General factor of body composition, 3. Factor of resistance from the operational traumas, 4. Factor of false emotional stability. 5. Factor of “internal” stress isolation, 6. Factor with no logic ground for interpretation. With the members of the Alpha team the latent psychosomatic structure has totally different look and order, such as: 1. General factor of the body composition, 2. Factor of operational trauma, 3. Factor of repetitive force in the upper body, 4. Factor of false leniency, 5. Factor of general intelligence in the everyday living and 6. Factor of speed and aerobic endurance.

Table 4. Factor analysis of psychosomatic characteristics with the Alpha members

Variables	Factor 1	Factor 2	Factor 3	Factor 4	Factor 5	Factor 6
BW	<b>-0,94</b>	0,10	0,24	-0,01	-0,06	0,07
BM	-0,37	0,04	<b>0,59</b>	0,02	-0,08	-0,27
BMI	<b>-0,89</b>	0,11	-0,09	-0,02	-0,02	0,25
ABS	0,14	0,28	<b>-0,75</b>	0,12	0,00	-0,22
PUSH	-0,15	0,03	<b>-0,85</b>	-0,08	-0,10	-0,14
R3200m	-0,25	-0,22	0,08	0,18	0,07	<b>0,74</b>

<b>R20m</b>	-0,13	0,19	0,31	-0,23	-0,08	<b>0,71</b>	
<b>IQ</b>	0,15	0,16	0,08	0,54	<b>-0,59</b>	0,05	
<b>E</b>	-0,06	0,29	0,43	-0,04	0,07	<b>-0,55</b>	
<b>N</b>	0,27	-0,39	0,12	0,12	0,61	0,16	
<b>P</b>	0,15	0,27	-0,12	<b>0,55</b>	0,33	0,16	
<b>L</b>	0,10	0,15	-0,02	<b>-0,86</b>	-0,06	0,09	
<b>RAXE</b>	0,01	0,04	0,03	0,13	<b>0,79</b>	-0,09	
<b>IES</b>	0,24	<b>-0,83</b>	0,11	0,03	0,04	0,11	
<b>IES-IZ</b>	-0,02	<b>-0,85</b>	0,02	-0,05	0,09	0,04	
<b>Eigenvalue</b>	2,65	2,48	1,69	1,51	1,30	1,10	Cum.(λ)=10,73
<b>%</b>	17,64	16,55	11,26	10,06	8,70	7,31	Cum.%=71,51

From the presentation so far, generally all the similarities and differences can be seen which are present among the members of the two special units in the latent psychosomatic structure. With the received results from this analysis a clear image is completed for the condition and interaction are the manifested psychosomatic characteristics which contribute for the latent psychosomatic look. Even though the two special units are ranged as highly elite and professional units, their internal organizational structure and the manner of their functioning in many things contributes for their differencing in the analyzed psychosomatic space. The differences that appear are closely connected with the selection procedure which is implemented during the admission of the new candidates, with involvement of proper experts for implementation of the biomotor and psychological program, with martial arts, with experiencing and managing stressful events, with short time period for preparing and planning professional actions etc.

## CONCLUSION

Based on the analysis of the results received from the research, large quantity of useful information on the manifest condition and latent structure of the psychosomatic characteristics of the members of the special police units in Republic of Macedonia is obtained. In that direction the received information enable receiving significant information on the structure of the professional tasks that the members should perform and the adequacy of their structure which they should have for performance of their work.

For that purpose, it is very important the members of the special units to work constantly on raising the level of quality during the selection, training, organization, managing in order to have more efficient and more rational usage of the psychosomatic characteristics in the performance of the complex operative-tactical actions.

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## **THE PROCESS OF TRAFFICKING IN HUMAN BEINGS: PHASES OF COMMITTING THE CRIME<sup>28</sup>**

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### **Abstract**

The modus operandi is connected with the characteristics of the perpetrator of the crime; therefore it is a mean which through its analyses gives information that can be used to build a profile of the possible perpetrator of the crime.

The XX and the beginning of the XXI century are marked by the many attempts to get to the real meaning and content of the phenomenon of trafficking in human beings. Called modern slavery, existing through the years, it has been adjusting its characteristics on the society's conditions, and its criminal process on the field conditions.

The paper is directed to explain the process of trafficking in human beings using a review of its three phases, and afterwards building a framework of the possible modus operandi of the organized crime groups.

**Key words:** modus operandi, process, trafficking in human beings, phases.

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<sup>28</sup> professional paper

## INTRODUCTION: THE TERM MODUS OPERANDI

One of the earliest records mentioning modus operandi was in 1654 in a piece called *Zootomia*: “Because their causes or their modus operandi (which is but the Application of Cause and Effect) doth not fall under Demonstration.” Modus operandi became popular in the 1800s, with citations in the *Edinburgh Review* in 1835, Mill’s *Logic* III in 1843, and in Kenneth Grahame’s short story “Justifiable Homicide” in the *Pagan Papers* in 1898.<sup>29</sup>

By the late 1930s, M.O. identification techniques and procedures had become a standard part of criminal investigation literature (Soderman & O’Connell, 1936). Edwin Sutherland (1947) defined modus operandi as the “principle that a criminal is likely to use the same technique repeatedly, and that any analysis and record of the technique used in every serious crime will provide a means of identification in a particular crime.”<sup>30</sup>

In modern-day usage, Hazelwood and Warren (2004) emphasized that “the term modus operandi is used to encapsulate all of the behaviors that are requisite to a particular offender successfully perpetrating a crime.” It encompasses all behaviors initiated by the offender to procure a victim and complete the criminal acts without being identified or apprehended.<sup>31</sup>

## PROCESS OF TRAFFICKING IN HUMAN BEINGS: FROM REGRUTATION TO EXPLOITATION OF THE VICTIMS

Trafficking in human beings is a form of crime and socio-pathological phenomenon with which on the most difficult, most cruel, inhuman way are attacked the greatest, most significant, highest valued human rights and freedoms. It’s a crime that turns human being into a slave in biological, physical, psychological, social, economic, legal, political, socio cultural sense. He/she loses his/her rights, freedom, dignity, and honor, everything

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<sup>29</sup> Robert D.Keppel. William J.Birnes. *Serial Violence: Analysis of Modus Operandi and Signature Characteristics of Killers*. (Boca Raton - London - New York: CRC Press, 2009). p.2

<sup>30</sup> Robert D.Keppel. William J.Birnes. *Serial Violence: Analysis of Modus Operandi and Signature Characteristics of Killers*. (Boca Raton - London - New York: CRC Press, 2009). p.3

<sup>31</sup> Ibid. p.5



that builds a civilized human being. Man is forced to act on a way that he doesn't want. With making him/her a slave essentially on a sail is something that cannot be sold.<sup>32</sup> Namely in the Article 3<sup>33</sup>, paragraph (a) of the Protocol, trafficking in human beings is defined as: "the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs."

Trafficking in human beings is composed by three, conditionally said, phases and few sub - phases through them who play the role of a bridge from one to another main phase or an action of a facilitator. Using the definition of trafficking in human beings from the Palermo Protocol, the phenomenon can be structured in these three phases: recruitment, transport and exploitation.

## PHASE OF RECRUITMENT

Recruitment is a set of methods, actions and means with whose single or combined usage a person enters the net of trafficking in human beings.<sup>34</sup> This phase is deeply connected to the country of origin, which is the country where from potential victims are coming.

Crime organizations make choice of countries which will serve as source for people for trafficking. This choice mostly is based on some characteristics they have, like the inability to give work to people; than countries where the

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<sup>32</sup> Љупчо Арнаудовски. "Криминалитетот "Трговија со луѓе" – проблеми во дефинирањето" *Родова перспектива на трговијата со луѓе* (2004): 46 - 47

<sup>33</sup> Article 3 from the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, available at [http://www.uncjin.org/Documents/Conventions/dcatoc/final\\_documents\\_2/covention\\_%20traff\\_eng.pdf](http://www.uncjin.org/Documents/Conventions/dcatoc/final_documents_2/covention_%20traff_eng.pdf)

<sup>34</sup> Саша Мијалковиќ. "Трговина људима како облик организираног криминала - основна феноменолошка обележја". *НБП - Београд, Vol.XII, 1* (2006): 116

crime organizations are very well defined and organized; and countries in which culture highlights the subordinated role of women in society.<sup>35</sup> Recruitment can be easier in periods of economic crises, natural catastrophes and war conflicts.<sup>36</sup>

Starting from the methods that traffickers use during recruitment, different authors give different classifications. One of those classifications is the one which recruitment divides<sup>37</sup> on forced recruitment, totally deceptive recruitment, and partially deceptive recruitment.

Forced recruitment is a process in which the victim and the trafficker before did not have any contact; it is recruitment that happens during their first contact.

Kidnapping as method, although is not very often used from perpetrators, however it should be mentioned as possible one.

Abduction is an establishing of factual power over a person, bringing the person into position to be treated as object that the perpetrator can dislocate, close, use, or to have the role of master over him.<sup>38</sup>

The selling of victims from their family is a method characteristic for poorer countries and countries with restrictive population politics, as China.<sup>39</sup>

Deceit is the false display or concealment of facts: the perpetrator gives as fact something false, something that does not exist or hides the existence of some facts, and something that exists.<sup>40</sup>

Totally deceptive recruitment as method contains the misconception of the process which is presented before the potential victim.

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<sup>35</sup> Мајкл Д. Лајман и Гари В. Потер. *Организиран криминал*. (Скопје: Магор, 2009), стр.210

<sup>36</sup> Louise Shelley. *Human Trafficking: A Global Perspective*, (Cambridge: Cambridge University Press, 2010). p.94

<sup>37</sup> Совет на Европа, и Меѓународна организација за миграција. *Трговија со луѓе во регионот на Западен Балкан*, (Стразбур – Женева: 2006). стр.22

<sup>38</sup> Владо Камбовски. *Казнено право: посебен дел*, (Скопје: Просветно дело, 2003) стр. 110

<sup>39</sup> Станојоска Ангелина. *Феноменолошки карактеристики на трговијата со луѓе на територијата на Република Македонија, во периодот 2004 - 2010 година*. Магистерска теза. 2011. стр.32

<sup>40</sup> Владо Камбовски. *Казнено право: посебен дел*, (Скопје: Просветно дело, 2003) стр. 326

We should also mention the “lover” method which is used by many organized criminal organizations. The method contains a love relationship or marriage with the potential victim, and after that the victim is included in the process of trafficking in human beings for sexual exploitation in most cases.

The partial deceptive recruitment is also based on deceit as mean to have the victims agreement, mostly in cases when victims do not get information around the conditions in which they’ll work, then around their payment, knowing the suspiciousness of the area they’ll work in.

As a part of the deceptive recruitment is the very well-known method of recruitment in which people that were already victims of trafficking, recruit ne potential victims.

They may unknowingly be asked to recruit friends to work abroad. They may be sent back to their countries of origins to recruit friends under the watchful eye and threat of the organization that trafficked them. They may knowingly recruit women as a way to buy their freedom or may have become part of the trafficking organization. The United Nations has called this “happy trafficking,” although there is nothing happy about it. It has been described as a sort of human pyramid scheme in which a few of the trafficked victims are released, and sometimes provided financial incentives, to return to their home countries and recruit other victims. The term “happy” refers to the illusion that the new recruiters create by pretending that they have had a wonderful experience in a legitimate job abroad. This manipulative method reduces the risk to organizers by putting women in visible positions as recruiters and at the same time increases profits, turning victims into “proxy recruiters” and eventually traffickers.<sup>41</sup>

**Table N.1**

***Ways of recruitment in trafficking in human beings (Article 418-a from the Penal Code of the Republic of Macedonia) in the period 2002 - 2012***

Year	Forced recruitment	Partially deceptive recruitment	Totally deceptive recruitment
2002	/	/	18
2003	/	/	42

<sup>41</sup> Alexis A. Aronowitz. *Human Trafficking, Human Misery: The Global Trade in Human Beings*. (Westport – London: Praeger, 2009). p.53

2004	/	/	19
2005	/	/	12
2006	/	1	1
2007	/	3	/
2008	/	1	/
2009	/	1	/
2010	/	/	/
2011	/	2	/
2012	/	3	/
Вкупно	/	11	92

Source: Ministry of Internal Affairs of the Republic of Macedonia

**Table N.2**

***Ways of recruitment in trafficking in minors (Article 418-g from the Penal Code of the Republic of Macedonia) in the period 2002 - 2012***

Year	Forced recruitment	Partially deceptive recruitment	Totally deceptive recruitment
2008	/	8	1
2009	/	5	2
2010	1	2	/
2011	/	5	/
2012	/	1	/
Вкупно	1	21	3

Source: Ministry of Internal Affairs of the Republic of Macedonia

Most common way of recruitment when it comes to trafficking in human beings in Macedonia is the totally deceptive recruitment. But we must mention that this way of recruitment is mostly used until 2005. From 2006

till 2012 the partially deceptive recruitment is used. Deception is used only in a part of the situation coming. Most of the victims have accepted to work into catering objects, where lately are submitted under violence and are sexually maltreated.

## PHASE OF TRANSPORT

Traffickers are specialists when it comes to victim's movement on huge areas. Often the routes are not the most direct, because traffickers avoid roads controlled by police, control points on borders and states where the authorities are effective and cannot be corrupted. In most cases, the country of destination is the one where an ethnic community traffics people or country where there is a partner criminal network that accepts and distributes the victims.<sup>42</sup>

During the last decade, several regional and local studies have been completed on transit countries for international trafficking in persons. Taken together, they provide a set of characteristics that begin to explain why a trafficker may choose to move their victims through a transit country, or multiple transit countries, in order to reach the destination country rather than simply transporting the victims directly from their country of origin to the destination country. These characteristics of transit countries may be summarized as follows: (1) geographic proximity by land, sea, or air to attractive destination countries; (2) insufficient legislation and weak enforcement to deal with trafficking in persons and migrant smuggling; (3) liberal immigration policies; and (4) an operational criminal infrastructure to facilitate illegal entry to, and exit from, a country.<sup>43</sup>

*Trafficking by land* is the easiest way to move from one country to another. The spectrum ranges from simply walking migrants across "green" borders to sophisticated methods of clandestine trafficking in trains and trucks. Trafficking by land offers the advantage that many people can be moved in a single venture if buses or trucks are used. If people cross borders

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<sup>42</sup> Maggy Lee. "Introduction: Understanding Human Trafficking". *Human trafficking*. (Cullompton: Willan Publishing, 2007). p.25

<sup>43</sup> Benjamin Perrin. "Trafficking in persons and transit countries". *Trends of Organized Crime* 14 (2011):237

clandestinely, for example, at night-time or beyond control points, land trafficking also removes the need for bribery and fraudulent documents.<sup>44</sup>

*Trafficking by air* is the fastest-growing method of organized illegal migration due to increasing international air traffic as well as insufficient transit and immigration controls in many countries. The number of migrants that can be trafficked at a time is limited and the illegal passengers have to be prepared as to how to deceive officials at control points. Trafficking by air requires sophisticated travel documents or alternatively the bribery of border and immigration officials or airline personnel. In many cases trafficking organizations facilitate the onward travel of their customers by switching documents, tickets and boarding passes in the transit lounges of international airports.<sup>45</sup>

*Trafficking by sea* involves a much lower risk of detection and arrest compared to land and air trafficking. Also, it enables the trafficking organization to transport many people at once. Beyond that, the logistics of trafficking by sea are much simpler than, for example, of trafficking by air. The need for travel documents is removed and there is no need to bribe border officials as the illegal migrants do not pass through immigration control points.<sup>46</sup> In some cases individuals travel in horrendous conditions – in the holds of cargo vessels, in small boats with no protection from the sun or rain, or in specially constructed and poorly ventilated compartments of trucks. Many become ill, but the traffickers, seeking to minimize costs, rarely provide medical care. The conditions of transport recall the abysmal conditions in which slaves were transported in past centuries to the new world.<sup>47</sup>

The world of trafficking in human beings can be described as net in which the organizers of routes (or part of routes) have the most important roles. Except most important players, there are smaller players that are active on field, like individual road guides or mules that are responsible for transferring people over borders.<sup>48</sup>

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<sup>44</sup> Andreas Schloenhardt. "Organized crime and business of migrant trafficking: An economic analysis". *Crime, Law and Social Change* 32 (1999):223

<sup>45</sup> Andreas Schloenhardt. "Organized crime and business of migrant trafficking: An economic analysis". *Crime, Law and Social Change* 32 (1999):223 - 224

<sup>46</sup> Ibid.p.224

<sup>47</sup> Louise Shelley. *Human Trafficking: A Global Perspective*, (Cambridge: Cambridge University Press, 2010). p.100-101

<sup>48</sup> Дина Зигел, Хенк Ван де Бунт, Дамјан Зайт, *Глобален организиран криминал – трендови и случувања* (Скопје: Магор, 2009), стр.112

## PHASE OF EXPLOITATION

By the definition of trafficking in human beings from the Protocol of Palermo, exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.<sup>49</sup>

The Protocol of Palermo is listing the most common ways of exploitation, but also does not close the possibility of existence of others.

Not even the terms “prostitution” or “any kind of form of sexual exploitation” are not defined in the Protocol. The reason for it should be looked into the existence of two theoretically different streams formed by few women organizations: radical feminism and feminism of sexual work.<sup>50</sup> Radical feminism says that prostitution is violence on women; it victimizes all of them, it justifies selling of sexual services and women sees only as sexual objects. On the other side, the second stream says that there are two kinds of prostitution - forced prostitution and voluntary prostitution. Forced prostitution and trafficking in human beings are manifestations of violence against women, they are breaking of the right of self-determination.<sup>51</sup> Very often trafficking in human beings is seen as an aggressive variation of prostitution, which is completely wrong and inadequate view of the phenomenon. It is because of the multilayer nature of trafficking in human beings, its social complexity which can be viewed from different contexts: psychological, criminological, victimological, legal, moral, from side of migration, from side of work, etc.<sup>52</sup>

Sex tourism covers travelling in tourist sector, or outside the sector with usage of its structures or nets, with primary goal for affecting the

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<sup>49</sup> Article 1 from the Protocol of Palermo

<sup>50</sup> Silvia Scarpa. *Trafficking in human beings: Modern slavery* (New York: Oxford University Press, 2008), p.6

<sup>51</sup> Цо Доезема. “Распуштени жени или изгубени жени? Повторно појавување на митот за белото робје во современиот дискурс за трговијата со жени” *Родова перспектива на трговијата со луѓе* (2004): 229

<sup>52</sup> Vesna Nikolic – Ristanovic i Copic Sanja “ Krivicno djelo Trgovina ljudskim bicima – medjunarodni dokumenti, savremena zakonska resenja i Krivicni Zakon SR Jugoslavije” *Spisanie Temida, br.1* (2002):35

commercial sexual relationship of tourists with the inhabitants of the country of destination.<sup>53</sup>

The pornography industry is now international in its production and distribution, in the trafficking in women which it facilitates, and in the damaging effects it has on women's status in non-western cultures in which pornography is a new harmful practice. As the industry expands it seeks both new and cheaper environments in which to produce the materials and new markets into which to sell it. Elements of the pornography industry choose to make porn movies in countries in which women are vulnerable to severe forms of exploitation and can be paid a pittance<sup>54</sup> or not paid at all.

Forced marriage is any institution or practice whereby: (i) A woman, without the right to refuse, is promised or given in marriage on payment of a consideration in money or in kind to her parents, guardian, family or any other person or group; or (ii) The husband of a woman, his family, or his clan, has the right to transfer her to another person for value received or otherwise; or (iii) A woman on the death of her husband is liable to be inherited by another person.<sup>55</sup>

***Forced or compulsory labour*** shall mean all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily.<sup>56</sup> Each Member of the International Labour Organisation which ratifies this Convention undertakes to suppress and not to make use of any form of forced or compulsory labour: (a) as a means of political coercion or education or as a punishment for holding or expressing political views or views ideologically opposed to the established political, social or economic system; (b) as a method of mobilising and using labour for purposes of economic development; (c) as a means of labour discipline; (d) as a punishment for having participated in strikes; (e) as a means of racial, social, national or religious discrimination.

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<sup>53</sup> World Tourism Organization Statement on the Prevention of Organized Sex Tourism, Adopted by the General Assembly of the World Tourism Organization, 11th Session, Cairo (Egypt), Oct. 17-22, 1995.

<sup>54</sup> Sheilla Jeffreys, *The industrial vagina: The political economy of the global sex trade*. (New York: Routledge, 2009), p.79

<sup>55</sup> Article 1 from the *Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, 1956*.

<sup>56</sup> Article 2 from the Forced Labour Convention of ILO N.29



Forced labour can cover situations as slavery, practices similar to slavery, debt bondage or servitude.<sup>57</sup>

Serfdom, that is to say, the condition or status of a tenant who is by law, custom or agreement bound to live and labour on land belonging to another person and to render some determinate service to such other person, whether for reward or not, and is not free to change his status.<sup>58</sup>

Slavery is the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised.<sup>59</sup> Debt bondage, that is to say, the status or condition arising from a pledge by a debtor of his personal services or of those of a person under his control as security for a debt, if the value of those services as reasonably assessed is not applied towards the liquidation of the debt or the length and nature of those services are not respectively limited and defined.<sup>60</sup>

Trafficking in persons for the purpose of removal of organs is addressed by the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime. The inclusion of this form of exploitation into the Protocol is intended to cover those situations where a person is exploited for the purposes of a trafficker obtaining profit in the 'organ market', and situations where a person is trafficked for the purpose of the removal of their organs and/or body parts for purposes of witchcraft and traditional medicine.<sup>61</sup>

Trafficking in human beings in Macedonia is mostly ended with sexual exploitation. Till 2005 it was committed into catering objects, under the mask of night clubs, but till 2005, modus operandi is changed and victims are exploited in rented apartments and houses.

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<sup>57</sup> Article 1 from Abolition of Forced Labour Convention n.105

<sup>58</sup> Article 1, paragraph b, from the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery

<sup>59</sup> Article 1, paragraph 1, from the Slavery Convention

<sup>60</sup> Article 1, paragraph a, from the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery

<sup>61</sup> UN GIFT Background paper. *Human Trafficking for the removal of Organs and Body Parts*. p.2

## CONCLUSION

Newer researches in criminology, count trafficking in human beings into the so called "consequent crime", which indicates the crime that unites the most difficult forms of crime, physical, psychological and intellectual exploiting of every human being, always mixed with most difficult, most cruel methods of violence and physical and psychological coercion. It's a crime that, because its wideness and the effects of human beings life and work, is difficult to be revealed and proved.<sup>62</sup>

Analyzing and studying the phases through which the crime is happening is the mirror in which we can see its consequence. Information we get can be used to learn for the new ways of committing the crime, which today still have the adjective of perpetrators signature on the crime scene.

Using modus operandi information there can be concluded for the structure organized criminal groups, their territory, ethnic signature, their exploitation, the level of violence usage, the way they legalize the financial gain.

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<sup>62</sup> Љупчо Арнаудовски. "Криминалитетот "Трговија со луѓе" – проблеми во дефинирањето" *Родова перспектива на трговијата со луѓе* (2004): 47

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**COMPARATIVE ANALYSIS OF  
PHENOMENOLOGICAL FEATURES OF ILLICIT  
TRAFFICKING IN ARMS, AMMUNITION AND  
EXPLOSIVE IN THE REPUBLIC OF MACEDONIA  
WITHIN THE PERIOD 1989 – 1998 AND 2001 – 2010<sup>63</sup>**

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**Abstract**

**Purpose:** Primarily the subject of this paper are the phenomenological characteristics of the illicit trafficking in arms, ammunition and explosives on the territory of the Republic of Macedonia, especially comparative-correlation analysis between two time periods of 10 years (time period\*1 (1989-1998) and time period\*2 (2001-2010)). The main purpose is primarily getting a clearer picture of the phenomenological features of this type of crime in the period just before the Macedonia's independence in 1991 through the arm conflict in 2001 until 2010, and predicting the future crime trends.

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<sup>63</sup> review scientific paper

**Design:** For the phenomenological research we used statistical method, comparative method and content analysis.

**Findings:** Illicit trafficking in arms, ammunition and explosives on the territory of the Republic of Macedonia has a high crime rate and is characterized by an extensive criminal phenomenology. The data tell us that in the future this type of crime will still be a problem in R. of Macedonia.

**Originality/Value:** The authors of this paper decided to conduct a phenomenological research because this is a type of crime where the etiology is just an assumption, speculation, theory and it can't be confirm with an empirical research. On the other hand scientific results obtained by studying the phenomenological characteristics tell us indirectly about the crime factors that led to committing illegal arms trade.

**Key words:** illicit trafficking, firearms, ammunition, explosives, phenomenological characteristics.

### **THE CRIMINAL-JUSTICE DETERMINATION OF ILLICIT TRAFFICKING IN ARMS, AMMUNITION AND EXPLOSIVES CC IN THE REPUBLIC OF MACEDONIA**

Criminological terms, in the most comprehensive sense, illicit trafficking in weapons, ammunition and explosives in the Republic of Macedonia criminal law is incriminated in several separate offenses of special paragraphs in the Criminal Code. These separate crimes are:

1. "Developing and acquiring weapons and tools designed to perform CA "Article 395, Chapter XXXIII<sup>64</sup> of the Criminal Code.
2. "Unlawful manufacture, possession and trafficking of firearms or explosives "Article 396, Chapter XXXIII of the Criminal Code.
3. "Forging a firearm "Article 396 - A, Chapter XXXIII of the Criminal Code.

Phenomenological analysis of the features will be made only through the analysis of the volume and dynamics of "illegal manufacture, possession and trafficking in weapons and explosive substances" in Article 396, Chapter

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<sup>64</sup> Criminal acts against public order

XXXIII of the Criminal Code, because this crime most closely determines the matter in question.

The data for the analysis were provided by the State Statistical Office and the Ministry of Interior of the Republic of Macedonia.

**THE SCOPE AND DYNAMICS OF TRAFFICKING ARMS,  
AMMUNITION AND EXPLOSIVES THROUGHOUT  
THE REPUBLIC OF MACEDONIA IN THE PERIODS  
1989-1998 AND 2001-2010**

The volume of crime usually includes two features: the number (volume) of the criminal acts and the number of offenders.

It has been determined in the way that during one year follow every stage of criminal procedure is being followed: 1. Number of reported perpetrators (total, dropped charges, suspended investigation terminated investigation, indictment filed), this figure allows us to get close up to the number of real criminals. That means that this figure with the dark figure of undetected CA depicts real crime generated in a given area at a given time. 2. Number of defendants and 3. Number of inmates. It should be borne in mind that often the number of applicants does not correspond with the number of completed CA which is quite understandable.

From the collected data, overseeing of the factors affecting the selection is performed through different stages. We get the phenomenon of “funnel” or reported by the doomed figure always diminishing.<sup>65</sup>

The dynamics of the crime is one of the most important phenomenological features that allow tracking through the scope, structure and distribution over a period of time to make conclusions in the form of indicators and identification of factors of social, economic and political nature that affect processes society and thus the crime as inextricably woven from every social organism.

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<sup>65</sup> The term “funnel” is being used by Phd Chacheva Violeta, with which she tries to depict more in detail the decrease in numbers through separate phases

***Volume and dynamics of the crime “Unlawful manufacture, possession and trafficking in firearms or explosives “Article 396 of the Criminal Code of the territory of the Republic of Macedonia in the period from 2001 to 2010.***

**Analysis of data obtained from the State Statistical Office**

In the period from 2001 to 2010 Chapter 33 of the Criminal Code (where Article 396 "Unlawful manufacture, possession and trafficking in firearms or explosives") a total of 8098 adults were reported of which 2029 are reported under Article 396 of the Criminal Code. The total known offenders under Article 396 are 1980 (of which 45 women) and unknown perpetrators in 49. Application is rejected against 167 people, disrupted the investigation against 40 people, and stopped the investigation against 111 people and an indictment proposal 1662 people. The data shows that out of 2029 applicants, against 167 persons (23.8 %) the application is rejected, and is filed indictment against 1662 persons (81.91%).

Comparing these data with the data obtained in the period from 1989 to 1998, where at this time we have made a total of 792 criminal charges of which 74 were rejected (9.34%) , we see that 43 were under suspended investigation (5.42 %) and a charge is made for the 675<sup>66</sup> submitted returns (85.22%), it is obvious that we have dramatically increased the number of applications filed by 792 to 2029 (in percent 156.18%) reduction in the percentage of rejected applications from 9.34% to 23.8%, indicating better quality work of law enforcement in this period and submission of insight applications, but it was noted that there was the decrease in the percentage of charges filed by 85.22% to 81.91%, which brings the previous claim in a state of questioning.

The increase in the number of applications from 792 (in the period of 10 years) is 2029 (in another period of 10 years with a distance of 2 years between periods) with a percentage of 156.18%. If we assume that the future will hold this increasing trend of this type of crime found that this phenomenon would be a serious problem for Macedonian society and a serious challenge to the security agencies.

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<sup>66</sup> Димовски, З. Илегалната трговија со оружје и тероризмот во Р. Македонија, 2005 година, стр. 63



If we perform a comparative analysis, overall from 1989 to 1998 (10 years) of 792 applications together, rejected or suspended investigation is 117, representing 14.77% of the total figure. One of the authors of this paper, while this research was conducted, has noted that these data indicate a point in the operation of MI , namely, due to the high percentage rate of rejected applications and stopped investigating the author mentions that this is due to lack of evidence backed with material on criminal charges , performing with a warning, low operational work of officials, lack of cooperation with the public prosecutor's office and warns that if we do not pay enough attention in the future again the unsupported and the partiality of the criminal charges with appropriate evidence this percentage will remain great.<sup>67</sup>

On the other hand, analyzing the period from 2001 to 2010 it can be noted that out of 2029 filed for charges dismissed or stayed investigation, the figure is 207, which is 10.20%. We notice a downward trend from 14.77% to 10.20%, which gives a positive signal in the improvement of the security organs.

\* \*

The category which is taken as a basis for measuring the volume of a crime is the number of convicted persons. This index indicative of convicted persons together against the other two (index of applicants and defendants) suggests that policy and criteria of the bodies of criminal prosecution in discovery as well as the prosecution and adjudication.

In fact , from 2001 to 2010 for the crime "Unlawful manufacture, possession and trafficking in firearms or explosives" Article 396 of the Criminal Code of the Republic of Macedonia, a total of 1259 convicts people of which 28 are female persons.

According to the data, in 2010, a growth of 9:56% has been noted in regard to 2001. On further analysis of the data found that in the investigated period we do not notice any serious fluctuations in the amount of results. The index indicator shows that from 2001 to 2010 a slight increase of 9:56 % of the number of inmates has been made, yet, still speaking after year, we see the highest index of indicative only 29.56% in 2009, and the lowest in 2002 with a decrease of - 17.39% over to 2001.

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<sup>67</sup> Ibid.

On the other hand, in the period from 1989 to 1998, 792 judgments have passed. The increase from 792 to 1259 over the next ten years (with a difference of two years between periods) index is an indicator of 58.96%.

The comparative analysis of the two investigated periods (Period1 \* - from 1989 to 1998 and Period 2 \* - from 2001 to 2010) suggests an increase in the number of applicants for only a 156.18 % increase in the number of persons convicted of only 58.96%. Hence we can draw a conclusion indirectly reducing the effectiveness of the judiciary and changing that policy and criteria of judgment.

The dynamics of this crime looking back over 20 years gives us the potential to predict the crime trend over the next 10 years. Prediction go towards confirming the previous assumption that in the future the problem of illegal weapons in Macedonia was burdened fragile security situation in the not-included ability of destabilization in certain proportions. The number of applicants for "Unlawful manufacture, possession and trafficking in weapons and explosives" in the next ten years (seen 2 years after 2010) from 2013 to 2022 under index indicator ( compared to the periods 1989-1998 and 2001-2010) would be increased to 5197 applicants . The total number of inmates in the period from 2013 to 2022 calculated the index indicator of 58.96% (compared to the periods 1989-1998 and 2001-2010) would be about 2001 inmate.

### **Analysis of the data obtained from Ministry of Interior of Republic of Macedonia**

In the period from 2001 to 2010 a total of 2.247 crimes were revealed by MOI. "Unlawful manufacture, possession and trafficking in firearms or explosives" under Article 396 of the Criminal Code of the Republic, for which measures of persecution against 2.601 perpetrators were undertaken. The ratio of detected offenses and offenders is 1:15 i.e. on average every CA is committed by 1:15 people.

Tabular presented data:

Табела бр.1

"Недозволено изработување, држење и трговија со оружје или распркувачки материји" Член 396, Глава XXXIII од КЗ										
	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
	година	година	година	година	година	година	година	година	година	година
Регистрирани кривични дела	138	153	213	214	355	250	240	248	237	199
Сторители	172	215	238	235	395	279	286	288	270	223

Член 396, Глава 33 од КЗ  
 Недозволено изработување, држење и трговија со оружје или распркувачки материји  
 - Регистрирани КД/сторители на КД -

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From the data it is evident that most of the crimes were discovered in 2005, after which it is kept level and in the following 2007 and 2008, while in 2009 and 2010 the number of crimes falls.

Over an order of comprehensive analysis and extraction of relevant conclusions and predictions of crime trends, comparisons were made with data for the period \*2 from 1989 to 1998.

Namely, in the period from 1989 to 1998 the number of detected offenses and the number of employees in the following years were made.

Delivered table:

Табела бр.2

"Недозволено изработување, држење и трговија со оружје или распркувачки материји" Член 396 (претходно член 218)										
	1989	1990	1991	1992	1993	1994	1995	1996	1997	1998
	година	година	година	година	година	година	година	година	година	година
Регистрирани кривични дела	7	2	7	57	95	67	62	77	160	205
Сторители (извршители)	7	5	37	134	146	70	106	118	293	222

Регистрирани КД и Сторители на КД - "Недозволено изработување, држење и трговија со оружје или распркувачки материји" Член 396 од КЗ (Претходно член 218 од КЗ)

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<sup>68</sup>Source: Ministry of Interior, Bureau for Public Security, Sector for analytical research and documentation.

<sup>69</sup> Димовски, З. Илегалната трговија со оружје и тероризмот во Р. Македонија, 2005 година, стр. 72

The presented data shows that in the period from 1989 to 1998 by the Ministry of Interior revealed 739 crimes under Article 396 (before the amendments to the Criminal Code offense "Unlawful manufacture, possession and trafficking in firearms or explosives "was under Article 218) were carried by 1138 people. The proportion of recorded crimes and the number of employees is 1:53, i.e. on average every CA is committed by a person 1:53.

Comparative - correlation analysis of the two ten-year period reviewed (period \* 1 - year period from 1989 to 1998 \*2 - 2001-2010) indicates the following : We have increased the number of detected crimes of 739 (year 1989-1998) of 2247 (2001-2010) , which is a huge increase of 204 %. The number of employees from 1138 people (1989 to 1998) increased to 2601 persons (2001-2010) or seeing an increase of 128%.

Following these trends , no special changes in social reality were made, it's simple mathematical prediction (forecasting based on certain facts), taking as measure current index indicator (204 % and 128 %) for the period 2013 to 2022 would be the following: The number of detected offenses would be somewhere around 6830, and the number of employees would be somewhere around 5930 people.

Dynamics from 1989 until 2010 suggests a steady increase in the number of employees and the number of detected crimes, we basically saw balanced steady growth, but in 1992, 1993, 1997, 2005 and 2006 the number of detected offenses and offenders have increased sharply, and in subsequent years this growth returned to normal with a certain tendency to decrease in 2009 and 2010. The results obtained through comparative analysis of the two investigated periods (three years after the first period (1989-1998) in the first year of the investigated period (2001-2010) was going conflict in the Republic of Macedonia, can be further concluded that more moments as well as the overall social situation in the Republic of Macedonia, the impact of various social factors, as well as the work of the Ministry of Interior Affairs.

\* \* \*

As to the quantity of confiscated ( stripped ) weapons between 2001 and 2010 seizures following quantities of weapons: 1523 pieces revolvers and pistols , 680 rifles pieces, 4117 pieces of other weapons, 161,922 rounds of ammunition and 262.91 kg explosives and 217 pieces of explosive charge and 72 pieces of TNT explosives.

In period \*2 in 2007 seized the largest quantity of arms, due to the fact that in that year only within a share (in Tetovo, the village Brodec) have seized 1192 pieces of various types of weapons, over 30,000 rounds of ammunition and 72 pieces - TNT explosives .

Quantities of weapons seized in the period from 1989 to 1989 : 5344 weapons, 263,432 rounds of ammunition, 178.22 kg of explosives and 3153 bombs.<sup>70</sup>

The quantities of seized weapons shown on graph for the period from 1989 to 1998 and from 2001 to 2010, we will reveal the trend and the dynamics of confiscated of weapons, ammunition and explosives.

**Graph 1**



*Бројка на запленети парчиња оружје во периодот од 1989-1998 и од 2001-2010 година*

The graph clearly shows that the quantities of seized weapons in the considered periods vary from year to year, with most pieces of weapons seized in 1997 - 1725 pieces, which exceeded the figure from 2007 - 1512 pieces. This above all, according to the authors due to the intrusion of the Albanian population in Albania barracks in 1997 and robbery of over 700,000 military weapons by civilians, weapons smuggling through channels to find the way to Macedonia and Kosovo, Serbia, etc..

<sup>70</sup> Ibid

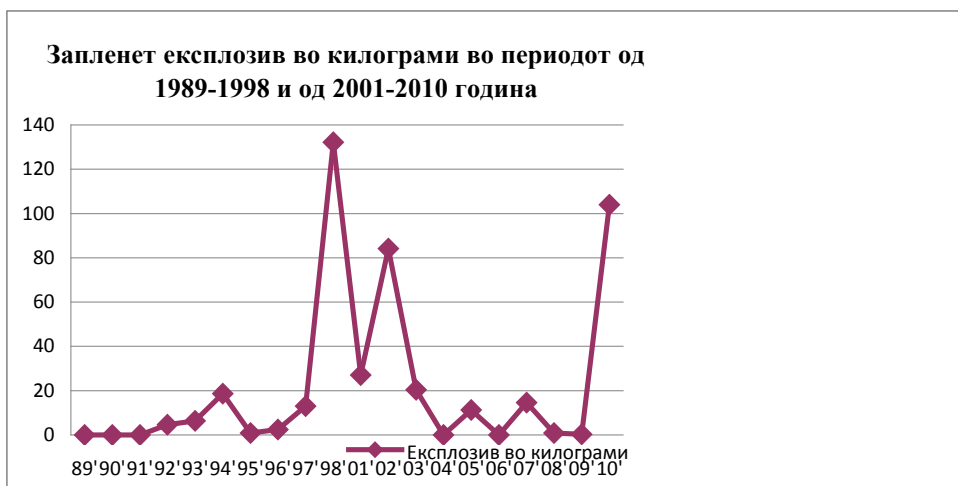
**Graph 2**



*Запленети парчиња муниција во периодот од 1989-1998 и од 2001-2010 година*

Ammunition in 1989, 1991 and 1992 has seized indicating a failure in the work of law enforcement in that period. Most ammunition was seized in 1998, only 100,253 pieces of various caliber. The data that we have seen show a trend in scaling later, with sudden drops or increases in certain years.

**Graph 3**



*Запленет експлозив во килограми во периодот од 1989-1998 и од 2001-2010 година*

The greatest amount of kilograms of explosives seized in 1998 seized 132.2 kilograms. In the reference period from 2001 to 2010 mostly seized in

2010 (104 kg) followed in 2002 and 2001 (84.144 kg or 27.95 kg). In 2006, though not seized explosives seized 217 pieces of explosive charge.

## **CONCLUSION**

Knowing the phenomenology of this type of crime, as part of the criminological science, a major asset in clarifying and understanding of all relevant facts and external manifestations of this problem, which would reflect better understanding of the occurrence, quality of opposition phenomenon and promotion the penalties by proposing new and true measures that correspond to the current situation. The picture that give us scientific research, objectivity shows the real situation in the field of trafficking in arms, ammunition and explosives .

The results obtained by using the exact scientific methods indicate steady growth in the volume of this type of crime, and the comparison between the \* 1 and \* 2 indicate the period of drastic increase in the number of reported crimes, reported offenders and seized quantities of weapons. Analyzing the data received from the Ministry of Interior recognized the following: We have increased the number of detected crimes of 739 (1989-1998) to 2247 (2001-2010), which is a huge increase of 204 %. The number of employees from 1138 people (1989 to 1998) increased to 2601 persons (2001-2010) or seeing an increase of 128 %. Dynamics from 1989 until 2010 suggests a steady increase in the number of employees and the number of detected crimes, we basically balanced steady growth, but in 1992, 1993, 1997, 2005 and 2006 have sharply increased the number of detected offenses and offenders, and in subsequent years this growth returned to normal with a certain tendency to decrease in 2009 and 2010.

As to the quantity seized weapons from 1989 to 1989 were seized : 5344 weapons, 263,432 rounds of ammunition, 178.22 kg of explosives and bombs 3153 and from 2001 to 2010 by MI seized a total of 6320 weapons, 161,922 rounds of ammunition and 262.91 kg of explosives and explosive charge 217 pieces and 72 pieces of TNT explosives.

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## **HISTORICAL DEVELOPMENT OF RESTORATIVE JUSTICE: FROM RESTITUTION TO VICTIM-OFFENDER MEDIATION<sup>71</sup>**

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### **Abstract**

Studying the history of punitive reactions is topic of concern to many historians, penal experts, law experts, anthropologists, criminologists. Taking into account the social reactions: exile from the community, revenge and composition in prehistory, and the eliminatory sanctions, deportation, physical and property sanctions and sanctions of social degradation in ancient and medieval times, it can be seen that restorative elements are incorporated in the system of social reaction, into the composition measures and confiscation of property regardless they are applied as single measures, as alternative or in combination with other measures.

Comparing the arguments for the existence of restorative traditions in historical societies and their denial and referring to the few written sources in this part of the paper I will not prove which model of justice was dominant in the prehistoric and historic societies, but I will try to present that restorative elements were also an integral part of the criminal response which was later abandoned and now they relive again

**Key words:** Restorative justice, mediation, victim, offender, sanction

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<sup>71</sup> review scientific paper

## INTRODUCTION

As crime exists since mankind exists, reactions to crime dating at the same time and they have changed during social development. Studying the history of punitive reactions is topic of concern to many historians, penal experts, law experts, anthropologists, criminologists. Taking into account the social reactions: exile from the community, revenge and composition in prehistory, and the eliminatory sanctions, deportation, physical and property sanctions and sanctions of social degradation in ancient and medieval times, it can be seen that restorative elements are incorporated in the system of social reaction, into the composition measures and confiscation of property regardless they are applied as single measures, as alternative or in combination with other measures.<sup>72</sup>

It is interesting to note that advocates of Restorative Justice see its roots in the negative social reactions to excesses behavior in prehistoric societies for which there are historical data. In the science literature we can often meet the thesis that the **roots of Restorative Justice are in philosophy and customs of indigenous people in ancient societies**, such as Native Americans in North America and Canada, Aborigines in Australia and Maori in New Zealand<sup>73</sup> and that traditions we should apply as successful relics of the past. On the other hand, some authors including *Sylvester Douglas & Daly* write about myths in the history of Restorative Justice because, based on data from their research, have found that some of the advocates of Restorative Justice wrongly interpret the facts on which they rely. In addition they distort the history, have selective approach to the facts and manipulate with certain sources of knowledge in order to create unilateral claims to support Restorative Justice as part of the penal reaction in early historic and prehistoric societies. Thus, *Daly*, in her critique of the history of Restorative Justice concluded that “*advocates try to slip ideas within the political agenda, saying that in the political arena talking untrue stories about Restorative Justice can have effective impact on reforming parts of the legal system.*”<sup>74</sup> It may inspire legislators for new laws and introduce alternative measures in response to crime. Comparing the

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<sup>72</sup> Sulejmanov, Z., Penologija, Skopje, 1999

<sup>73</sup> P. 34-46

<sup>74</sup> Sylvester J. Douglas, *Myth in Restorative Justice History*, Utah Law Review No1, 2003, available at: <http://www.law.asu.edu/files/Programs/Sci-Tech/Commentaries/16Sylvester.pdf>

arguments **pro and contra** existence of restorative traditions in historical societies and referring to the few written sources in this part of the paper I will not prove which model of justice was dominant in the prehistoric and historic societies, but I will try to present that restorative elements were also an integral part of the criminal response which was later abandoned and now they relive again.

### HISTORICAL DEVELOPMENT OF THE CONCEPT OF RESTORATIVE JUSTICE

*Sylvester* in his paper **Myth in Restorative Justice History** has analyzed theses posted by *Stephen Schafer*, who in 1970 has conducted research on the application of compensation and restitution for victims of crime in Europe, in the middle Ages. His main thesis is **that restitution as one of the elements of Restorative Justice long time has been inextricably linked to other forms of punishment.** *Herbert Edelhertz* in his paper **Restitutive Justice** from 1975 argued that restitution in the Middle Ages appears first, to limit the effect of blood conflict and secondly, to protect the offenders and their clans rather than to provide compensation to victims. He concludes that the first penal codes have recognized private and individual nature of excesses negative behaviors and social justice required restoration of the material damage. In his thesis, *Edelhertz* argues that restitution was oriented toward offender, not toward victim and restitution was introduced, not only to prevent blood conflict, but also to strengthen the central government and the fear of retaliation by the offender.<sup>75</sup>

Previous authors represent restitution as illiberal and punitive in combating criminal behavior. Contrary to their theses, anthropologists *Laura Nader and Elaine Combs-Schilling* considered that restitution is a liberal institution, it is not revenge but a desire to compensate the damage caused to the victim.<sup>76</sup> Central objective in their analysis is the view that restitution has different motivations and goals and it is separated from the punishment. Also, according to them, restitution is dominant measure in criminal justice system throughout whole history, which has retained in the current penal legislation. In addition to the above, they argue that **restitution is oriented towards the victim** saying *that the nature of the restitution in the surveyed*

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<sup>75</sup> Ibid, p. 496-498

<sup>76</sup> Ibid

*societies is contrary to the universal claim that restitution favors offenders which allows them to buy their crimes and to avoid vengeful victims. They even put into question the right of the victim and her family to impose other sanctions.*

In a further study of the history of Restorative Justice, we can recognize the learning of *Daniel Van Ness*, who in his work **Crime and its victim** since 1986 concludes that *what we see in ancient cultures is recognizing that what has been hurt by the crime is the victim and therefore she has right to be compensated. Thus, the restitution is and should be oriented towards the victim.*

One of the greatest explorers in the history of Restorative Justice well known in the literature is a criminologist *Elmar Weitekamp* that focuses on the development of models of Restorative Justice in two stages of human history: in the prehistoric (original) and yearly–historic societies. Data from surveys indicate that Restorative Justice is a victim -oriented, it aims to balance the harmony in society rather than to punish the perpetrators and exists since the beginning of human history. He refers to the example of the *Yurok Indians* in Northern California which have developed a program to compensate the damage by a tribe whose perpetrator was a member to the tribe of the victim.

Despite the right of the victim to use corporal punishment, death penalty, or to put the offender in so-called debt slavery, she/he used them only in cases when the victim was not properly compensated. In terms of the amount of damage, *Weitekamp* based on his research has found that several factors affected the amount of damage: the nature of the crime, the victim's status, solidarity and clan behavior, personal temperament and behavior of the victim and the offender and the geographical position of both Clans. The economic status of the offender is taken into account in determining the amount of damages. *Weitekamp* concluded that restitution was replacement of the original desire of the victim for revenge and murder<sup>77</sup>. It was explained by professor *Sulejman*, who sees the composition, as a form of punitive

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<sup>77</sup> Ibid, p. 510. *Weitekamp* explains punitive aspects of the objectives of the punishment: to prevent further, more serious conflicts, to rehabilitate the offender and returned to society, to avoid the negative stigma, to protect the victim's needs, to confirm the values of society by addressing the needs the victim and the offender and to show that society wants justice for all its members, to bring its members the norms and values of society, All these elements are purely restorative oriented.

reaction in ancient society as an attempt to reconcile the parties through material compensation for the damage.

When studying the history of Restorative Justice in yearly historical societies, *Weitkamp*, although, through numerous examples does not negate the application of physical punishments and of death penalty, he emphasizes restitution as an explicit alternative to physical punishment. The victim had two legal rights regulated by the courts: to take revenge or to accept payment for the damage. Later, revenge was only available if the damage had not been fully paid. Provisions for restitution were first regulated in the legal codes of ancient Mesopotamia, the Hammurabi's Code of Law, in 12 tables of Roman law. For example, the following provision of the Twelve Tables contains a measure of restitution for the damage done: *the thieves to pay double restitution unless the property is found in their houses. In that case they pay triple damages. If they refuse to accept search in their houses they pay quadruple damages.* According to Jewish Law, also if the fight between two people inflicts bodily harm, then the perpetrator who has inflicted the injury paid for the lost work time due to the treatment process. Or, if a domestic animals of some owner inflict mortal injury to some person, and the owner did not took any safety measures, in that cases the animals and the owner are killed, unless the victim's family has not require other adequate reparation.<sup>78</sup>

Claims that current models of Restorative Justice have their roots in the indigenous justice are justified with the examples of indigenous people (Maori, Aboriginal and Native Americans) in New Zealand, Australia and South and North America who have applied Group Conferencing and Sentencing Circles.

### **SHIFT FROM PRIVATE JUSTICE TO STATE JUSTICE**

Throughout the history of criminal justice in general, considering the crime as a private matter between the offender and victim and compensation as a better way of crime response was not held long in history. *Jonhson* writes about the shift from Private Justice to State Justice, which explains the change from a **System of Restitution (Composition System) in the System**

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<sup>78</sup> *Ibid*, p. 512

**of State Punishment.** In the previous system, the crime is viewed as violence of one against another person and priority of the community was not to determine the guilt of the offender and to impose appropriate punishment, but to establish peace through acceptance of responsibility by the offender and compensation of inflicted damage. The reparation and reconciliation are benefits for the injured party, rather than short-term pleasure, because the victim, due to her loss and pain, receives useful compensation.

Hence the question arises **why the system of Restorative Justice was abandoned and replaced by a system of state punishment?**

According to advocates of Restorative Justice, the change was not for humanitarian reasons, nor was an inevitable response to the need for greater social stability. The creation of State Control crime occurred because of low financial and political reasons, or because of the desire for money and power.<sup>79</sup> Thus, in the twelfth century in Europe, the Kings began to think about the public display of repressive power as a useful way to show their political power. King replaced the Composition System to System of Punishment because the punishment caused intimidation among people and fear towards him and the state.<sup>80</sup> *Daly* writes about the change of the systems, and she claims that the development of the State (royal) Law is connected with the Norman invasion of England in 1066. In that time, there was a transformation of disputes as disputes between individuals, to offenses against the King or against the State.<sup>81</sup> This was a **first step towards the process of extinction of pre-modern forms of Restorative Justice.**<sup>82</sup> This process entails a series disadvantages.

**First**, the takeover of the Criminal Justice resulted in the abandonment of the victim's needs. Thus, in order to exercise the right to compensation, the victims were directed to file private lawsuits in civil courts.

**Second**, increase of the State punitive Control resulted in loss of the sense of people that crime control is no longer their responsibility. In

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<sup>79</sup> Johnstone, G., *Restorative Justice – ideas, values, debates*, William Publishing, Devon, p. 40-41, 2002

<sup>80</sup> *Ibid*, p. 49-50

<sup>81</sup> It is a conquest of England by the Norman conqueror William in 1066 to change the system of English law in the interest of the king, see at:

<http://hr.wikipedia.org/wiki/Normandija>

<sup>82</sup> *Daly, K., Restorative justice: The Real story*, 2001, available at:

[http://www.griffith.edu.au/\\_data/assets/pdf\\_file/0011/50321/kdpaper12.pdf](http://www.griffith.edu.au/_data/assets/pdf_file/0011/50321/kdpaper12.pdf), p. 15

addition, communities have lost their confidence, ability and capability to deal with local problems caused by crime. Although State Justice, on the one hand provided higher reliability, it undermines social control which was, in any case, more powerful, more efficient and more just mechanism to control crime.

**Third**, the State Justice replaced restorative response with punitive system that used violence against committed violence. That not prevents crime, but creates more crime and causes stigmatization and moral rejection of the offenders.

The aforementioned disadvantages, the State Justice tried to eliminate through reform of the penal system and with the introduction of state compensation, mitigation of penalties, improving conditions in penal institutions and introducing measures for rehabilitation of offenders. But, most advocates of Restorative Justice testify that the state system could not be reformed in that way. According to them, it is necessary to leave the state system of punishment and to take back the application of traditional restorative practices i.e. to re-establish justice which will be based on community. Contra arguments are that in today big cities, there is no cohesion and relationship between residents, there is social disintegration and destroying of communities. However, the advocates said that participation of the community is not affiliated with the community as a geographic entity, but as a **personal community (community of care)** of the offender and the victim, which is composed of people (relatives, friends, intimate partners) which victim and offender know and are personally and emotionally involved in their lives. According to *Braithwaite*, the community should be seen **not as a place but as a relationship** because people are in a community with different people, and they must not necessarily be their neighbors.<sup>83</sup>

Taking into account the text above, measuring the positive and negative conditions for the development of Restorative Justice, we can agree that Restorative Justice went back within the criminal justice in the eighties through the revival of some elements of the old restorative practices. Today, Circles inherited from Aborigines and Conferences from Maori are implemented to settle criminal cases with active participation by the offender, victim and community. Also, mediation in which restitution is an

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<sup>83</sup> Johnstone, G., *Restorative Justice – ideas, values, debates*, William Publishing, Devon, p. 50-52, 2002

essential element in resolving the dispute is one of the most spread restorative measures in Europe.

We are free **to conclude** that today's models of Restorative Justice are in some way eclecticism of old and new penal institutes/responses to crime that are carefully incorporated into modern criminal legislation (some slower, some faster) considering (somewhere more sometime less), tradition, culture and customs in every society.

In further historical development of Restorative Justice, we will explore the introduction of mediation between offenders and victims (VOM), which gradually leave the state response for any offense and against any offender.

### **EARLY APPLICATION OF VICTIM-OFFENDER MEDIATION**

Victim-offender mediation was first established in Canada in 1974 and then in the U.S., UK, and Western Europe. In New Zealand and Australia is widespread in the late eighties. More precisely, in the town Kitcher, Ontario, two young boys aged 18 and 19 years violently destroyed many vehicles causing shock among the local community, primarily because they had not prior criminal record. The local probation officer suggested to the court the boys to meet damaged parties in their homes in order to reach an agreement on how to compensate the damage. Although there was no legal basis, the court agreed with the proposal of the probation officer. Boys faced with damaged parties, acknowledged their guilt and together reached agreement on restitution. Within three months, boys met the contract and compensate damages in the amount of \$ 2,000.<sup>84</sup>

The positive result of out of court resolution of the dispute was the basis for the introduction of the first program for victim-offender

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<sup>84</sup> Khan, S., *Mediation in the Criminal System: An improved model for Justice*, Professor Madigan, Final Paper, 2005



mediation,<sup>85</sup> which has found its legal basis as alternative measures program in Canada in the **Act of young offenders** since 1984.<sup>86</sup>

In the US, the early introduction of victim-offender mediation is set with the establishment of the Center for Mediation and Conflict Resolution in Minnesota in the 1970s. Its volunteers, elected representatives of the community in the first ten months had to resolve over 1,600 conflicts. A year later, in 1971 the *Minnesota Restitution Center* developed program for the application of alternatives to prison for adult offenders of property offenses through active cooperation of the offender and his victim in order to reach a restitution agreement on their immediate meeting. However, the first Victim Offender Reconciliation Program in the United States began to apply in 1978 by the *Mennonite Central Committee* in Indiana. Since then, the Department of Justice began to develop centers that implement such programs which undertake and process civil, neighborhood, marital, family and school disputes, as well. In American cities are established **dispute resolution services, community mediation services, centers for social justice, centers for community justice, Centers for Restorative Justice**. In 1982, studies show that approximately 200 mediation services (VOMP) are established, while in 1985 their number was double increased. During that year, the first national survey on 32 VOMP is conducted, and ten years later, in 1994 national survey was done on 123 VOM programs in the United States.

When we are applying mediation, which means reaching a mutually acceptable agreement between the parties, there are differences in the bodies responsible for their implementation, the manner in which cases are referred, the length and purpose of the process, the type of crime committed etc.<sup>87</sup> Considering these differences, restorative practice in the United States distinguish **community mediation, victim-offender mediation and victim-offender reconciliation**. Community Mediation involves family, marriage, custody, work, school disputes and they are run in Community Centers for Dispute Resolution. Disputes arising between the offender and the victim of

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<sup>85</sup> Victim Offender Mediation/Reconciliation Program

<sup>86</sup> Umbreit, M. & Warner, R., *Mediation of criminal conflict in England, An Assessment of services in Coventry and Leeds*, Centre for Restorative justice & Peacemaking, 1996

<sup>87</sup> Ibid, p. 42

the crime are involved in Programs for Reconciliation and Mediation. Mediation program is focused on the responsibility of the offender and the harm that make a difference in their implementation.<sup>88</sup> In 1994, the American Bar Association by adopting the **Requirements for application of the programs for mediation and reconciliation between offender and victim** encourages the stakeholders to incorporate them into federal, state and local criminal legal systems in all federal states in the U.S.

On the European continent, England is considered to be the cradle of mediation, which in 1979 by the police initiative has implemented the first project of mediation between victims and juvenile offenders in Exeter, known as *Exeter Joint Services Youth Support Team (YST)*. Police officers, probation officers and representatives of the local community who attended the common meetings with young offenders were included in its implementation. The police officer who led the case was entitled instead to file charges before the court to impose a measure of reparation or to refer the juvenile perpetrators to certain reparation program. Depends on the consent of the offender, he had the opportunity to repair the damage and to complete the case without formal prosecution.<sup>89</sup> A special feature of the first restorative program in England was the fact that financial compensation as a kind of reparatory measure was rejected. So, there is only nonmaterial reparation which was consisted of verbal apology, written apology, or community service. Such a practice was supported by the belief that mediators are not **collectors of money**, and even more by the fact that juvenile offenders are rarely able to compensate the victim financially. Therefore, in the literature we can often meet the claim that the reparation within the first restorative programs was synonym of apologize.<sup>90</sup>

Two years later, prompted by *Nills Christy*, in 1981 in Norway are established *Child Welfare Conflict Councils* where 90% of the cases by the police are directed to mediation process. In England and Wales in 1982 was established the first community mediation service to implement the UK Newman Conflict and Change Project. Afterwards Finland follows, which in 1983 began to apply mediation within the juvenile justice, then Germany in 1984, Scotland, Holland, and France.<sup>91</sup>

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<sup>88</sup> Ibid

<sup>89</sup> Davis, G., *Making amends: mediation and reparation in criminal justice*, Routledge, London, p. 43, 1992

<sup>90</sup> Ibid, p. 63-64

<sup>91</sup> McCold, P., "Restorative justice practice- the state of the field 1999", 1999, available at: [http://iirp.org/library/vt/vt\\_mccold.html](http://iirp.org/library/vt/vt_mccold.html)

Today, restorative measures and practices have found deserved place in almost all criminal justice systems in the world.

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## TYPICAL CHARACTERISTICS OF CORRUPTION IN REPUBLIC OF MACEDONIA<sup>92</sup>

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### *Summary*

The theme of this article are some of the hallmarks of corruption in Republic of Macedonia, presented through the research results. In it is concluded that corruption is the reason for inefficiency of the state. In addition, basic phenomenal forms of corruption are: giving and receiving bribes, nepotism and abuse of authority or function for personal gain. It is associated with the undercover alliances of political and economic elites and the political parties ruling over the public sector and the attempts to establish institutional control that will eliminate the exchange of influences, power and money.

In this paper is interpreted the opinion of respondents for corruption in certain institutions and activities ranging from 8.30 for receiving bribes to the lowest 3.94 for abuse of authority.

It is concluded that from all forms of corruption more prevalent are giving and receiving bribes, and then follows the triad of giving, receiving bribes and abuse of authority.

**Key words:** bribes, bribery, abuse of authority, corruption, institutional corruption

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<sup>92</sup> original scientific paper

## INTRODUCTION

The subject of this article are the characteristics of corruption in Republic of Macedonia. The analysis will be restricted to the results of the research "Citizens opinion about the corruption in Republic of Macedonia", conducted from 8<sup>th</sup> to 18<sup>th</sup> of January by a research team\* from the Faculty of Security - Skopje on the territory of the state. It included 1210 respondents.

Corruption here is observed as a negative social phenomenon. Etymologically the term corruption has its roots from the Latin word *corruptio* which meanings are bribery, embezzlement, perishable or deterioration, collapse and decomposition processes.<sup>93</sup> From structural point of view, corruption is constituted of three elements: (1) public authorities, (2) misuse of the public authorities and (3) gains accomplished. First signs of corruption are since the country emerged as an institution. We can talk about corruption cases since ancient times. Corruption as socially negative phenomenon was defined even in Roman law (*Lex Julia Reputandae*). The crime of corruption is defined as giving, receiving or claim benefits intended to influence the officer in connection with his work. Aristotle, Machiavelli and Monteskie concluded that corruption is a sign of deterioration of the moral values of society. That is why corruption is considered as immoral and harmful phenomenon in society, because social functions holders must conspiring common, not their own, private interests. In the process of developing of the modern state corruption can not be understood only as moral damages, also it is the reason for the inefficiency of the country. The most important forms of corruption are giving and receiving bribes, nepotism – abuse of position (function) for private purposes. Proclaimed values - especially success at any cost - act as an incentive for spreading the corrupt practices. In this sense the term corruption means abjection, extortion, depravity, bribery, exploitation of officials, moral depravity.

Robert Klitgaard definition of corruption claims that corruption exists when an individual illegally will put self-interest above the interests of

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\* The research team is composed: Dr. Sc. Cane Mojanoski – leader of the research team, Ass. Dr. Sc. Mrina Malish Sazdovska, Ass. Dr. Sc Marjan Nikolovski, and Ass. Dr. Sc Katerina Krstevska

<sup>93</sup> **Corruption** - (Lat. corruptio) 1. decay, rot, decay 2. moral corruption, depravity, debauchery 3. graft, bribery. See Velika Shirilova Large lexicon of foreign words, Toper, Skopje, 2001, p.511

the people and above ideals that will faithfully serve<sup>94</sup>. Definition of Vito Tanzi determined that corruption exist when the impartial principles in decision making are violated consciously and deliberately and main purpose is to usurp a convenience. His determination is that there is no corruption, unless it is a conscious, planned violation of the impartiality principle or some form, like postponed payment of the service, or any proposal for exchange of services, accompanied by bias and haughtiness of administration. Lack of information or reactions based on feelings, sympathy or antipathies are indicators of insufficient expertise and professionalism, but not for corruption<sup>95</sup>.

The distribution of authority and power (including security services, in some part institutions of justice and media) are taken of so called *ruling party*, those who participate in governing coalitions at the national level, in major cities and provinces in each municipality. Contrary to "classical" party state whose monopoly over the state was guaranteed with ideological legitimacy, the ruling party adheres to its political ideology but tends to create cartels of common interests in the appropriation of public goods, institutions and public services. This interesting structure is justified by the need of unity ("communion") for "state and national interests" which allegedly should not have differences, so, onward, paradoxically for a multiparty system, *the exclusion of political competition is based on national unity*. Interesting feedbacks, steeped in nationalistic ideology, undermine the establishment of normal constitutional state<sup>96</sup>. This actually is a temporary condition<sup>97</sup> where, from political and other sciences gets qualification of undemocratic regime<sup>98</sup>.

The poor economic situation in the country and low-income of the government officers are some of the multitude of factors that lead to corruption.

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<sup>94</sup> Robert Klitgaard: *Controlling Corruption*, Berkley CA: University of California, 1988, p.32

<sup>95</sup> Vito Tanzi: "*Corruption Around the World: Causes, Consequences, Scope and Cures*", International Monetary Fund Working Papers WP/98/63, (1998), Internet: <http://www.imf.org/external/pubs/ft/wp/wp9863.pdf> [accessed on 3.11.2013].

<sup>96</sup> *Ibidem*... p.2;

<sup>97</sup> Cane T. Mojanoski: the political parties to machine conquest of government, p.423-27; See: The reform of the institutions and its significance for the development of the Republic of Macedonia, Book V, MANU, Skopje, 2009;

<sup>98</sup> Jonuz Abdulahi: social change and corruption in developing countries, p. 8; [www.fes.org.mk / ... / Jonuz 20Abdullahi%,%,% 20SOCIJALNITE 20PROMENI% 20I% 20KORUPCIJATA% 20V ...](http://www.fes.org.mk/.../Jonuz%20Abdullahi%20SOCIJALNITE%20PROMENI%20I%20KORUPCIJATA%20V...) [accessed on 11.02.2011]

According to *Miodrag Labovikj*<sup>99</sup>, following factors allow corruption at the big door to be present in society:

- concentration of power, wealth and status,
- undemocratic and autocratic regimes, unresponsive bureaucracy,
- poor administrative audit,
- market trade restrictions,
- monopolies,
- industrial and infrastructure development,
- poorly organized and low-paid public service,
- weak structure and efficiency of the courts,
- system where government, money and politics play a leading role

## METHODS AND INSTRUMENTS

For the purposes of the research were made: a) **Basis of conversation**: "The opinion of citizens about corruption and b) **A written questionnaire**: corruption in the Republic of Macedonia. An integral part of the toolkit are: Survey diary, Analytical table of data processing, The Code of passwords and The Guidance for using the basis for conversation and providing a correspondent.

The **Basis for conversation** was designed for examining the attitudes of citizens and **A written questionnaire** was distributed to institutions in which their employees are directly concerned (or have a experience) in dealing against corruption (Ministry of Internal Affairs, Customs, Courts, Public Prosecution, Media and NGOs).

The basis of conversation and written questionnaire are designed in form of socio-demographic survey specifically for this research, the form is designed and structured as a questionnaire, which included demographic characteristics of respondents and a number of groups of questions which create ranking of certain manifestations of corruption or determine the extent of corruption. Here we can talk about the method of collecting data by using a structured interview. Let's remind ourselves. When we talk about **structured interview**, in fact, all candidates are asked the same questions, formulated according to the specific situation. Structured interview tend to

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<sup>99</sup> Labovikj, M. / Nikolovski, M.: Organized crime and corruption, Faculty of Security, Skopje, 2010, p.194



create as much objective terms as possible: all candidates are evaluated according to the same criteria and all were given equal time to present themselves.

The Basis for discussion was structured in six sections. a) demographics data; b) knowledge of corruption; c) experiences related to corruption; d) position of corruption; e) willingness and determination to fight against corruption; and f) developing defensive systems against corruption. The written questionnaire consist the following five sections: a) demographic data; b) knowledge of corruption; c) experiences related to corruption; d) position of corruption; and f) forms of manifestation and fighting against corruption.

The form of the questions is closed and consists of scales of corruption degrees, ie the selection of variations for questions related to obtaining knowledge, experiences related to corruption or the presentation of forms of fighting against corruption.

In the instruments were embedded scales of valuation (from 1 to 10 or 1 to 12), about the level of corruption in specified occupations or institutions and were offered rating scales about the forms in which corruption is usually manifested.

## **RESULTS AND DISCUSSION**

Corruption is undoubtedly a social phenomenon where dominates the opinion about its existence, widespreadness and incorporation into the system. The debate about corruption as a institutional phenomenon is needed in order to find forms that limit, prevent and overcome. Therefore it is really important to find out the answer about the general feeling for existing of corruption<sup>100</sup>.Corruption is a phenomenon in modern societies, especially in transition countries. This does not mean it did not exist before but it is a fact that changed the norms and the standards, while the previous have become unacceptable. In the pre-transition system existed many obstacles against personal enrichment, as well as against the weak concentration of political power. In that period the service was not changed for money, but for influence. In fact, the motive were not directly the money, but the fear (the threat), or a desire to have more power, which would secure progression on the social scale. In the new society things are changing. Aspirations are growing and the money become means for their attainment. It is a time when

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<sup>100</sup> "The current issue of sociological theory, you can set the following way: how is it possible to subjective meanings become objective factual circumstances?"  
PLBerger, T. Luckman, *The Social Construction of Reality*, Penguin Books, London, 1985, p.32

simultaneous explosion of material aspirations, on one hand and the erosion of values and norms on the other hand became serious, or can say and dangerous combination. If we add on this and the new challenges of privatization, illegal enrichment, the denationalization process and the direct looting of public funds, they only increase and provide clear image of unstable transitional societies. At this can be added and the reduced efficiency of the institutions for detection, prosecution and punishment of the corruption, and then is not surprising and the phenomenon of corruption and its expansion. In addition, in society is created impression that corruption is important – it is not a fashion hit because it is dangerous - that it is an indicator of somebody's "successfulness" and the ability to "handle". About this type of situation Durkheim says that experiencing such period in which "crime is normal because it is not possible a society which is free of it ... because in particular society to stop performing acts that are declared as criminal, will be needed they to become, feelings that offend us ... it is required the community as a whole to feel them more lively. But if this feeling become so strong ... violations will be the subject of a rigorous conviction that will contribute some of the simple moral mistakes to become crimes"<sup>101</sup>. Having no intentions to get into the debate about the reasons for the corruption, can be concluded that it has a devastating consequences, and that is the erosion of trust in the institutions<sup>102</sup>.

In the research were placed questions for evaluation of a number of situations, in which are evaluated certain institutions or sectors, how much they are susceptible to giving and receiving bribes, abuse of authority and illegal mediation. Following are the average grades.

**Table N. 1 Evaluate your opinion, which forms of corruption are present in certain parts of society.**

(Evaluate the following: **1 - at least up to 12 – the most**. In every field in the row, enter a score, which will not be repeated.)

	<b>38.1</b>	<b>38.2</b>	<b>38.3</b>	<b>38.4</b>	<b>38.5</b>	<b>38.6</b>	<b>38.7</b>	<b>38.8</b>	<b>38.9</b>	<b>38.10</b>	<b>38.11</b>	<b>38.12</b>
<b>1</b>	6,03	6,74	6,84	7,26	7,13	6,65	6,71	5,81	6,44	6,25	4,74	6,29
<b>2</b>	6,70	7,46	7,53	7,77	8,30	6,91	7,12	4,95	6,92	6,32	4,08	4,48
<b>3</b>	7,39	7,89	7,97	7,82	7,97	6,84	7,60	5,04	6,19	5,40	3,94	4,42

<sup>101</sup>Emil Dirkem: *O normalnosti zločina*, kaj Talcot Parsons & all.: *Teorije o društvu*, Vuk Karadžić, Beograd, 1969, strp. 827; J.Kregar, *Deformation of Organizational Principles*, u D.V.Trang, *Corruption and Democracy*, D.v.Trang (ed), COLPI, Budimpešta, 1994, p.47-61

<sup>102</sup> Josip Kregar: *Korupcija u pravosuđu*; p. 2-3; See: [www.pravo.hr/\\_download/repository/korupcijasudstvo.cg.doc](http://www.pravo.hr/_download/repository/korupcijasudstvo.cg.doc) [accessed on 26.04.2011];

4	7,15	7,74	7,73	7,84	7,72	6,92	6,92	5,41	5,97	5,42	3,95	5,09
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**A legend:**38.1 Legislative authority (Parliament); 38.2. Executive authority (Government); 38.3 Administrative authorities(Ministries); 38.4. Local Government (Mayors); 38.5. Courts; 38.6. Public Prosecution; 38.7. MOI; 38.8. Finances and banks; 38.9. Healthcare;38.10.University (Faculties); 38.11. Secondary education; 38.12. Private sector; 1- payment of bribes to; 2- receiving bribes; 3- abuse of authority and 4- illegal mediation;

The calculation of the values in Table N.1 is performed according to the form for calculation of the weighted arithmetic average. The elemental review indicates that scores range from 8.30 for receiving bribes to the lowest 3.94 in abuse of authority. In fact they are appropriate empirical indicator that shows citizens trust towards them. It may be noted that the scores (perceptions) for the presence of certain forms of corruption are approximate for mayors in the local government and for courts. In the first group, their range is from 7.82 for abuse of authority and illegal mediation, receiving and giving bribes. Receiving bribes is highest negatively evaluated occurrence for courts.

Corruption in the institutions exists. It exists in that form in which each institution is subject to collapse. It exists as an inevitable consequence of professional and moral imperfection of people who have the power to decide about the interests of any society. It should be taken in mind that in society except the market and economic exchange exists and exchange of status and power. As in economic markets, and here exists supply and demand for illegal services. Interactions that are an integral part of the system and its institutions are being created. In fact, it is undesirable and dysfunctional part, but along the way a real "gray" supplement to the institutions. Corruption in the institutions can be attributed to the imperfection of people, to the values and norms that need to stick to. Therefore is argued that corruption is a moral problem and weakness of the individual.

In principle, a number of indicators point to corruption and they are not considered as serious breach of professional ethics or of the established code of honor. It is considered "normal" to show appreciation as a "small gift" or "free lunch", sponsoring participation in an international event, as well as providing "cruise in some exotic places", socializing of lawyers and judges, accepting donations for construction works and equipment to the institution and similar activities. Such examples of "attention" are not considered a violation of the norms or the rules of the code. Today it is difficult to find data on prevalence of such cases, but the point is that they exist, while social action is weak. In the pre-transitional period in R.Macedonia, according to the logic of the former system, the ruling party

argued about "beneficial fraud" and determined a strategy how to combat it. It should be noted that the leading structures in the society, often take actions whose outcome is certain, ie that is doomed to failure.

**Table N. 2 Scale of corruption in certain type of corruptive services and institutions and activities**

<b>Rank</b>	<b>Giving bribes</b>	<b>Receiving bribes</b>	<b>Abuse of authority</b>	<b>Illegal mediation</b>
<b>1</b>	4. Local Government (Mayors);	5. Courts;	5. Courts;	4. Local Government (Mayors);
<b>2</b>	5. Courts;	4. Local Government (Mayors);	4. Local Government (Mayors);	2. Executive authority (Government);
<b>3</b>	3. Administrative authorities (Ministries);	3. Administrative authorities (Ministries);	3. Administrative authorities (Ministries);	3. Administrative authorities (Ministries);
<b>4</b>	2. Executive authority (Government);	2. Executive authority (Government);	2. Executive authority (Government);	5. Courts;
<b>5</b>	7. MOI	7. MOI	7. MOI	1. Legislative authority (Parliament);
<b>6</b>	6. Public Prosecution	9. Healthcare	9. Healthcare	6. Public Prosecution
<b>7</b>	9. Healthcare	6. Public Prosecution	6. Public Prosecution	7. MOI
<b>8</b>	12. Private sector	1. Legislative authority (Parliament);	1. Legislative authority (Parliament);	9. Healthcare
<b>9</b>	10. University (Faculties)	10. University (Faculties)	10. University (Faculties)	10. University (Faculties)
<b>10</b>	1. Legislative authority (Parliament);	11. Secondary education	11. Secondary education	8. Finances and banks
<b>11</b>	8. Finances and banks	8. Finances and banks	8. Finances and banks	12. Private sector
<b>12</b>	11. Secondary education	12. Private sector	12. Private sector	11. Secondary education

In the survey the respondents were asked to make ranking from a list of 12 institutions how according to their assessment, whether and which forms of corruption are present in particular parts of society. The assessment was carried out on a scale in which 1 do not have and 12 has the most.

Following are the synthetic indicators about the level of presence of certain corruptive forms in a number of institutions and sectors in the state. The indicators are weighted arithmetic averages.

At the end of this debate, whether there is a correlation between the forms of corruption, ie whether any (and which) and how much it influences the other?

#### Correlations

			<i>Giving bribes</i>	<i>Receiving bribes</i>	<i>Abuse of authority</i>	<i>Illegal mediation</i>
<i>Spearman's rho</i>	Giving bribes	Correlation Coefficient	1,000	,902**	,858**	,837*
		Sig. (2-tailed)	.	,000	,000	,001
		N	12	12	12	12
	Receiving bribes	Correlation Coefficient	,902**	1,000	<b>,925**</b>	,876*
		Sig. (2-tailed)	,000	.	,000	,000
		N	12	12	12	12
	Abuse of authority	Correlation Coefficient	,858**	,925**	1,000	,923*
		Sig. (2-tailed)	,000	,000	.	,000
		N	12	12	12	12
	Illegal mediation	Correlation Coefficient	,837**	,876**	<b>,923**</b>	1,000
		Sig. (2-tailed)	,001	,000	,000	.
		N	12	12	12	12

\*\* . Correlation is significant at the 0.01 level (2-tailed).

The calculation is made with Spearman's (rho) coefficient of correlation. Elemental analysis, not only of the amount of coefficients, but and the significance indicator, shows that there is a high positive correlation of 0.925 between the form receiving bribes and abuse of authority<sup>103</sup>. A similar correlation exists between the mediation and the abuse of authority by 0.923. High correlation has been noted between giving and receiving bribes from 0.902. Somewhat smaller values, but high coefficients of linear correlation are registered between giving bribes and abuse of authority by 0.858, giving bribes and mediation 0.837 and mediation and receiving bribes by 0.876.

Correlation analysis indicates that the forms of corruption that are subject to assessment of the respondents show a high degree of connectivity,

<sup>103</sup> Цане Т. Мојаноски: *Методологија на безбедносните науки – аналитички постапки*, Книга III, Скопје, 2013, p.412;

ie a high degree of intensity of links among the forms of corruption. It means that undertaking a certain form of corruption assumes or is contributing to the emergence of another similar form. Therefore it should be concluded that the elimination of certain form of corruption will assume reduction or loss of another form.

## CONCLUSION

In the perceptions of the citizens of Republic of Macedonia dominates consciousness and the conviction that all of the forms of corruption are present, emphasizing that giving and receiving bribes is the most common form of corruption, followed by triad of giving, receiving bribes and abuse of authority. This suggests to the opinion of citizens that receiving bribes is more frequent form of corruption from giving, not considering that if one person had received bribes, anyone should have given the bribe to the bribed person. Besides these two forms of corruption one third of the respondents consider that the abuse of position and authority is also quite present in our society, while attention is not paid to a great extent on other forms of corruption. It is **an indicator** that are absent certain forms and instruments of control, or legal mechanisms are insufficient to fulfill the controlling function.

It can be concluded that more than a quarter of citizens respondents answered affirmatively about the fact that have been in the situation, or have been at risk of bribery. In such a situation have been and one quarter from the respondents of the professional public.

Most exposed to risk of corruption is the citizen in situations when looking for a job (employment) and while advancing at work. The analysis proved that the holder of state (administrative) function is mostly at risk in situations when "carries the realization of public procurement procedures".

The research results indicate to the findings that corruption, despite the emphasized social efforts is a serious problem which is focused on the values of the society, especially on realization of the principles of rule of law. This is why it is important to point out that is necessary to strengthen the mechanisms of organized society to deal with the consequences of corruption.

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## **SOME ASPECTS OF CORRUPTION IN REPUBLIC OF MACEDONIA<sup>104</sup>**

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### **Abstract**

Corruption is a social evil which greatly impairs the democratic processes and benefits of one society, and occupies a significant part of the criminal behaviour in the Republic of Macedonia. There are numerous activities that offenders undertake and are considered as corruption. The most important and most frequent are giving and receiving bribe, abuse of the official authority, and there are many other forms.

That the corruption is an important deviant corruption and crime phenomenon in a society indicates the fact that the international community recognizes a field of action of democratic governments and states. So, in any reports of the European Union accession negotiations of Macedonia in the European Union, a special section deals with the implication of corruption to overcome the problems of corruption in the country.

Motivated by this situation, a research team from the Faculty of Security-Skopje conducted a research on corruption in the Republic of Macedonia, which results represent a content of this paper.

**Keywords:** corruption, abuse, bribe, etc.

### **INTRODUCTION**

Research on the opinion of citizens about corruption in the Republic of Macedonia was conducted at the Faculty of Security - Skopje by a research

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<sup>104</sup> original scientific paper

team<sup>105</sup> and by students of the faculty. The survey consisted of the realization of a questionnaire as a method of gathering opinions from citizens, and during the analysis of the given results following methods were applied: analytic - synthetic method, comparative, dogmatic and statistical method. The sample was randomly selected and successfully implemented in 1210 questionnaires in January 2013.

The aim of the research is to consider the public opinion of the citizens of the country in terms of corruption<sup>106</sup>, process of the results and to propose a model to overcome certain issues. During the implementation of the research findings were obtained on subjects in which corruption is most common, the way of execution of corrupt activities<sup>107</sup>, the role of the authorities and the measures they should implement to combat corruption and the like<sup>108</sup>. Also the research team at the end of the report is also going to offer measures to overcome the problem of corruption in the Republic of Macedonia.

### PERCEPTIONS OF CITIZENS OF CORRUPTION

In the survey the interviewed participants answered a number of questions about their experiences with corruption. In fact they have presented their opinion on corruption in the Republic of Macedonia through the prism of their own experience of giving, receiving bribe, participating in corrupt activities, opinions of relevant authorities about their activities to prevent corruption<sup>109</sup> and the like., thus they also provided answers to the following questions.

**Table no. 1 Have you been in a situation (or have personal experience) to be exposed to the risk of corruption (to give BRIBE)? - (circle one answer)**

		Frequenc y	Percen t	Valid Percent	Cumulative Percent
Valid	(1) Yes	357	29,5	29,5	29,5

<sup>105</sup> The research team is composed of Prof. Dr. Cane Mojanoski, Associate. Prof. Dr. Marina Malis Szdovska, Associate. Prof. Dr. Marjan Nikolovski and Doc. Dr. Katerina Krstevska

<sup>106</sup> see more Kambovski V., Naumovski P. Corruption-greatest social evil and a threat to the state of law, Skopje 2002

<sup>107</sup> Labovic, M. / Nikolovski M.: Organised crime and corruption, Faculty of Security, Skopje, 2010

<sup>108</sup> More on Police combating corruption See manual for police integrity, DCAF, Slovakia, 2012, p. 27

<sup>109</sup> Labovic Miodrag: The Government corrupts; Gamma, Skopje, 2006

d	(2) No	674	55,7	55,7	85,2
	(3) I don't want to declare	179	14,8	14,8	100,0
	Total	1210	100,0	100,0	

Regarding the situation of giving bribe 29.5% of respondents said they were at risk of corruption and gave bribe. 55.7% said they were not in a position to give bribe and 14.8% did not want to speak. People who gave bribe and they are almost 30% from the total number of the respondents indicating that corruption is present in our society and especially if this figure is added to the number of those who do not wish to speak, it is a really a high number. The not respond of some of the respondents on certain issues of giving bribe is expected because people generally manifest fear of giving an opinion on a delicate topic as corruption. This is especially due to the fact that people who give bribe are not exempt from criminal liability.

**Table 2. If you answered YES to what risk have you been exposed (what did you give)?**

	Frequency	Percent	Valid Percent	Cumulative Percent
1. Money in cash	185	15,3	39,7	39,7
2. Money on an account	42	3,5	9,0	48,7
3. Sponsorship	23	1,9	4,9	53,6
4. Different kinds of services	103	8,5	22,1	75,8
5. Other	113	9,3	24,2	100,0
<b>Total</b>	<b>466</b>	<b>38,5</b>	<b>100,0</b>	
System	744	61,5		
Total	1210	100,0		

Regarding the assets or services which persons giving bribe have used, the following results were gained: 39.7% gave money in cash; 9% put money on someone's account; sponsorship 4.9%, different kinds of services 22.1% and other 24.2%. A relatively large percentage of implementation of giving bribe is accomplished by giving or payment of funds or a total of 48.7%, which is almost half of the implemented methods of corruption. Also a significant number is realized by exercising or giving services of different nature - 22,1% , and there is a similar number of other ways of giving bribe, which is the result of personal experience of the respondents – 24,2%. Based on an analysis of the ways of giving bribe, dominates the provision of money in cash. Although in recent times we have witnessed the prevention of corruption through the implementation of measures by applying chemical snares to mark the money which is given as bribe and prove the guilt of the recipients. Several operational actions to detect corruption in the Republic of Macedonia were carried out in this same way and the public and the affected are familiar with the method of detecting and proving the act<sup>110</sup>. Thus new forms of committing the act that are harder to prove, such as payment of money on a bank account and sponsorship, but from the results obtained it can be concluded that these ways of bribing are not found in large numbers. So in our country still dominates the traditional way of bribery, and that is giving money in cash in order to corrupt some individuals.

**Table no. 3 Have you been in a situation (or have personal experience) of being exposed to the risk of corruption (to receive BRIBE)? - (Circle one answer)**

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	(1) Yes	121	10,0	10,0	10,0
	(2) No	901	74,5	74,5	84,5
	(3) I don't want to declare	187	15,5	15,5	100,0
	<b>Total</b>	<b>1209</b>	<b>99,9</b>	<b>100,0</b>	
Missing	System	1	,1		
<b>Total</b>		<b>1210</b>	<b>100,0</b>		

<sup>110</sup> Malis-M Sazdovska. "The role of the police and prosecutors in the fight against organized crime in the Republic of Macedonia," Social aspects of organized crime, the Institute for International Politics and Economics, Belgrade, 2011

Considering the situations or the personal experience of the respondents with their exposure to the risk of corruption, specifically receiving bribe, the results are as follow: 10% of the respondents were in a position to accept bribes, 74.5% weren't in a position of receiving bribe and 15.5% of the respondents don't want to declare.

In relation to the fact that the phenomenon of corruption is related to criminal responsibility to both involved parties reaction of the respondents who do not want to speak on this issue is expected. Thus the figure of 15.5% of the respondents who do not want to comment on the situation of receiving bribe is an expected reaction, but it indicates that there are indications of the possibility this population to be connected to corruption. The majority of respondents 74.5% have no personal experience with corruption, which means that it is not largely present. But if we connect these answers with the job and the position of the respondents we can come to the conclusion that these respondents haven't been in a position to accept bribe. Namely, 70% of respondents are with secondary education and lower levels of education, so probably they are not in a position to accept bribe and to give service in return or the like.

**Table no. 4 Have you had personal experience (situation) in which you were at risk of corruption (abuse of authority, official position, power)? – according to the gender (circle one answer) Crosstabulation**

		P.III.15 III.15. Have you had personal experience (situation) in which you were at risk of corruption (abuse of authority, official position, power)? (Circle one answer)			
		1 (1) Yes	2 (2) No	3 (3) I don't want to declare	Total
Gender	1 female	50	433	89	572
	2 male	89	444	104	637

**Table no. 4 Have you had personal experience (situation) in which you were at risk of corruption (abuse of authority, official position, power)? – according to the gender (circle one answer) Crosstabulation**

		P.III.15 III.15. Have you had personal experience (situation) in which you were at risk of corruption (abuse of authority, official position, power)? (Circle one answer)			
		1 (1) Yes	2 (2) No	3 (3) I don't want to declare	Total
Gender	1 female	50	433	89	572
	2 male	89	444	104	637
Total		139	877	193	1209

#### Chi-Square Tests

	Value	df	Asymp. Sig. (2-sided)
Pearson Chi-Square	8,777 <sup>a</sup>	2	,012
Likelihood Ratio	8,899	2	,012
Linear-by-Linear Association	2,201	1	,138
N of Valid Cases	1209		

a. 0 cells (,0%) have expected count less than 5. The minimum expected count is 65,76.

As a result of the analysis of the Chi-Square Tests<sup>111</sup> can be concluded that the Pearson Chi-Square is 0.012 which means that there is a certain correlation between the position of the man / woman and the exposure to the risk of corruption. This may be due to the status of the man / woman in the

<sup>111</sup> Mojanoski, T. Cane: Methodology of security science - fundamentals, Book I, Faculty of Security, Skopje, 2012;

management of the institutions and bodies of the state administration which is more common for men.

**Table no. 5 Have you had personal experience (situation) in which you were at risk of corruption (abuse of power, authority, power)? - according to the qualifications (circle one answer) Crosstabulation**

		P.III.15 III.15. Have you had personal experience (situation) in which you were at risk of corruption (abuse of power, authority, power)? (circle one answer)			Total
		1 (1) Yes	2 (2) No	3 (3) I don't want to declare	
P.I.5.5. Qualifications :	1. Without education	4	2	2	8
	2. Primary school	5	76	27	108
	3. Qualified	8	42	9	59
	4. Medium expertise	63	468	97	628
	5. College	12	57	17	86
	6. University degree	37	201	34	272
	7. Master 's degree	8	25	6	39
	8. Doctorate	0	1	0	1
Total		137	872	192	1201

We use Crosstabulation in the table and correlate the expertise and the exposure to the risk of corruption. It can be concluded that according to the degree of participation in the survey of all options of expertise offered have adequate participation in exposure to the risk of corruption.

### Chi-Square Tests

	Value	df	Asymp. Sig. (2-sided)
Pearson Chi-Square	33,632 <sup>a</sup>	14	,002
Likelihood Ratio	29,879	14	,008
Linear-by-Linear Association	8,455	1	,004
N of Valid Cases	1201		

a. 6 cells (25,0%) have expected count less than 5. The minimum expected count is 11.

The analysis from the Chi-Square Tests by which the Pearson Chi-Square is 0,002, we can conclude that there is a certain connection between the degree of education and qualified training and the possibility of exposure to corruption. This means that the possibility of abuse of the official authority<sup>112</sup>, and other types of corruption are in correlation with the qualified expertise of the respondents. This can be explained by the positions that the people are working on according to their level of education and the possibility to be corrupted.

***Table no. 6 Have you had personal experience (situation) in which you were at risk of corruption (abuse of power, authority, power)? - according to the nationality (circle one answer) Cross tabulation***

	P.III.15 III.15. Have you had personal experience (situation) in which you were at risk of corruption (abuse of power, authority, power)? - according to the nationality (circle one answer)	Total
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<sup>112</sup> More on abuse of official authority see Nikolovska S. Methodology of research of economical-financial criminality, Skopje, 2013, p.427



		1 (1) Yes	2 (2) No	3 (3) don't want to declare	
P.1.3.3. Nationality:	1 Macedonian	114	735	158	1007
	2 Albanian	19	92	25	136
	3 Turkish	2	20	5	27
	4 Vlach	2	12	0	14
	5 Roma	0	4	3	7
	6 Serbian	1	13	1	15
	7 Bosniak	1	0	0	1
	8 others	0	2	1	3
	Total	139	878	193	1210

The table in which the data of nationality and the possibility of exposure to risk of corruption are intercrossed doesn't offer results of dramatic deviation of nationality in relation to the possibility of corruption.

### Chi-Square Tests

	Value	df	Asymp. Sig. (2-sided)
Pearson Chi-Square	19,321 <sup>a</sup>	14	,153
Likelihood Ratio	18,419	14	,188
Linear-by-Linear Association	,032	1	,858
N of Valid Cases	1210		

a. 14 cells (58,3%) have expected count less than 5. The minimum expected count is ,11.

Thus, in this case the Pearson Chi-Square showing 0.153 doesn't determine the existence of certain degree of dependence between the categories of nationality and the risk of exposure to corruption. So nationality isn't a reason for bigger or smaller exposure to corruption.

**Table no. 7 Have you had personal experience (situation) in which you were at risk of corruption (abuse of power, authority, power)? (circle one answer)**

	Frequency	Percent	Valid Percent	Cumulative Percent
(1) Yes	139	11.5	11.5	11.5
(2) No	878	72.6	72.6	84.1
(3) I don't want to declare	193	16.0	16.0	100.0
Total	1210	100.0	100.0	

In terms of personal experience of respondents to exposure to risk of corruption, only 11.5% responded positively, 72.6% had no such experience, and 16% of respondents did not want to speak.

**Table no. 7 Have you had personal experience (situation) in which you were at risk of corruption (unlawful mediation)? (circle one answer)**

	Frequency	Percent	Valid Percent	Cumulative Percent
(1) Yes	99	8.2	8.2	8.2
(2) No	903	74.6	74.6	82.8
(3) I don't want to declare	208	17.2	17.2	100.0
Total	1210	100.0	100.0	

Regarding the risk of corruption and personal experience in unlawful mediation 74.5% of respondents have no personal experience, 8.2% have such experience, while 17.2% did not want to comment on this issue. The issue compared with previous ones and the personal experiences of respondents, the number is approximate of those who were not in a position to mediate illegally, but the number of those who have personal experience

with this kind of corruption<sup>113</sup> is reduced. For example, those who gave bribe are represented with about 30% of the total number of respondents, which means that the unlawful mediation is rarer case in terms of giving bribe, as one of the ways of corruption in the country.

## CONCLUSION

Analyzing some of the results of the survey specific conclusions can be made on appeared forms and other facts about the corruption in the Republic of Macedonia according to the views of the respondents. So in terms of the situations giving bribe respondents clearly expressed the view that they were in a position of giving bribe, and most usually money in cash. A smaller number of respondents were in a position to accept bribe, but a number of respondents do not speak on this and not even on other issues related to corruption and their personal experience with it. Considering the gender in distribution of exposure to risk of corruption, there was greater exposure to risk by men. According to the qualifications of the respondents, it can be concluded that the possibility of abuse of the official authority, and other types of corruption are correlated to the level of qualifications of the respondents. Regarding the nationality of respondents there is no drastic deviation in exposure to corruption in relation to the nationality, which means there is an equal opportunity for exposure to risk to all of them.

Considering these and other conclusions about corruption in the Republic of Macedonia can be concluded that in the following period adequate measures for reducing the risk of exposure to corruption need to be taken. Of course this is only possible if all the entities responsible for the prevention of corruption act systematic ally and coordinately and thus proactively. The solution of this serious problem in the country is significant, and all factors should be in position of increasing the awareness against corruption, respecting ethical and legal norms and daily fight to prevent corruption in the Republic of Macedonia.

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<sup>113</sup> See more on research result on corruption in RM, “Monitoring Programme of court cases related to corruption in the Republic of Macedonia”, the Coalition for Fair Trials, Skopje, 2008, p. 20

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## **THROUGH NATO MEMBERSHIP TO ECONOMIC SECURITY AND STABILITY<sup>114</sup>**

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### **Abstract**

The idea for economic security is set into a political argument which refers to the nature of relations between the political structure of international (dis)order and the world market economical structure (Buzan, 1991). Mercantilist and neomercantilist give priority to the politics. According to them, the state has to follow the social and political goals, in order to create social welfare and maintain the stability which is considered to be essential for the survival of the individuals, the companies, as well as the markets. Therefore, the economic security is part of a greater state priority, which is the national security strategy.

Activating the business for the preparation and adoption of the new opportunities given with the NATO membership, seeks for reviewing carefully the politics of today, which create the economical development, security and state defense. The progress of the actions taken into this direction can initiate development and practice of a new priority political line for mutual action between the business sector and the security institutions. The fundamental tool for this integral politics can be a program for partnership between the private and public sector, in the security and defense department.

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<sup>114</sup> review scientific paper

**Key words:** economic security, economic stability, security strategy, NATO membership.

## **Introduction**

The NATO and European Union membership is a dual strategic goal for the most post-communist countries, since 1989. Entering the two western "clubs" means belonging to the area of economic prosperity and political freedom provided by institutional and military relations between the Member States.

It is easy to see why the entry into NATO is considered a milestone in the economic and political development of a country. A membership requires fulfillment of certain conditions which indicate that a country has achieved a high level of economic prosperity and political maturity. The functional market economies provide good economic results that are necessary to support military infrastructure and meeting the needs of NATO. Democratic institutions provide the fundamental rights of citizens and help to overcome domestic and regional conflicts.

However, we raise a question about the extent to which NATO affects the economic development. The alliance is no longer what it used to be during the Cold War. The main ideological enemy, Soviet communism, no longer exists. It became difficult to articulate the common interests, as well as to define specific tasks.

Geopolitics cannot avoid estimating the economic weight of the main players, and considering that that economic weight changes, it changes the perception of the Alliance as well.

In that situation that is constantly changing, NATO is just one of the "ingredients" that can enhance economic development. The goal of NATO membership is a powerful stronghold of stability on the Western Balkans, and helps reduce the constant interethnic animosities and disagreements about the national borders. However, even at this point, the EU increasingly is becoming the driving force of democratic changes and economic development. The Union also provides a great economic aid to the region.

The NATO membership is important for the economic development of Southeast Europe, but considering the everyday more complex geopolitical environment, entering into the Alliance does not solve all the issues. The NATO or EU membership should not be considered to be a substitute for the prudent and consistent leadership of the local politics.

When everything is taken into account, a long-term economic progress and ability to fulfill the requirements for the Euro-Atlantic integration, depends on the countries themselves. The energy that drives reform must come from within countries from this region.

### **Euro-Atlantic integration and the economy**

Many analysts are quite skeptical about the direct impact of collective security based environment for the business. Sometimes this skepticism does not arise only from the reality of new opportunities, but also from the weak administrative ability that they can be used. Another reason is the limited information about new features and technology for their realization, knowledge and applying them by the business sector. However, new opportunities exist, and they should be constantly promoted in the business environment. Most important are:

- Opportunity to participate in the execution of projects of the program for military infrastructure of NATO;
- Opportunities for participation in the process of modernization of armament and technique of the Macedonian Army by facilitating the import and procurement of the necessary modern military models or associated with participation in purchasing their compensation (offset) deals;
- Participation in tenders for the execution of government orders to supply the army by producing the necessary armament, machinery, equipment, products and services for operational activities;
- Defense business organizations have a significantly larger role in the repair of arms, technique and equipment as a result of outsourcing of traditional military activities, which can be implemented on a contractual basis economical, effective and more beneficial to taxpayers than from outside;
- Participation of equipping national forces for international operations, assistance to economic stabilization and development of countries undergoing crisis and conflict periods;
- Supply of goods and services required for operation of the NATO bases in the country and its vicinity;
- Participation in tenders for research, development, education and training activities according to the interests of the Alliance;

- Participation in the construction of mixed enterprise joint activity or target consortia, working to meet the needs of the Covenant;
- Execution of the program for liquidation of the already use omitted weapons and equipment.

All these possibilities are quite real and can be implemented taking appropriate actions from the politicians as well as from administrators in the security sector and defense, and by the interested business.

### **Business projects**

Macedonian legislative framework has not predicted any of the major mechanisms that would regulate the field of equipment and would greatly help the state to address this issue through specific models of equipment, otherwise the world known off-set program. According to the military analyst Peter Shkrbina, one of the biggest promoters of the off-set programs in the area of Macedonian to successfully apply them in the Macedonian army and police, "It's not clear why no institution acceded to solve the problem when the adoption of the legislation with European Union funding for the problems of defense was enforced. It is known that the last twenty years in the developed countries, the set off method works in their legislation, and have included more than 80 countries and the last ten years this method works well in the countries in transition.

The term off-set means compensation or reciprocity, i.e. other form of payment used in equipping the armed forces. A offset program represents a legal obligation to be fulfilled in the procurement of arms, and to achieve agreement between the two countries (buyer and seller) and to achieve benefits such as cooperation, license production, technology transfer, joint venture and other financial and commercial support. This form of the offset program is a way of counter trade, urging governments of countries that have supplied military equipment (not excluded and civil procedure) for certain goods of domestic origin. From the total number of all contracts for procurement of weapons and military equipment, only one has incorporates the rules of the offset program.

Modern arms are more expensive and few countries in the world cannot afford full development, design and production of modern aircraft, armored assets and other military equipment. Others are forced to buy arms from these countries. The value of military equipment grows each year and depends on many factors. Thus, for arming only one squadron of modern fighters s country has to pay hundreds of millions of Euros. If in the Cold War such costs were approved by guaranteeing greater security for the country, today the situation would be different. Off-set is a form of compensation to the economy of a country in war or other major area of



expenditure incurred and the actual export of capital. If a foreign company signs a deal to deliver military equipment, great value, the offset obliges the country to develop specific counter economic activity that will contribute to the domestic economy.

Today the meaning of the terms "offset" or "offset crawl" is extremely broad and includes various techniques for implementation. Offset can be also named with different names and can be in different forms and other words; it can be described as a "reverse assignment". In modern war economy that includes: technology transfer, industrial partnerships, Barter Trade, regional trains, installation of components produced by domestic manufacturers, licensing, joint production, joint companies, association of capital and many other forms that depend only on specialists in the offset business. In the last decade an indispensable part of the offset in most war deals, turned into an independent public policy of many developed countries. Statistics show that currently over 80 countries around the world use different forms of offset with a value greater than \$ 140 billion was commented in an analysis of the professional journal "Defense."

The main objective of the offset program is to maintain the technological potential of the economy, to preserve as many jobs, and to return as soon as most of the invested funds for the procurement of foreign equipment. The offset program is being applied, and is actually determined by the state law, for things which exceed the determined monetary value. Today the world's commitment to the offset is 100 percent of the program, the total value of the contract becomes a common value that customers demand, but there are also examples where the offset obligations totaled 200, or even 300 percent. For example the UK and Germany offset program offered in South Africa amounting to 300 percent in the tender for the purchase of submarines, while Austria for the purchase of helicopters required offset of 200 percent. The state estimate almost every country wants to equip its army often does not allow a maneuvering space, but is limited in financial terms. The processes in most countries result in reducing the amounts on daily basis, and especially in terms of what concerns the equipment of the armed forces. Often it is required to achieve high level of equipment with limited funds. Because of that, specific models of equipment such as the offset program are often applied.

For the objectives the offset program is written a lot, because of that type of equipment the last 20 years have significantly recovered, and over 80 countries worldwide work with it, and is used by most developed countries, less in developing countries, while in the countries in transition, the program was implemented mostly declaratively than into practice. More recently, especially the countries in transition and those in active development are

accepting the offset program, while the developed countries, this program presents a special problem, because each sale of its equipment and services is bound to the offset programs especially with countries that are less developed. Hence, each country adjusts its offset program to their specifications, but generally the offset program is completely identical.

It is known that there is a direct and indirect offset. Direct refers to the development and maintenance of means of defense systems that are purchased. Indirect offset refers to investment and technology transfer, or reciprocal procurement of goods and services from client countries that are not related to defense systems that are purchased. Some countries such as Finland require so-called pre-offset program, or conditional offset. The potential supplier of a defense system is obliged to invest ten percent of the eventual value of the contract before the auction. Otherwise, to determine the obligations under the offset is required to use coefficients multipliers. By the countries Governments buyers encourage foreign suppliers to invest correctly in certain parts of the economy. Those coefficients are between 0.5-2 in Poland, from 1-7 in Slovenia, and from 0.1-5 in Norway.

The offset is still often referred to as the Act to execute the contract for millions of values and the goal is primarily bringing home industry and capacities in the countries which have their reasons to export weapons and military equipment. In the past 20 years of applying the offset program, different models of its application have been developed. Developed countries in a way limit or narrow the application of necessity; others are in countries that encourage the development of this offset to the extent that its value is often greater than the value of each contract for purchase. These facts alone are understandable because the countries that are equipped with some military equipment often do not have available sufficient financial resources and, on the other side, I feel great competition in the high-suppliers (manufacturers) of that same equipment, and ideas for engaging national capacities in procurement of such equipment come by themselves.

Developing countries can produce a limited number of products for the defense, or must rely on foreign suppliers. In developed countries the reasons for the application of the offset program in the first line of the opening of new jobs, application of new technology in the industry of defense which would later be applied in the civil economy. Developing countries had similar reasons, but often focused on the transfer of technology as a tool for further development of military industry. The question is a strategic decision that the priorities in the development of a country, in this context to the decision to implement the policy and the way the applicability of the offset program.

If the offset programs are put into legislation, which will significantly reduce the opportunities for manipulation of individuals and institutions working to the detriment of the state. Through the White Book, data regarding the equipping of the Macedonian defense as the world practice should be announced to the Macedonian public. When the offset program in the Republic of Macedonia would be able to implement legislation, particularly the possibility of developing a utility industry that the Macedonian left (NB Eurokompozit Prilep), and agricultural products (wine, peppers, tomatoes, etc.) and other technical tools and products can find export strategy in the long run, it is through the implementation of the offset program.

Macedonia is able to develop and create its own bylaws for the application of offset. Line ministries can use the current situation in the world and create laws by which Macedonian businessmen to develop their production facilities and most importantly, strengthening the defense capability of the army will step up and industrial facilities is certainly contributing to the strengthening of national security and stability.

### **Future programs**

A big part of the fulfilled offset does not mean that the process will slow down or stop after the realization of the accepted tasks. For the future, a series of new cooperation agreements can be made and continue to spread. The “offset wellbeing” is headed in the same direction, which can reach up to 250% of the value of procurement, and thereby contribute to the development and rationalization of the domestic economy.

The purchases of military equipment in Macedonia are relatively rare, and more frequent are the donations of military equipment. With our membership in NATO it can be confidently stated that the Army of Republic of Macedonia will increasingly procure new military equipment which will have to be paid. In those cases more advantageous is the application of offset agreements, which will allow several benefits:

- The Budget would be eased;
- The economy of the Republic of Macedonia will be eased;
- There is a real opportunity to dramatically increase the direct investments in Macedonia;
- New jobs openings;

### **Requires policy**

Activation of the business of preparing and adopting the new opportunities of the NATO membership requires a careful review of the

current policies which concern the economic development, security and defense of the country. Synthesis of the actions may encourage the development and implementation of a new political line priority action for mutual business and defense. Basic instrument for the integrated policy can be approved by the parliament, and it is a government program for the public - private sector partnership in security and defense. The program should aim to build links between the sector of security and defense and the micro business level, to increase the ability to accept the common defense and committed to building a guarantee for their execution. A database program can be a part of the national strategies in the defense strategy and sector policy for the country's defense industry. The main goal should be to increase the competitiveness of the business as a condition for assistance to foreign policy and defense. The execution of the program will not seek more funds, because it should include only basic policy actions to create positive conditions for the business to adapt to the new reality of the environment for security and defense.

The main sectors in this program may be building administrative capacity for active participation in the NATO authorities, taking into account the interests of business, business leverage the participation of national forces in international operations; national strategy for development, diversification and conversion of defense industry , stimulating the implementation of high technology and scientific research and development in the security sector and defense, construction and operation of military bases and military infrastructure of NATO in the country and the region.

Especially important is the elucidation of the spectrum of organizational measures to strengthen the administrative capacity and capabilities of the business of providing worthy of membership in the Alliance. Major difficulties can arise when the decision to replace the minority sections of the state-owned civilian conversion and diversification of production takes place, accepting the tax breaks for the businesses working for the defense, as applied in other states. Probably, it would be easier to resolve issues of preparing the personnel to work with the bodies of NATO related to the business, for example those working in the construction of military infrastructure, collective supply of arms and equipment, the indicative planning of industrial cooperation and etc.

Therefore, it is necessary in Macedonia to have a real and effective government program for conversion and diversification of the production of defense equipment.

The first is related to increasing the administrative capacity for the programmatic management of similar activity. The state should approach in building a government agency, which could direct mutual action of the

security sector business, including the process of conversion and diversification of the defense industry, a national exercise and control arms in the country. The Agencies' responsibility can be the state quality control of the manufactured products. Another obligation can be the care for the now very underestimated role of the multilateral and bilateral agreement for future cooperation with future partner countries in the framework of the North Atlantic Alliance and European Union.

## **Conclusion**

NATO integration processes as well as achieving undoubtedly have economic effects. Primary and most important to emphasize is that these effects are very positive for the Macedonian economy. Improving the conditions in the economy is good not only for its citizens but also for the national and regional stability and security.

In the modern world, especially after the wars in the Balkans, Iraq and the terrorist attacks in the U.S., Spain and Russia, it is evident that there is a very strong link between security and economic performance. Simultaneously, the role and activities of NATO after the Cold War significantly changed. From being the military alliance to defend the territory, NATO becomes a global provider of security and its guarantor. The maxim of contemporary political and military doctrines is that the security of one country cannot be separated from the global security. The terrorist attacks in the U.S. and Europe have tested, and strengthened the transatlantic dimension of NATO as a symbol of the so-called Euro-Americanism.

From another point of view, the Balkans is a region which has always been seen as a place of insecurity and conflict. In the same time it is a region that often intersects interests in the east and west, the U.S. and Russia. Also, it is a region in which there are no easy answers to any political issue. For these reasons, security today is the key word in these areas.

Therefore, the security relationship with economic prosperity and development of democracy in the Balkans is unquestionable, and its realization on a permanent basis is much easier through integration of Macedonia and the EU and NATO. This would mean applying the motto "Investing in security is to ensure the security of investments." The second relates primarily to investments in transport, communications, energy and information infrastructure to connect the EU and the U.S. with key regions such as Middle East, Mediterranean, Caucasus and Central Asia countries.

But the infrastructure in this part of the world does not mean only what is positive. In the Balkans there are "corridors" through which are spread people, weapons, and drugs. The termination of these channels is key to improving the security and the economy in this region. The successful

termination of many of these corridors, as it is the latest example of the Police, together with reforms in the economy, army and police, are the key factors that bring Macedonia closer to NATO.

However, besides the geopolitical implications that NATO brings, there are many purely economic effects of this process. They are synthesized into two groups: tangible and measurable effects. The former are primarily expressed in modernizing and equipping the army, which implies an increased budget for this purpose.

In addition, NATO integration has a direct and measurably positive impact on the development of infrastructure, including roads, railways, communications and energy transmission systems. For Macedonia to join NATO, the country must improve its infrastructure network, which has a positive effect on economic growth. In addition, several other sectors will gain positive momentum: information related to the software industry and telecommunications needs, because tourism will increase the number of business guests and tourists from Western countries, the education which will require specific knowledge and personnel required for participation in most modern defense system in the world, etc.. As much as these are significant measurable effects, the real long term benefit for the Macedonian economy of NATO membership is contained in immeasurable effects. Namely, they help to repair the international image of Macedonia as the Balkan and former communist country, which is certainly not the most favorable context in terms of foreign investors. This context is associated with instability, insecurity and ethnic tensions, which produces a high degree of uncertainty for foreign investors.

Despite this, NATO context means political solutions to interethnic and interstate tensions, greater border security, and better institutional quality. The entry of Macedonia into NATO is the best guarantee of sustainability of the Macedonian model, and the only successful model of functional multiethnic democracy in the Balkans.

Overall, the NATO membership increases personal and business security and enhancing predictability and stability of business environment and political climate. Safety and security is a precondition for economic development. This will be achieved through cooperation and integration. Such security requires compatible and high-tech military capabilities as an early warning and rapid response to a wide range of missions.

The real reform in the areas of security and defense cannot be achieved solely by the efforts of legislative and executive authority in Republic of Macedonia. The business sector plays a crucial role, especially in areas such as application modernization, equipment, external procurement, dual use of infrastructure systems and operations,

reconciliation of research projects and development projects, education and training, the optimal use of human resource development strategic partnerships between companies (domestic and foreign), realization of foreign programs (these programs usually do not refer only to military industry, but also in sectors outside of it).

The most important thing is to accept the fact that it appears that joining NATO, as a process, but also as a goal is beneficial for the Macedonian economy, and stronger Macedonian economy is a good thing for the Macedonian, regional and global security.

The purpose of this so-called product is to consider not only technical and financial issues, but also organizational, legal, technological and even educational aspects of our accession to NATO. The organizational-legal dimension is crucial, because it gives transparency, which if informational and technology provided derived from the educated and motivated people - can really give positive results. To obtain the Economic Benefits of NATO enlargement in Southeast Europe is very important to restructure the defense and economy areas. Therefore, if a country can join NATO after implementing the reforms, the real benefits the country can get even after integrating deeper reforms.

It should be understood, that the investments being done in security, not only remain in the military sphere: they also guarantee the safety of the investments and free trade, which is a precondition for economic growth and prosperity.

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## **THE ROLE OF EDUCATION IN NATURAL DISASTER RISK REDUCTION<sup>115</sup>**

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**Abstract:** Having in mind that the number of natural disasters is constantly growing, and it produces more serious consequences for the humans and their material goods, it is essential all the preventive measures to be taken in order to reduce the risk of natural disasters to a minimum. In the XXI century, the role of this type of education has become unequivocally clear and recognized. The importance of education for that purpose has been recognized and confirmed at numerous international conventions and conferences, with a clear emphasis that schools, the families and the local communities play a decisive role in reducing the severity of consequences caused by natural disasters, through the process of developing awareness and knowledge of natural disasters.

Considering the importance of education in order to reduce the risks of disasters, in the paper the role of schools that represent major entities in playing a key role in providing basic information about the natural disasters is explained. Besides the schools, in the developing of the awareness for the natural disasters a significant role also have the higher education institutions and therefore it is very important of considering the current trends in this field as well as the future development of their role in the education and developing awareness about. Finally, a particular attention is dedicated to the role of the family and the community in this process.

**Key words:** education, natural disaster, reduction of risk, emergency situations, security.

### **INTRODUCTION**

Natural Disasters are undermining the world development as never before. Only in 2011th , there were 332 natural disasters that is less than the

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<sup>115</sup> review scientific paper

average number for the period from 2001 to 2010th which was 384<sup>116</sup> During 2011, the natural disaster killed 30,773 people, and the economic losses were the largest since the registration started being estimated at 366.1 billion dollars.<sup>117</sup>

Nearly every day in the newspapers, on radio, on TV and other media we hear reports on natural disasters that affect different parts of the world.<sup>118</sup> For reasons of better understanding of the phenomena, it should be noted that the term disaster comes from the French word, *desastre*, which consists of the word, *des*, meaning bad and *astre* meaning star.<sup>119</sup> Thus, the term refers to 'bad or evil star.' The very term, a disaster "has a multiple meanings, and its many-angle (divergent) of the definition of the term exists in the literature as hazards (dangers).<sup>120</sup> There is a widespread debate about its meaning. The etymology of the term disaster refers to a specific threat to the humans and their material goods. Generally speaking, the disasters are adverse events with negative consequences that cannot be overcome without outside help or support resources, including state and national governments, or even other states.<sup>121</sup> One of the earliest definitions was given by Charles Fritz. He defined the disaster as: Event, focused (concentrated) in time and space, which causes heavy losses to the society or some parts of it where its members and material values in which the Society or parts of him threats are endangering the social structures, as well as some of the basic functions of the prevention.<sup>122</sup> Generally speaking, all disasters can be classified in three frame types: natural, disasters that are related (directly or indirectly) to the humans (called also anthropogenic, technological, technical -

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<sup>116</sup> Debby, S., Femke, V., Regina, B., Sylvain P.: *Annual Disaster Statistical Review: The numbers and trends*. Brussels, Belgium: Centre for Research on the Epidemiology of Disasters (CRED) Institute of Health and Society (IRSS), 2011.

<sup>117</sup> Edward, B.: *Natural hazards, second edition*. Cambridge: University Press, 2005.

<sup>118</sup> Cvetković, V.: *Interventno-spasilačke službe u vanrednim situacijama*. Beograd: Zadužbina Andrejević, 2013.

<sup>119</sup> Mijalković, S., Cvetković, V.: *Vulnerability of Critical Infrastructure by Natural Disasters*. Belgrade, International Scientific Conference, National Critical Infrastructure Protection, Regional Perspective, 2013.

<sup>120</sup> Mesjasz, C.: *Economic vulnerability and economic security*. In *Coping with Global Environmental Change, Disasters and Security: Threats, Challenges, Vulnerabilities and Risks* (eds H.G. Brauch et al.). New York: Springer, 2011.

<sup>121</sup> Bimal, P.: *Environmental Hazards and Disasters Contexts, Perspectives and Management*. Kansas, State University, Wiley - Blackwell, 2012. godina.

<sup>122</sup> Bimal, P.: *Ibid.*

technological, social) and hybrid (a combination of interaction of natural forces on one and human impact on other side).<sup>123</sup>

According to Daegu, the Natural disasters are the result of the spatial interactions between hazardous environmental processes (i.e., extreme natural events), and the population that is being irritated of such processes. The Natural disasters appears as a result of combination of hazards, vulnerability and insufficient capacity or measures to reduce the probability of the potential risks. A natural disaster occurs when a hazard hits vulnerable populations causing damage, fatalities and disorders. Any hazard - floods, earthquakes or cyclones - representing the activating event with greater vulnerability (inadequate access to resources, the sick and the elderly, lack of awareness, etc.), leads to disaster, causing great loss of life and property. For example, the earthquake in an uninhabited desert cannot be considered a disaster, regardless of its intensity.

The role of education through the past in some way has been ignoring the importance of the need for education in the area of disasters. The reasons are several.<sup>124</sup> disasters have always been considered to be rare events, appearing in many different shapes, bringing a variety of different causes and consequences. These considerations lead to the conclusion that it is almost impossible to standardize the forms of action.

On the other side, the practice has shown that children who are familiar with the phenomenon of natural disasters and how to react in such situations are capable of promptly and properly respond in order to protect themselves and others alerting to potential dangers. One of the classic examples of the power of knowledge and education is the story about the 10-year-old girl from Britain, Tilly Smith, who warned tourists to flee before the tsunami reaches the shore.<sup>125</sup> In this way she has saved more than 100 tourists during the 2004th. She recognized the signs of an approaching tsunami, after a lesson in geography had been introduced to this phenomenon in her school, just a week before she visited Thailand.<sup>126</sup> Also, it is important to remember that the UK is not the country where such

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<sup>123</sup> Mladan, D., Cvetković, V.: Classification of emergency situations. Beograd: Medjunarodni naučni skup „Dani Arcibalda Rajsa“, tematski zbornik radova međunarodnog značaj, organizacije Kriminalističko-policijske akademije, mart 2013. godine.

<sup>124</sup> Lidstone, J.: *Disaster education: Where we are and where we should be*. In: Lidstone, J. (Ed.), *International perspectives on teaching about hazards and disasters* (p. 3). Philadelphia, USA: Channel View Publications, 1996:34.

<sup>125</sup> Rajib, S., Koichi, S., Yukiko, T.: *Disaster education*. United Kingdom, Emerald Group Publishing, 2011.

<sup>126</sup> UN/ISDR.: *World disaster reduction campaign. Disaster risk reduction begins at school*. Available at [http://www.unisdr.org/eng/public\\_aware/world\\_camp/2006-2007/pdf/WDRC-2006-2007-English-fullversion.pdf,2006](http://www.unisdr.org/eng/public_aware/world_camp/2006-2007/pdf/WDRC-2006-2007-English-fullversion.pdf,2006) (Accessed on January 10.04. 2013).

phenomena occurs, and that she had no previous experience, making only the knowledge gained in the classroom contributing for saving many lives.

In addition to the above said, there are also other examples for the importance of knowledge, such as the case of generational transfer of knowledge that has been repeatedly affected the rescue of a large number of lives. During the Indian Ocean tsunami on the coast of Sumatra, which is only 100 km away from the epicenter of the earthquake that caused the tsunami, only a few people were killed by the total number of 83 000 people who were present.<sup>127</sup> However, the inhabitants of Sumatra have had previous experience in 1907. , and this experience has been passed on from generation to generation through songs and poems (e.g. if you feel tremors caused by the earthquake you should immediately move away from the coast). From the given example, we can easily see how the formal and informal education about the natural disasters assists in improving the awareness of individuals, helping them to protect their own and others' lives.

### **The role of schools**

When it comes to risk reduction of natural disasters, we have the right to say that schools are unavoidable entities having an increasingly important role. They play a crucial role in providing basic information on natural disasters in the local community. Sivaki states that the importance of school education about natural disasters has increased rapidly, accounting for the following reasons: children are the most vulnerable categories in the society: They represent the future, the school is a center of education and the results of the educational process are transmitted to their families as well as the Local community; the schools are recognized as centers of culture and education.<sup>128</sup>

Experience has shown that access to quality educational programs on natural disasters is crucial in the child protection and their families. It was also noted that instead of considering women and children as the most vulnerable (victims), they can be recognized as contributors to a recovering community before assuming that they have acquired a solid knowledge about natural disasters and elimination of their consequences. In addition, the women play an important role in the process of education of children and in this respect it is necessary to include the mothers and fathers more extensively in the education process about natural disasters, since they will transfer this knowledge on to their children. Many researchers and officials employed in the respective UN bodies during the consideration of disaster

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<sup>127</sup> Degg, M.: *Ibid.*

<sup>128</sup> Lindstone, J.: *Ibid, str 45.*

risk reduction, emphasized on the Safety of the school buildings and the education about disasters.<sup>129</sup> However, the safety of school buildings is useful for disaster risk reduction within a short period, and the education about natural disasters has much more important role in developing a culture of risk reduction on the long run. Shaw & Kobayashi (2001) emphasize that schools have an important role in increasing the awareness of students, teachers and parents. UNISDR has conducted a campaign based on the observation that children are the most vulnerable populations during natural disasters, starting with the fact that education on disaster risk reduction to a large extent increases the level of awareness in the community also.<sup>130</sup>

Only the education about risks related to natural disasters can be represented through specialized or through the implementation of the elementary teaching programs. Furthermore, such an education can be accomplished through curricular and extra-curricular activities (such as. Various workshops, games, etc.). Although the education of young people for life, health and the environment has its roots in family and preschool education, the school is irreplaceable of achieving that goal. The school is obligated to develop the knowledge, the awareness and the habits in prevention of danger, in fact, in its function it is mandated to provide the knowledge for the man's 'mastery' over the nature, and on the other, the protection from hazards that may befall, also coming from their nature."<sup>131</sup> We cannot escape the catastrophes but we can prevent them by being aware, informed, educated having habits in their prevention and reducing the damage when they happened. During the education we can develop people with sense of responsibility, truthfulness, humanity and justice that in the end is going to result by the people having the ability to protect themselves and the others in such cases. In addition, the education for active and passive protection of self and others,

The role of education in the disaster risk reduction is often directly or indirectly regulated by the state legislation and by the competent strategic documents of the Country. For example, the Law on Emergency Situations of the Republic of Serbia in Section 6 with a title training in Section 119

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<sup>129</sup> Petal, M.: *Education in disaster risk reduction*. In: R. Shaw, R. R. Krishnamurthy (Eds), *Disaster management: Global challenges and local solutions* (pp. 285–320). India: Universities Press, 2009.

<sup>130</sup> UN/ISDR. (2007). *Building disaster resilient communities. Good practices and lessons learned*. Available at <http://www.unisdr.org/eng/abouty/education-good-practices.pdf> (Accessed November 17, 04 2013).

<sup>131</sup> Kuroiwa, J. A.: *Peru's national education program for disaster prevention and mitigation (PNEPDPM)*. Training and Education for Improving Earthquake Disaster Management in Developing Countries, UNCRD Meeting Report Series, 57, 95–102, 1993.

says that in order to acquire the necessary knowledge in the field of individual and collective protection, the citizens are trained and qualified for prevention and rescue. This provisions are also the case in Macedonia. We are all being submissive to protect and rescue during disasters and catastrophes. It further stipulates that the training is being conducted in the framework of primary and secondary education in order to gain knowledge about the dangers of natural and other disasters and protect them in accordance with specialized legislation and the corresponding programs.<sup>132</sup>

The educational activities that are carried out through the the curricula in schools are effective measures to emphasize the importance of reducing the risk of natural disasters, because working with children, the knowledge is being spread to their families also. Climate change and measurable increase in the number of natural disasters around the world can change that perception, especially because they cause significant damage to the infrastructure, and even represent a threat to national security.

During 2006-2007 UN has conducted a campaign, 'Disaster risk reduction begins at school'. "Both campaigns have emphasized the impact of an integrated education to reduce the risks of natural disasters. UN / ISDR has not only emphasized importance of integrating the risk reduction of natural disasters in the formal education, but at the same time emphasized the importance of engaging the entire community in preventing them. In addition, the school buildings in the provision of education can serve as a temporary asylum within which are consider various prevention topics, as well as the importance of buildings in reducing the risk of natural disaster, and taking into account where the process of education takes place.<sup>133</sup> Lessons from the experience include the following: The education process is very important and could be very effective in the natural disasters risk reduction. At the same time the knowledge, the perception (awareness, performance), the understanding and the activities represent four important steps. The schools and formal education also is playing a very important role in the development of knowledge; the families and the local communities are important to a comprehensive education and awareness of the importance of natural disasters risk reduction. In response to the invitation of the campaign carried out by the UN / ISDR 2006-2007, various international and regional conferences and workshops were held, and the countries have developed action plans that provide implementation of the risk reduction from natural disasters in educational programs, but also deal with issues regarding the

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<sup>132</sup> Zakon o vanrednim situacijama Republike Srbije, *Službeni glasnik Republike Srbije*, broj 111/2009.

<sup>133</sup> UN/ISDR.: *World disaster reduction campaign*. Disaster risk reduction begins at school.: Ibid.



school buildings safety in such situations.

The International Conference for school safety, which was held in January (18-20) in 2007, Ahmadabu, India, has recognized the importance of providing education for every child in order to achieve the ultimate goal – living in safety Environment so we could:<sup>134</sup> „, having Zero percent mortality rate caused by natural disasters. "To achieve this goal, the priority areas are being established: The Education related to disasters is going to be implemented in schools; The school buildings and the other infrastructure must be resilient to disasters; We must enhance the education of the members of the local community so that it can become more resilient to disasters; making the schools safer.”

### **THE ROLE OF HIGHER EDUCATION INSTITUTIONS**

When it comes to education about natural disasters, usually its attention is on the school, the family and on the community. However, we think that the higher education related to natural disasters is crucial, but at the same time underdeveloped in countries around the world. The development of an appropriate higher education related to natural disasters is very important for the countries. Thus, the Council of Europe through its document recommends guidelines for developing appropriate education about natural disasters.

The educational process related to natural disasters refers to multidisciplinary subject of scientific interest.<sup>135</sup> In this context, lessons about the Environment and sustainable development can result in a positive effect on the risk reduction from natural disasters. In order to develop appropriate curricula's in higher education related to natural disasters, significant support can be found within the already stable state higher education system. In reality, higher education about natural disasters is implemented through various departments at universities, ranging from engineering, architecture, agriculture, economics, social sciences.

Therefore, the future development of higher education on natural disasters would be: comprehensive instructional programs (what kind of natural disaster, help, recovery, prevention, mitigation and preparation, all in the context of socio-economic status, technical competence and the political

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<sup>134</sup> Chhokar, B.: *Higher education and curriculum innovation for sustainable development in India*. International Journal of Sustainability in Higher Education, 11(2), 141–152, 2010.

<sup>135</sup> Chhokar, B.: *Ibid*.

priorities of the society<sup>136</sup>; theoretical focus (the curriculums should be focused on the segments to reduce the risks of natural disasters and the prevention, mitigation and preparedness; defining the field of interest (curriculum will be focused only on theoretical knowledge, but also on research related to risk reduction disaster; multidisciplinary approach (management and preparation for natural disaster has essentially the approach must take into account many factors in actions. Different subjects such as geography, environmental science, geology, sociology, psychology, medical science, civil engineering, regional planning, architecture, agriculture contributes to the development of scientific field of disaster management. However, it is necessary to keep the focus on cycle to reduce the risk of natural disasters, with a special focus on specific areas of interest and research. Program on disaster risk reduction should be looked at all of the items that contribute to the development of risk reduction, improving skills (learning should be based on the experience gained from the previous case study).

### **THE ROLE OF THE FAMILY AND THE COMMUNITY**

In the events of a natural disasters, there is an inverse relationship between the level of community development and the human losses. About 85% of the casualties caused by natural disasters occur in the less developed countries, where are living the majority of the world population.<sup>137</sup> The greater loss of lives in the developing countries occur for several reasons: the low quality of construction, the lack of standards in the construction and the application, construction in hazardous areas as a result of not having planned construction, the low level of awareness and preparedness for natural disasters, imprecise or non-existing early warning systems, the lack of evacuation planning and lack of people encharge for rescue and medical assistance. So if the risks associated with additional investment can not be removed, increasing awareness among citizens with minimal investment certainly could be realized.

The family as a basic cell of society, usually bears serious consequences due to various natural disasters. When considering the vulnerability of the families and the local communities it is very important to

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<sup>136</sup> Fortuin, J., Bush, R. (2010). *Educating students to cross boundaries between disciplines and cultures and between theory and practice*. International Journal of Sustainability in Higher Education, 11(1), 19–35, 2010.

<sup>137</sup> In 1993 4.7 billion people live in Countries categorized as less developed. Kuroiwa, A.: *Peru's national education program for disaster prevention and mitigation (PNEPDPM). Training and Education for Improving Earthquake Disaster Management in Developing Countries*, UNCRD Meeting Report Series, 57, 95–102, 1993, 35 str.

consider the different characteristics of the population affected by the natural disasters: past experience, the belief that a natural disaster will occur and it is necessary to take measures for protection, personal qualities.<sup>138</sup> In addition, there are significant demographic characteristics of the population - gender, age, education, income, ethnicity, marital status, family size. Improved health and educational status helps to reduce the vulnerability and the limit of the loss of life during natural disasters. The fact is that the better-educated population - including women and children - is better suited to the warnings and generally it behaves properly in accordance with the evacuation orders. This discovery led to the creation of a more practical design of educational campaigns. Nate, for example, suggests that:., What do people really need to know in order to change their behavior in relation to risks, how best to achieve the transfer of the best scientific information to the lay population, and which is the best way to take advantage of the opportunities before disaster events."<sup>139</sup>

The Increased frequency and severity of natural disasters and their consequences indicates that the problem has to be in the focus of the international community in the years to come. In the IDNDR (International Decade of Disaster Risk Reduction 1990-1999) and also in other organizations that were created during the past year, the reduction of the impact of natural disasters and becoming more important. The first step towards this reasoning is to develop a culture of participation in prevention without waiting for something to happen in order to act among the people and the competent authorities of the importance. It also should be noted that the regions around the world, that are more prone to natural hazards in recent years have become more resistant as opposed to regions that are not faced with the same.

Every individual has the right and obligation to be informed of the potential risks that exist in the area where he lives or works, and if is necessary to enable easy and efficient access to this type of information. There is also the important role of the media. The media must be responsible and accountable for the community informing for the adverse effects of natural disasters present at the lowest levels (individual and community), not always and exclusively being accountable to the state and its institutions. The principle of subsidiarity should be clear and all the rights and obligations according to this principle, should be respected. And the community and local authorities should be empowered to manage and

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<sup>138</sup> Victoria, P.: *Community capacity and disaster resilience*. In: R. Shaw, R. R. Krishnamurthy (Eds), *Disaster management: Global challenges and local solutions* (pp. 338–351). India: Universities Press, 2009.

<sup>139</sup> Petal, M.: *Ibid*, str.76.

reduce the risk of disasters, and to at all times be available all the necessary information, resources and authority to implement actions to reduce risk.

There is clearly a need to improve the international as well as the regional cooperation and assistance in disaster risk reduction, especially through: The transfer of knowledge, technology and expertise for capacity building in order reducing the risk of natural disasters; exchange of research findings, lessons learned and best practices; compiling information of the impact of natural disaster risk scale for all hazards in a way to be informed about sustainable development and the risk reduction from natural disasters; provide adequate support to improve risk management through awareness-raising initiatives and measures for capacity building at all levels, in order to enhance the resilience of natural disasters in developing countries; financial assistance to reduce existing risks and to avoid the creation of new risks.<sup>140</sup>

In general, families and communities are well resisting to natural disasters by using their knowledge and experience gained in dealing with previous similar situations. The education regarding natural disasters for families and communities is directed towards development of competences to recognize the characteristics of such phenomena, to protect themselves and others, and to respond appropriately in a given moment.<sup>141</sup>

In the past, the role of people in the local communities was different and made it possible of daily exchange of experience and knowledge of natural disasters. That allowed them to becoming more prepared. In order families and the local community to be prepared, we need to acquire certain knowledge on such events and the measures for protection of them. The education of family members and the local community could be both externally and internally. The Internal education is based on the mutual exchange of experience among family members and the local community, such as it is retold, while the external is based on the exchange of experiences between the states.

The education about natural disasters should not be limited only to schools, where the education is provided, but it should be apart both within the family and in the community.<sup>142</sup> The Importance of the association between school education, the Families and the local communities, are gradually recognized and is being currently implemented in several countries.

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<sup>140</sup> Shaw, R., Shiwaku, K., Kobayashi, H., Kobayashi, M.: *Linking experience, education, perception and earthquake preparedness. Disaster Prevention and Management*, 13(1), 39–49, 2004, 135.

<sup>141</sup> *Ibid.*

<sup>142</sup> Nimpuno, K.: *Ibid.*

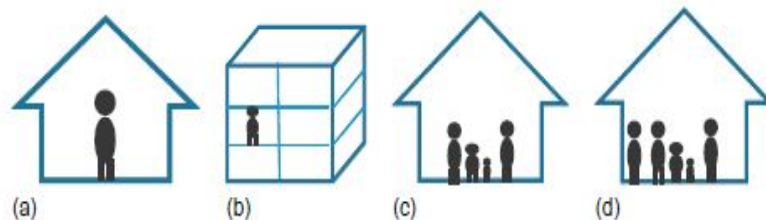


Fig. 1. Various Types of Individuals and Members within a Family and Community.

Family education about natural disasters is related to the education gained through mutual influences between family members in daily activities and conversations. The education at the local level can be gained through participation in local public and voluntary activities, trainings, seminars, and other public activities.<sup>143</sup> Seniors (Figure 1a) who live alone, separated from the local community are not in a position to assist themselves in the case of natural disaster.<sup>144</sup> Older persons can be prepared with the necessary knowledge from past experiences, however, as a result of the very poor social contacts, this knowledge will not be transferred. Figure 1 (b) displays the students of the University and the employees who live alone in a room or apartment. Such a group of individuals should have the capability to provide assistance to itself and to help others during natural disasters. However when we get into such a situation, they might not be able to participate in activities on the local level or to help their neighbors, the reason why they do not lack the social contacts and maybe they will not even feel the need to help someone in that situation. Figure 1 (c) explains the common household where family lives, in most cases consisting of parents and their children.<sup>145</sup> Source: Rajib, S.: *Ibid*:79.

In addition, the parents will have the ability to help themselves and to assist others when should the need arise. In families where parents have accumulated experience regarding natural disasters, they will be able to share their knowledge and experiences with their families. The picture 1 demonstrates a household where three generations of families are living. The children, their parents and their grandparents.<sup>146</sup> In these situations, when we are talking about domestic education, we must not forget that, grandparents

<sup>143</sup> Viktoria, P.: *Ibid*.

<sup>144</sup> Rajib, S.: *Ibid*.

<sup>145</sup> *Ibid*.

<sup>146</sup> *Ibid*.

", will also be capable to share their experiences and lessons learned from the previous natural disasters.

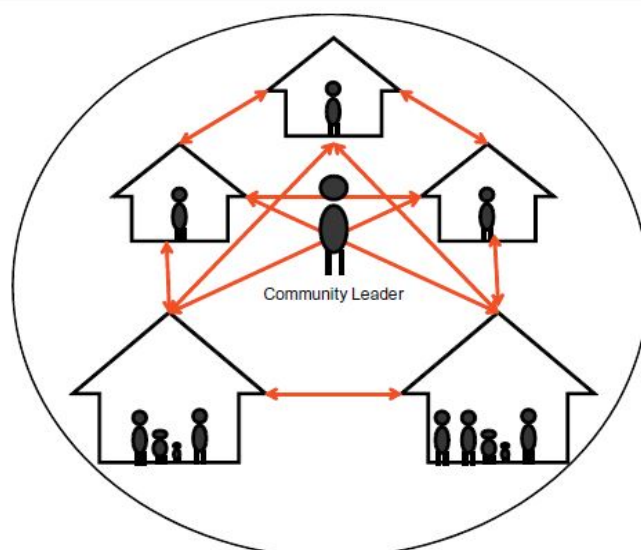


Fig. 2. Individuals and Characters within a Family and Community in Rural Area.

Source: Rajib, S.: *Ibid*:80.

Figure 2 shows the families that constitute the local community in the rural areas. The key elements that have impact on the educational process of natural disasters are definitely the level of information related to environment, traditional that is innate knowledge, the social networks and the past experience.<sup>147</sup> Generally speaking, the rural areas have leadership who probably have confidence on all citizens who represent integrating factors and which play a key role in disseminating information and mobilization of resources during natural disasters.

Figure 3 shows the household before and after the 1970s. Before the 1970th, a common feature of all households was the common life of multiple generations (ie, living together the grandparents, their children and their grandchildren). The older members, who had the experience from previous natural disasters, implemented the direct contact with other family members and were able to transfer knowledge on a daily basis to the younger generations. Unfortunately, with the industrial development and modernization of life, individuals are increasingly estranged from their older

<sup>147</sup> Viktoria, P.: *Ibid*.

family members, living alone in their own homes, forming their own families. At that moment, the process of transfer of knowledge was absolutely stopped.

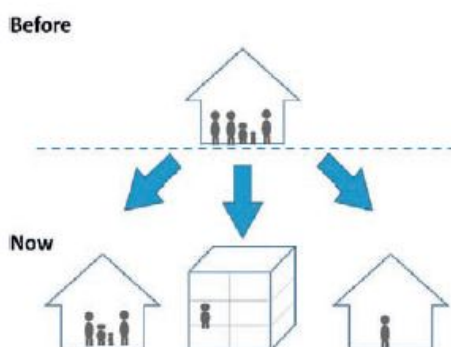


Fig. 3. Living Condition of Family in a Community in Japan Before and After the 1970s.

Source: Rajib, S.: *Ibid*:90.

Figure 4 shows the ideal situation of education about natural disasters between families and local communities.<sup>148</sup> There would be three types of education about natural disasters between the family members: between the parents, between the parents and their children and between older and younger family members.<sup>149</sup> It also would include the communication within the local community, the older members could share their experiences and passed them on to younger generations, who would pass on to their peers in schools.

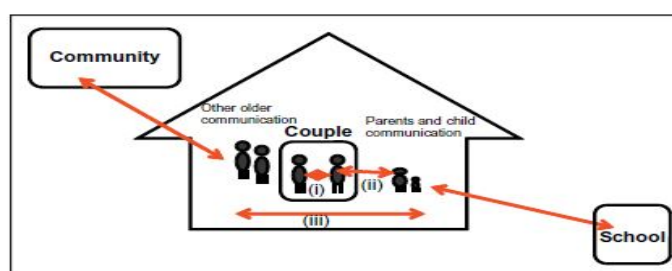


Fig. 4. Disaster Education Linkage in a Family to the Community.

Source: Rajib, S.: *Ibid*:93.

<sup>148</sup> Rajib, S.: *Ibid*.

<sup>149</sup> Nimpuno, K.: *Ibid*, 65.

## CONCLUSION

Disaster risk reduction can reduce the unwanted effects of natural disasters but it can not ensure 100% protection because that is unfortunately impossible. Still need to take measures to reduce the risk of disasters in order to bring the risks in acceptable "frames that would when natural disasters occur, have minimal effects on people and their property.

This is why the citizens should be systematically, timely and professionally be informed on all potential hazards and risks that could endanger their life and being learned how to protect themselves , how to behave in emergency situations. We need to encourage their active participation so that they are the first line of defense in the event of an unwanted effect.

The implementation of the theoretical research of the role of education in disaster risk reduction, has crystallized the following conclusions: 1 The number of natural disasters is increasing; 2. There is a change of the focus from "recovery from natural disasters" to "risk management and mitigation of the effects"; 3. The education represents the most significant measure to mitigate the consequences from natural disasters"; 4. The education on natural disasters can be accomplished in schools, families and local communities, and stillbeing underdeveloped and not having the adequate importance; 5. The education could be achieved through formal and non-formal education; 3. Since the children are the most vulnerable category of citizens, schools have a significant role in development of awareness about the consequences and safeguards against disaster; 4. The families and the local communities can influence the overall mitigation, development of awareness about natural disasters by using their knowledge and experience that they gained during elimination of consequences of previous disasters; 5. The education about disasters should not be limited only to schools; 6. The importance of education to reduce the risk about natural disasters is highlighted at numerous international agendas, frameworks, conferences; 7. In many countries around the world in educational curricula are already implemented activities related to natural disasters; 8. Internet and modern technological developments significantly facilitate the exchange of knowledge and experience on natural disasters; 9. Through education of members of the local community, the same community is more resistant to the consequences of natural disasters; 10. In the strategic and legal documents all over the world the significance of education is being recognized in order to minimize the risks of natural disasters.



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## **INTERCEPTION OF COMMUNICATIONS AS A SPECIAL INVESTIGATIVE MEASURE IN THE CRIMINAL PROCEDURAL LEGISLATION OF REPUBLIC OF MACEDONIA<sup>150</sup>**

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### **Abstract**

Interception of communications as a special investigative measure in the criminal procedural legislation of R. Macedonia was introduced with the Novelties in the Law of Criminal Procedure from 2004. The procedure for interception of communications is regulated with the Law of Interception of Communications as a *lex specialis* regarding the monitoring of phone and other electronic communications.

This paper determines the basic characteristics of the concept for legitimate interception and recording phone and other electronic communications in relation to conditions, purposes, authorized authorities, procedure and control over interception of communications.

Our national legislation on the interception of communications in a relatively short time, underwent substantial changes. Hence, the paper makes comparative analyses of previous and the new legislation as a way to perceive the direction of motion of the legislation in the field of interception of communications.

**Key words:** interception of communications, special investigative measures.

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<sup>150</sup> professional paper

## INTRODUCTION

Special investigative measures (SIM) are techniques applied by the officials for collecting information with the purpose of discovering serious criminal acts. Data and materials collected with application of SIM have evidentiary value in the criminal procedure. SIM are applied especially as pre-misdemeanor measures with the purpose to prevent crime. Their tendency is directed towards not waiting for the criminal activity to be committed, but to prevent it, by researching the dangers for the occurrence of the act.<sup>151</sup> Therefore, the research of truth in applying SIM is experienced as an intervention in individual interests of the suspect, starting by monitoring, through questioning, wiretapping and research, until the arrest occurs.<sup>152</sup> Because of this reasons, in their application, a reasonable compromise between requests for protection of the democratic society and the individual rights is accepted.<sup>153</sup> Application of SIM must be based on clearly established conditions and in a precisely formulated procedure. As guarantees for protection, The Council of Europe recommends their application only when there is a sufficient reason to believe that a serious crime is committed or is planned, with respect of the principle of proportionality and subsidiarity and with court or out of court control of their application.<sup>154</sup>

As a special investigative measure interceptions of communication is directed towards interception and monitoring of other people's unofficial communications. It is conducted as a hidden (acoustic and/or optical) supervision over communication or telecommunication of one or more suspects. The communication being monitored has to be recorded simultaneously, so that the content of communication can be reproduced with the purpose to have an evidentiary value in the criminal procedures. Monitoring of communications is an invasive special investigative measure. It is nonselective in personal and content terms.

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<sup>151</sup> Schroeder, F.C., *Criminal and procedural law*, ARS Lamina, Skopje, p. 83-88, 2010

<sup>152</sup> Rezner, D., 30 problems in Law of criminal procedure, Franz Wallen GmbH, Munich, p. 6, 2007

<sup>153</sup> More in Matovski, N., Lazhetikj Buzharovska, G., Kalajdziev, G., *Criminal and procedural law*, AKADEMIK, Skopje, 2011, p. 263

<sup>154</sup> *Rec (2005) 10 of the the Committee of Ministers to member states on „special investigation techniques“ in relation to serious crimes including acts of terrorism*

In exceptional cases, permission to eavesdrop with the purpose to combat organized crime, terrorism, spying, etc., is reasonable in the democratic world and can be found in almost all modern states.<sup>155</sup>

### **INTERCEPTION OF COMMUNICATIONS IN CRIMINAL PROCEDURAL LEGISLATION OF REPUBLIC OF MACEDONIA**

Special investigative measures in the criminal procedural legislation of Republic of Macedonia were introduced with the Law with amendments and supplements on the **Law of Criminal Procedure (LCP)** from 2004.<sup>156</sup> With article 142-b from these novelties of LCP eight SIM were promoted. From them, the first measure was: **Interception of communication and domestic entrance and other facilities or transportation means with the purpose of creating conditions for interception of communications, under conditions and procedures determined by law.** With the novelties of LCP, a special investigative measure was introduced: **Secret observation, monitoring and visual and tone recording of persons and objects with technical means.** But, the monitoring of immediate communications was not distinguished from monitoring of communications that are taking place with the mediation of technical means (telephone and electronic appliances).

In 2011, a change of the special investigative measure “Secret observation, monitoring and visual and tone recording .....”, was made. The change was formulated as “**Secret observation, monitoring and recording of persons and objects with technical means, outside the home and other facilities**“.<sup>157</sup>

In November 2010, a new Law of Criminal Procedure was adopted, in which the interception of communications was decomposed in three special investigative measures.<sup>158</sup> During the adoption, the circumstantial communications were distinguished from the non-circumstantial. Circumstantial communications are a subject of monitoring of SIM formulated as “**Interception and recording of telephone and other electronic communication in a procedure established with a special law**”. Monitoring over immediate communications is debundled in two

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<sup>155</sup> Kalajdziev, G., *Constitutional framework for privacy and the new investigative measures*, Proceedings of the Faculty of Law Justinian I, Skopje, p. 439, 2004

<sup>156</sup> Official Gazette of RM, No. 74/2004

<sup>157</sup> Published in Official Gazette of RM, No. 51/2011

<sup>158</sup> Published in Official Gazette of RM, No. 150/2010. According to the Law for amendments and additions of LCP (Official Gazette, No. 09/2012) the new Law of Criminal Procedure started to apply from 01.12.2013.

special investigative measures, formulated dependently on the space in which the communications are conducted: „**Interception and recording in homes, closed or enclosed space that belongs to that home or business space marked as private or an entrance in a vehicle and an entrance in those facilities for the purpose of creating conditions for interception of communications**“ and “**Secret interception and recording persons and objects with technical means out of the home or the business space marked as private**”.

### **INTERCEPTION AND RECORDING PHONE AND OTHER ELECTRONIC COMMUNICATIONS**

The special law pointed out by LCP regarding the special investigative measure that applies for telephone and other electronic communication is the **Law of Interception of Communications (LIC)**.<sup>159</sup> The Law was adopted in 2006 and in a relatively short time it was subjected to significant changes in 2008 and 2012.<sup>160</sup> The initiator of LIC (Ministry of Interior) explained the modifications and additions, with the need to improve the conditions and the procedure for appliance of the monitoring of communications and they called upon the critiques from the international law experts and the comparative experiences, as well as the need to harmonize LIC with the new LCP.

**Objectives and conditions for legitimate interception of communications.** According to article 142-b of the LCP novel with which in 2004 the SIM were introduced, the same could be applied in order to provide the data and evidence necessary for successful criminal procedure. In the new LCP the initial formulation of the article is reinforced with the words “*when it is probable that data and evidence will be provided...*”.

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<sup>159</sup> A better solution would be, for this Law to bear the title Law for monitoring of electronic communication, because in that manner it would be clear that its provisions apply only regarding monitoring communication as a technical process of exchange of words and information, not immediate communication that happen between persons without the mediation of technical means.

<sup>160</sup> The basic Law for interception of communication was published in Official Gazette of RM number 121/2006. Amendments and additions were published in Official Gazette of RM number 110/2008 и 116/2012.

Along with that, the new LCP abandoned the formulation that SIM could be used even if the gathering of the data and evidence is difficult, and it kept only the formulation that the measures could be applied *only if data and evidence could not be obtained by any other means*. Thus, the new LCP has introduced the ultima ratio principle for the usage of SIM, only if there is no other way of obtaining relevant data and evidence.

The conditions under which the communications can be monitored are identical in accordance with all estimated SIM and are: 1. Existence of a reasonable doubt that crime is prepared (when the preparing is punishable by law), in progress, or has been committed for which an enforcement of SIM can be ordered. With this formulation, the LCP provisions direct to enforcement of SIM in a very early phase and eventually without exploiting every other alternative mean. However this provision corresponds to the basic characteristics of SIM as a preventive measures. 2. The second condition concerns crimes according to which the measures can be enforced. Regarding this conditions, with the new LCP is made combination from previous solutions contained in the amendments to the Criminal Procedure from 2004 and 2008. Has been made an extensive approach to the crimes for which SIM can be enforced, i.e.: 1 Crimes for which a sentence of minimum four years imprisonment is pronounced and are prepared, in progress or committed by an organized group, gang or other crime organization; 2. List of crimes from CC (listed in article 253 paragraph 1.2 of LCP); 3. Crimes against the state and crimes against humanity and international law appointed in CC.

**Authorities authorized for interception of communications.** With the latest changes and amendments to LIC from 2012, the list of authorities authorized for interception of communications is expanded. Along with the Ministry of Interior and the Ministry of Defense, authorized authorities for interception of communication are the Public Prosecutor, Financial Police and Customs Administration. It can be assumed that this complex system of placement of the competent authorities for interception communications in practice will impose difficulties in the mutual relations of these authorities, but also in relationship between executive and judicial powers. Although it can be expected that the effect of these provisions will probably be lowered by the fact that the authorizations given to Judicial Police by LCP, with respect to Financial Police and Customs Administration (as part Judicial Police), are precise and apply only for crimes within their authority.

It is important that with the changes and amendments of LIC in 2012 the direct involved of the Minister of Interior in the process of interception of

communications for the purpose of detection and apprehension of criminals, and for the leading of the criminal procedure, is removed. The direct authority is transferred to the police officer of Ministry of Interior, i.e. the member of the Financial Police, or the Customs Administration that leads the case. The authority of the Minister of Defense and the Minister of Interior in the procedure of interception of communications concerning the security and defense of the country is retained.

**Interception of communications procedure.** The interception of communications procedure is initiated by the Public Prosecutor, or on a request (proposition) which the authorized party submits to the Public Prosecutor. In the 2012 LIC changes and amendments concerning the content of the request for interception of communications, the articles contained in the initial text of LIC from 2006 (deleted with the changes of 2008) are brought back. Those are the articles according to which among the other, the request has to contain the technical means that will be used in the interception of communications, and the amount and location of the enforcement of the measurement.<sup>161</sup>

The order for the interception of communications is ruled by the authorized court. In order to intercept communications for the purpose of detection and prosecution of criminal offenses, an order issues the judge of the previous procedure (Article 256 of the new LCP).

In order to intercept communications for the purpose to protect the interests of security and defense, the judge of the Supreme Court issues an order, which judge is determined by the internal order of the court (Article 30 and Article 31 of the LIC).

As positive can be marked the provision from paragraph 2 of article 257 of LIC specifies that the order for interception of communications has to

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<sup>161</sup> The practitioners suggest that a well-argued proposal should also contain information about the grounds on which the MI (when issuing a proposal) bases the reasonable doubts, in order to provide insight to the Public Prosecutor about the source of the grounds, and the process in which they are obtained, in order to evaluate if they can not be obtained in any other way. Ruskoska, V., Ilievski, J. and de las Heras, M., *Special investigative measures - Domestic and International practice*, OSCE, Skopje, p. 15, 2010



contain the type of the telecommunications system, the telephone number or other data needed to identify the telecommunication connection.

In the Law of interception of communications *viva voce* is allowed in exceptional case. The initial LIC of 2006, allowed *viva voce* only if (alternatively) there is a risk of death or heavy bodily injury on one or more persons; risk of material damage of huge proportions; risk of escape of the criminal with lifetime imprisonment sentence (article 14). With the 2008 LIC amendments, the quoted article is removed, and the conditions and procedure for *viva voce* are regulated with the current article 11-a, which contains only the phrase that the *viva voce* can be issued if danger that “an irremediable damage can be introduced in the successful leading of the criminal procedure” exists. Due to the implications of issuing a *viva voce*, returning the previous conditions seems more than need.

**Timeframe of the Interception of communications.** The Interception of communications has to cease when the required data and evidence are obtained. Other than these general provisions, in the initial text of LIC from 2006, there was a determined timeframe of 30 days for Interception of communications with the initial court order. The Law estimates a possibility to extend the initial timeframe for at most 90 more days, based on additional, separately argued proposal of the Public Prosecutor. The maximal timeframe for Interception of communications was 120 days, or 4 months. With the 2008 LIC amendments it was established that after the initial 30 day timeframe, the Interception of communications can be extended for another 30 days. The Investigative Judge could allow extension of the timeframe to a maximum of one year. This timeframe is eight months longer than the timeframe of the initial LIC.

According to the last 2012 LIC changes and amendments, with the initial order the Interception can last 4 months, and it can then be extended for another 4 months. The total timeframe of the Interception of communications can be 14 months. This period is ten months longer than the initial legal decision of 2006, respectively, two months longer than the maximum limit set by the LIC since 2008. However, this was an expected decision due to the fact that enforcement of the measure of Interception of communications and part of other SIM, with article 290 of the new LCP is dimensioned to fit this timeframe. In such a case the LIC had to adjust to the provisions of LCP.

The increase of the timeframe is evident also in the case of Interception of communications due to the protection of the interests of security and

defense of the country. The initial timeframe in the 2006 LCP that was 3 months with a possibility of extension to 1 year, with the 2008 changes and amendments is 6 months with a possibility of extension to maximum 2 years.

**Handling data from the intercepted communications.** The transcripts of the intercepted communications are the carriers of the evidence for involvement in criminal activities. But, these data cannot be used as proof in criminal procedures if they are collected by monitoring communications that was conducted against the regulations of LIC and LCP (article 25). In this case, the data is annulled.

Regarding the handling of data from the monitored communications, an illogicality was corrected. This illogicality was imposed by the provisions of LIC from 2008. In article 22, it was determined that after the finished monitoring of communications if the Public Prosecutor will not file for conduct of investigation, then the materials in a sealed casing are archived and are kept in special facilities in the public prosecution office, until the expiration of the legal term for ageing of the criminal prosecution for the deed that was monitored (before these changes, i.e. the basic text of LCP from 2006, the data was annulled if an investigation was not start for 30 days, starting from the day the data was received). With the last changes and amendments of LIC from 2012, article 22 was erased, and the handling of this information was determined in LCP. According to article 261 from the LCP, if the public prosecutor gives up the criminal prosecution, the gathered data will be annulled under the supervision of a judge, for which the public prosecutor must prepare a report.

**Control over interception communications.** The control over interception communications can be judicial and non-judicial.

The judicial control, according to the rules, is conducted by the court that issued the order for monitoring of communications. The judge has to objectively confirm the existence of probability that the interception of communications is a last resort, not an option applied from the earliest phases, without regarding other means.

Non-judicial control is conducted by the Parliament of Republic of Macedonia, thru the Commission for supervision over conduct of measures for interception of communications from the Ministry of Interior and Ministry of Defence.

The control from the Public Prosecutor is significant. This control, with the LIC and the LCP is predicted as a continuous control that is (it should

be) accomplished thru an insight in all the data, writings and other materials gathered with the interception of communications. An adequate mechanism for control is the commitment of the Public Prosecutor to the Parliament of Republic of Macedonia to submit a report for the implementation of SIM once a year. If this is objectively implemented in practice, this control can be a guarantee against eventual abuse of monitoring in communication, although we shouldn't neglect the fact that the Public Prosecutor is an unbiased subject in the criminal procedure, the implementation of SIM, and also in the control over their implementation.

## CONCLUSION

Legislation which in R. Macedonia is regulated the interception of communications as a special investigative measure, in basically contains clear and precise legal rules. Amendments and additions of the Law of Interception of communications especially the last from 2012, followed the changes of the criminal procedural legislation and were primarily directed towards the harmonization with the Law of Criminal Procedure. With that, the void that occurred by erasing some of the regulations, at the same time was fulfilled with adequate regulations from the new LCP which regulates the issues regarding all special investigative measures. In the LIC and the LCP in section which regulates the use of special investigative measures, is embedded the principles of proportionality and subsidiarity. The determination of the law maker for a complex system of structured authorities for monitoring of communications and a continuous increase of the timeframe in which the communications can be monitored, is obvious.

Compared with the previous, the new legal solutions properly arranged the handling of materials and data from the monitored communications, specified the elements that the request for interception of communications should contain, and removed the direct authority of the minister for interior in the procedure for interception of communications as a special investigative measure.

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## **DOCTRINE AND PRINCIPLES OF EUROPEAN CONTRACT LAW<sup>162</sup>**

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### **Abstract:**

The European Union as a separate sui generis entity covers most of the countries in this region. For its legal legislation used in the European Union is actually a set of legal rules governing the mutual relations that come to natural and legal persons. Intense harmonization of contract law is implemented for almost three decades, during which it is conducted within and under the auspices of the EU institutions and the academic community.

Harmonization of law is inevitably linked with overall procedure for adjusting the national legislation by establishing a framework of acceptable principles and common rules in the field of Contract Law in the European Union.

With the adoption of uniform rules to be applied in the field of regulation of contracts at the same time removing barriers that arise as a hindrance to smooth flow of transactions , which enriches the legal doctrine . The paper specifically highlights the role of Landon's principles , which are one of the most significant acts of unification adopted in the area of harmonization of Contract Law in the European Union

**Keywords:** European Union treaty law, principles, harmonization.

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<sup>162</sup> professional paper

## Introduction

The adoption of uniform rules that would successfully apply to contracts concluded in different: legal and economic systems, successfully removes the barrier performance of international business transactions. This in turn contributes to the development of international trade and the creation of general legal certainty. Because this unification of contract law is a constant goal to the business world, national legislation and the legal doctrine .

The classic definition of contract acceptance of the will of two or more parties aimed at achieving certain legal consequences , ie , according to independent and equal legal will . It is based on the principle of freedom of bargaining , which is manifested on two fundamental tenets : freedom to decide whether to sign a contract and freedom in determining the content of the contract . But the real view, social life and legal doctrine that led to this legal rule becomes increasingly fictio iuris. It is undoubtedly the restrictions imposed wear and contemporary circumstances in the area of trade .

The process of globalization undoubtedly has a major impact on the development of private law , primarily for the purpose of equalizing the legal norms , but also because of the development of the legal doctrine . This particularly affected the legal doctrine of Contract Law , which according to its nature as a part of civil law , and in separate legal aspects of contract law .

As far as the legal theory of European private law<sup>163</sup> , the process of internationalization and globalization of contract law , imposed the need for accelerated harmonization and codification within the European Union for the Commission on European Contract Law (CECL)<sup>164</sup> in 1982 began work on the principles of European Contract Law . This in return will allow codification of contract law in the European Union in the framework of its legal system , which it will finally be transformed from Fictio Iuris to Ius Commune.

## Principles of contract law

The globalization of the world market as well as at the regional level , implies accelerated liberalization of contract law. This is necessary for the purpose of avoiding decisions, and above all the limitations imposed by

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<sup>163</sup> RIEDL, K.,The Work of the Lando-Commission from an Alternative Viewpoint, European Review of Private Law (2000), 1, pg. 5

<sup>164</sup> Commission on European Contract Law.

national legislation , when it comes to transnational agreements in the sphere of trade .

On the other hand, arising from the separate regulation of different species to specific trade agreements that processes for international and European doctrine that regulated the field of contract law, imposing the necessity of accepting new and different standards than those typical of classic contractual right .

In such circumstances the national rights can solve existing problems of collision of norms in contract law only in a way that rules imposed by the European Union , in a satisfactory and harmonious way to incorporate in existing national legislation. But sometimes it is not entirely impossible, for the need of maintaining a coherent structure of private law in general is possible only by taking radical reforms in this area .<sup>165</sup>

The problem is growing and the fact that the integration process, which originated from the normative acts of the Union focused only on individual fragments of private law, undoubtedly because they are inspired largely by market and economic factors. Because of this thing, European Private Law , and in that context the European Contract Law as his segment may present as an " isolated island" in a sea of national rights .<sup>166</sup>

To overcome these problems the Commission on European Contract Law developed the "Principles of European Contract Law " also known as " Ole - Land principles<sup>167</sup> ." These principles are nascent European Contract Law and of course the new European Civil Code. They in turn are of particular importance to the legal doctrine in the European Union they contribute to finding a common denominator for the different systems of private law and toward creating a new *ius commune Europae*.<sup>168</sup>

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<sup>165</sup> A more detailed analysis of it at: SCHÜLTE-NÖLKE, H., The New German Law of Obligations: an Introduction, German Law Archive, [http:// www.iuscomp.org/gla/](http://www.iuscomp.org/gla/); SCHLECHTRIEM, P., The German Act to Modernize the Law of Obligations in the Context of Common Principles and Structures of the Law of Obligations in Europe, German Law Archive, (2002) Oxford U Comparative L Forum 2 at ouclf.iuscomp.org.

<sup>166</sup> KÖTZ, *Rechtsvergleichung und Gemeineuropäisches Privatrecht, u: Gemeinsames Privatrecht in der Europäischen Gemeinschaft*; Müller-Graff ed., II ed., 1999., str. 149.

<sup>167</sup> Principles of European Contract Law (Principles of European Contract Law - PECL) prepared by a special commission set up in 1970 The Commission on European Contract Law (CECL). In 1998 published the first and second part of principles, in 2002. the third part.

<sup>168</sup> V.T.Koopmans, Towards a new " *ius commune*", u. De Wirrte/Forder,1992, str.43-51

According to its nature these principles belong to the group of soft law rights , which means that they are not legally binding . Yet despite this, it is a document of great importance that also have multi-faceted purpose.<sup>169</sup>

In its extensive work, despite the adoption of classical principles, the Commission in its work devoted particular attention to: the application of the principles, the sphere of freedom of bargaining, concluding contracts, the calculation of the terms, scope of authority of agents, validity of contracts, meeting contracts , change of circumstances, change of debtors, netting, obsolescence and anything else that is in the context of specific agreements . Although these principles have more character references, they are used in all member states of the European Union, regardless of which of the following countries , the system of civil law "civil law" or the case ( Anglo-Saxon ) "common law system ".

Regarding the application of Ole - Landon's principles, provided that these rules be applied as general rules of contract law in circumstances where: the contracting parties will make an integral part of the contract, or when expressly agreed to their application or in circumstances when the parties have not made a legal system and rules that will apply to their contract .<sup>170</sup>

Their hierarchy , is primarily the application is determined by the undertaken obligations of States to harmonize existing national legislation with international agreements and conventions or special circumstances they can apply immediately .

The main objectives of Ole - Landon's principles are<sup>171</sup>: enabling counterparties to certain issues in its contractual right to use a neutral approach to legal rules , ie to exclude the possibility of the application of national law only on one side ; enabling arbitrage disputes arising from the contract ; serve as the basis of a draft Code SA contracts , as well as a European code of private law ; facilitating mutual trading within the European Union ; strengthen the European single market ; bridging the differences between civil law and common law legal systems ;

Some of the principles are similar or identical legal substitutes in the national legislation of the Republic of Macedonia , particularly in Contract Law . They are: the principle of diligence and honesty (art.1.201<sup>172</sup> ) ;

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<sup>169</sup> Smits, Jan, The principles of European Contract Law and the Harmonization of Private Law in Europe, Tirant, 2002, str. 567-590.

<sup>170</sup> Article 1.101 of the principles adopted by Ole - Lando Commission. (Principles of European Contract Law - PECL)

<sup>171</sup> More about this at: Lando, O.- Beale, H.: „Principles of European contract Law, Parts I and II “ , Kluwer Law int., 2000. Pages: 95.-97.

<sup>172</sup> Article 5 Obligations Act. OJ.RM..18/2001



freedom of bargaining ( art.1.102 ) and freedom arrangement of the Obligations <sup>173</sup>; performance of obligations in a manner agreed ( art.9.102 ) or by ZOO duty to fulfill obligations<sup>174</sup> ;

Principles of European Contract Law are the most complex and most respected international project aimed at harmonization of European contract law. They are the basis for a new European private law.<sup>175</sup> Because of this thing lately, a new term is often used in contemporary legal doctrine , and it is " Europeanization of private law ." <sup>176</sup>

### **Harmonization and unification of contract law**

Eliminating conflict of laws in the area of European contract law is possible only in circumstances of taking the essential unification using national resources over and above the maintenance of a national system of courts . Such unification is theoretically possible within the European Union , which in turn has an adequate system of regulation " regulations " and that the institution has the Court of Justice of the European Union, if necessary, can provide original interpretations of uniform rules that are used by Member States. In all circumstances where this does not work globally, previous attempts at unification through international bilateral or multilateral agreements , essentially a level more or less successfully implemented harmonization of national legislation with the European legal doctrine .

In fact the process of harmonization of legislation in this area involves the necessity of lifting the conflict of laws and not allow the termination of the use of " colonized norms ". Based on this procedure and further national legislation remain as a source for resolution of disputes regarding contracts , but their content is more or less through harmonization receives considerable degree of unification .

The process of unification and harmonization is a complex phenomenon. In recent years significant progress has been achieved in terms of : the organized international unification, reception of international decisions into national rights unification within the European Union.

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<sup>173</sup> Article 3 Obligations Act. Official .RM..18/2001. Abrogated by the Constitutional Court of the Republic, U.br.67/02, OJ.RM.59/2002

<sup>174</sup> Article 10 Law on Obligations. Official. RM..18/2001.

<sup>175</sup> Zimmerman, R. (2004). Načela evropskog ugovornog prava - moderna manifestacija stare i moguća osnova za novu osnovu evropske pravne doktrine privatnog prava. *Pravo i privreda*, 41(9-12), 35-74.

<sup>176</sup> Christian Joerges, »On the Legitimacy of Europeanising Private Law«, Jus Comune Lectures on European Private Law, February 2003.

Within the organized international unification as a positive example is the Convention of the United Nations on Contracts for the International Sale of Goods (KUMP), which on a large scale is accepted worldwide. It arose as a product of UNCITRAL<sup>177</sup> which paid special attention to the study of contract law in Europe and America.

The reception of international law into domestic solutions is most successfully done in the area of modernization of the Civil Code of the Federal Republic of Germany (BGB) in the section that treats contracts, which are accepted based solutions adopted the basic principles of KUMP, as well as the generally accepted uniform law for the sale of movable property physically.<sup>178</sup>

However most of this area has been done within the European Union (formerly European Economic Community), where the compilers of the new European treaty law believe that unification is most effective in circumstances of voluntary acceptance of the operators in the market, which is far more efficient than unification can be implemented through adoption of state regulations.

Association of European Contract Law (SECOLA)<sup>179</sup> considered a clear view about where its member Jacques Ziller noted: " In the matter of contract law, the quality of existing and future Community law should be improved through measures of consolidation, codification and rationalization of legal instruments in force, and by developing a" common frame of reference ." The framework should be established to explore opportunities to develop relationships and terms of contract law in the EU that could be used by companies and commercial enterprises of the Union . "<sup>180</sup>

The principles adopted by Ole - Landon were on the committee that was an active working group of the European Union for the preparation of the European Civil Code, which should finally legal to codify this highly movable property.

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<sup>177</sup> Commission under the United Nations mandate for harmonization and unification of international trade law.

<sup>178</sup> Reinhard Zimmermann, *Breach of Contract and Remedies under the New German Law of Obligations. Centro di studi e ricerche di diritto comparato e strmiro*, s.48, Rim 2002., str. 8.

<sup>179</sup> "SECOLA " was established to assist the study of European contract law and improve its quality. It organizes: open, interdisciplinary and international platform for discussion, with focus directed towards new EU legal measures and proposals for future legislation

<sup>180</sup> Martijin Hoselnic, *Politics of European Civil Code. Prosvetno Delo*, Skopje, 2012. pg.107.

However the codification and adoption of uniform rules to be applied in the field of regulation of contracts in the European Union , at the same time removing barriers that arise as a hindrance to smooth flow of transactions, which enriches and legal doctrine.

### **Conclusion**

The area of contract law in recent years has made small and insignificant steps towards setting up a single European legal framework arising from the new universal European treaty law. Although undoubtedly there have been made considerable efforts there are still a major problem and the fact that between the legal systems of the Member States of the European Union in the field of private law, and in that part of the law of contract and there are significant differences. However it does not mean that efforts are undertaken and implemented harmonization of national legislation, aimed at creating a single European *ius commune* in the matter of civil law, and therefore of course in contract law. The entire process of harmonization of contract law in the European Union according to many indicators is going in the direction of legal doctrine and matter of contract law into a single Act "European Civil Code" .

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## **IMPLEMENTATION OF THE BEIJING RULES IN THE JUVENILE JUSTICE SYSTEM IN THE REPUBLIC OF MACEDONIA<sup>181</sup>**

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### **ABSTRACT**

The juvenile justice system is a subject of a debate in numerous international documents that indicate directions and standard rules. It is not in their nature to set strict imperative and prohibitive regulations, whereas to define certain minimum standards that influence the criminal policy of the state and the selection of the most appropriate penal solutions that in the best possible way reflect the goals they proclaim.

This paper contains analysis of the legal position of the child offenders and the proceedings in the competent institutions in the Republic of Macedonia, comparison of the solutions in the Macedonian legal system to the references in the international documents and last but not the least, determination of the degree of harmonization with the United Nations Standard Minimum Rules, often referred to as the Beijing Rules.

**Keywords:** child, juvenile, Beijing rules, sanction

### **INTRODUCTION**

The unacceptable behavior of young people has since always attracted special attention in societies. As the society was developing, it also went through some changes and modified itself in a phenomenological way,

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<sup>181</sup> professional scientific paper

as well as in the terms of the causes and the conditions that provoke it and enable it.

Being tightly related to the alterations, the attitude of the society towards the socially unacceptable juvenile behavior in the context of moral standards and appreciated values, as well as the legal measures has suffered some modifications too. The main course of these changes followed different stages of social phenomenon - from being alert and responsive to even the slightest outburst and applying rigorous social and legal measures, to becoming more tolerant and reacting in a more humane way.

The juvenile justice system has been subject of numerous international documents<sup>182</sup> that are pointing out directions and setting standard rules. It is not their aim to set strict imperative or prohibitive norms, but to define certain minimum standards that influence the criminal policy of the state and the selection of the most appropriate penal solutions that in the best possible way reflect the goals they proclaim.

Especially important are the United Nations Standard Minimum Rules for the Administration of the Juvenile Justice (often referred to as the Beijing Rules), adopted in 1985, which will be the main topic of this research paper, i.e. their implementation in the Law of Children's Justice of the Republic of Macedonia.

## **IMPLEMENTATION OF THE UNITED NATIONS STANDARDS IN THE MACEDONIAN LEGAL SYSTEM**

The Law on Children's Justice ("Official Gazette of the Republic of Macedonia", N<sup>o</sup>148, 2013)<sup>183</sup> is the main source of the juvenile justice system in the Republic of Macedonia. According to Article 1 from the law, the provisions define the treatment of children at risk and of the child offenders, and further on Article 19 precisely defines the age limit for each category.<sup>184</sup>

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<sup>182</sup> United Nations Standard Minimum Rules for the Administration of the Juvenile Justice ("Beijing Rules") 1985, Convention on the Rights of the Child 1989, United Nations Rules for the Protection of Juveniles Deprived of their Liberty ("Havana Rules") 1990 UN Rules for the Prevention of Juvenile Delinquency ("Riyadh rules ") 1990.

<sup>183</sup> With its adoption, it put out of operation the Law on juvenile Justice," Official Gazette of the Republic of Macedonia", N<sup>o</sup>87, 2007

<sup>184</sup> A **child** is considered to be every person younger than 18 years of age; a **child at risk** is every child who has turned at least seven but less than 18 years of age and is physically or

As a starting point, the Law on Children's Justice narrows down the definition of the term delinquency, whereas only the actions that the legal system considers to be criminal acts or offences, and no other illegal or predelinquent situation will be encompassed. The law proclaims implementation of the provisions strictly in the cases where children and children at risk who have committed a crime or made an offence are involved. This is in correlation to the principle 2.2 from the Beijing Rules, where exists precise definition of the terms "juvenile" and "act"<sup>185</sup>, as components of the term juvenile offender, whilst setting the age limits in agreeance with the economic, the social, the political, the cultural and the legal systems of the member countries, by giving freedom to each country to decide for itself. As we already witnessed, it has been precisely defined in our country.<sup>186</sup>

In the context of the limits, we are free to conclude that unlike any other legal solutions in other countries, our law consists of provisions referring to criminal act or an offence committed by a child under the age of 14, at the same time having it well described that these persons are legally irresponsible. They will not face the court, nor will be sanctioned in any way, but are placed in the hands of the social care centers where they receive some sort of help and protection.

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mentally disabled, who is a victim of violence, who has been educationally and socially abandoned, who finds himself/herself in a situation where the parent/foster parent has difficulties or is prevented from conducting his/her educational function, who is not included in the educational system, who has been introduced to the world of begging, wandering and prostitution, who uses drugs and other psychotropic substances and precursors, who drinks alcohol and due to the condition can come in touch with the law in the role of a victim or a witness of an action the law refers to as a criminal act; **a child at risk under the age of 14** is every child who at the time being of the act has turned at least seven but less than 14 years of age; **a child at risk from 14 to 18 years of age** is every child who at the time being of the act has turned at least 14 but less than 18 years of age; **a child in conflict with the law from 14 to 16 years of age** is every child who at the time being of the act has turned at least 14 but less than 16 years of age; **a child in conflict with the law above the age of 16** is every child who at the time being of the act the law refers to as criminal, for which a criminal sentence of over three years in prison has been determined, has turned at least 16 but less than 18 years of age; **a younger adult** is every person who at the time of the pronouncing of the sentence for the criminal act has turned at least 18 but less than 21 years of age.

<sup>185</sup> A juvenile is a child or a young person who according to the appropriate legal system can be treated in a way that is different than the adults.

A criminal act is every conduct (action or an omission) that is punishable by law in accordance to the appropriate legal system.

A juvenile offender is every child or a young person who is accused of committing or has been proven that he/she has committed an offence.

<sup>186</sup>United nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules), General Assembly Resolution 40/30, November 29, 1985, Rule 1.5

The lower bottom limit - under the age of 14 fits the need of protection of juvenile delinquency, and is in accordance with the recommendations of the Beijing Rules, where the Principle 4.1 states that the initial age of the juveniles for legal responsibility “shouldn’t be too low“.

According to the rule N<sup>0</sup> 3.3, which points out that the implementation of the rules should be extended to the younger adults, Chapter 9 of the Law on Children’s Justice deals with that problem. These provisions determine the material and the process legal status of this inter-category by finessing the situations where some of the sanctions for child offenders can be applied or to sentence them as if they were adults, depending on the fact when was the crime/offence committed and whether they turned 21 years of age during the trial.<sup>187</sup> By those means the legislator makes an attempt to solve the problem with the abrupt transition from the restorative juvenile justice system to the repressive penal legislation for adult offenders.

While revising the implementation of the international standards it is of great importance to analyze the issue of the criminal justice system . Point 5 (the goals of the juvenile justice system) of the Beijing rules states that the juvenile justice system should put its emphasis on the wellbeing of the juveniles and make sure that the reaction towards the juvenile offenders will always be in accordance with the circumstances and the offenders. In relation to that, our law precisely states that the goals of the law itself and its implementation are realization of the priority interest and protection of the children from crime, violence and any other kind of threat to their freedom, to their rights and to their proper development; protection of the children who have committed acts the law considers to be criminal acts or offences and protection of the children from returning to that kind of life; socialization, education and reeducation of the children; helping the children and protecting their rights and freedoms guaranteed by the Constitution of the Republic of Macedonia, by the Convention on the Rights of the Child and by other international agreements on the position of the children ratified in agreeance with the Constitution of the Republic of Macedonia during the court trial and in front of any other institution.<sup>188</sup>

The provisions of the law unambiguously determine that the Macedonian legal system has firmly placed itself on the path to promotion of the wellbeing of the children and advocates the protection of their interests,

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<sup>187</sup> Law on Children’s Justice – “Official gazette of the Republic of Macedonia”, N<sup>0</sup>148, October 29, 2013 (Art. 62)

<sup>188</sup> Law on Children’s Justice – “Official gazette of the Republic of Macedonia”, N<sup>0</sup>148, October 29, 2013 (Art. 2)



at the same time being protective over them, which is entirely in accordance to the proclaimed goals in the Beijing Rules.

## **PROCESS GUARANTEES**

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Rule N<sup>0</sup>7 of the Beijing Rules speaks about the process guarantees and the term procedural rights is defined as: presumption of innocence, right to discover the reasons of the allegation, right to remain in silence, right to a legal representative, right to the presence of a parent or a foster parent, right to cross investigation of the witnesses and a right to file a complaint to a court of a higher instance.

With regards to the Law on Children's Justice, we are talking about a law that for the most part corresponds to the Beijing Rules, having as a starting point the possibility the child to be spared from the classical criminal procedure and its consequences, but as long as there exists the possibility for a court trial, the child needs to be provided process guarantees as a certain limit to the fairness of the trial.<sup>189</sup> One can recognize that stance in the basic principles, as well as in the guarantee of the basic rights of the defendant during the proceedings.

First comes the principle of legality that can be recognized in the provision that a child older than 14 years of age cannot be sanctioned for an action that before its execution was not treated by the law as a criminal act or an offence, that has not been provided a legal sanction for by a domestic law or an international agreement. Thus, the law provides that it cannot be considered the child to be in conflict with the law until proven by an effective court decision, which is in fact the presumption of innocence.

The trial against the child should be led only by a law competent for juvenile justice. Besides the fact that we do not have such independent court institutions in charge of juvenile justice, the legislator provides that the competence for such criminal procedures should be placed in the hands of the children's court judge (who is responsible for the reparation procedure) and the children's council (composed of the children's judge and two judges jurors who are responsible for the further course of the proceedings).<sup>5</sup> Also,

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<sup>189</sup> Law on Children's Justice – "Official gazette of the Republic of Macedonia", N<sup>0</sup>148, October 29, 2013 Ibid (Art. 17)

the right to a fair trial within a reasonable deadline that will not affect the interests of the child is emphasized.<sup>190</sup>

What is new is the mandatory proceedings in all of its phases, that enables the child and his legal representative in the proceedings to have a defender, who will not only defend (as one of the three basic functions of the criminal proceedings), but also makes sure the rights and the interests of the child get protected against any kind of violation during the proceedings. The costs for the defense shall be settled from the court budget when the child and his family file evidence that they cannot afford a defender, and in fact, the right to free legal aid is one of the basic rights.<sup>191</sup>

What differentiates the juvenile criminal proceedings from the classical one and is in agreeance with Point 8 from the Beijing Rules<sup>192</sup> is the right to privacy. This principle is effectuated through exclusion of the public from the trial, which goes in favor of the protection of the morals and the interests of the child, prevents possible secondary victimization and stigmatization through moral condemnation of the community. Part of the protection of the privacy is the prohibition of the publication of the decisions.<sup>193</sup>

Other aspects of the fairness of the trial such as the presumption of innocence, the equality of arms, the right to remain in silence, the right to a translator, the right to adequate time to prepare the defense, as well as the prohibition of torture are contained in the Criminal Procedure Law and are also applied in the treatment of children. Namely, the law has a subsidiary character, which means that the provisions can be applied provided that they

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<sup>190</sup> Law on Children's Justice - "Official Gazette of the Republic of Macedonia", N<sup>o</sup>148, October 29, 2013 (Art.5, 11, 101)

<sup>191</sup> Ibid Law on Children's Justice - "Official Gazette of the Republic of Macedonia", N<sup>o</sup>148, October 29, 2013 (Art. 90)

<sup>192</sup> The right to privacy of the minor shall be respected in all of the phases of the proceedings in order to avoid the damage that he/she could suffer from the unnecessary publicity or labeling. In theory, information that may lead to identification of the minor shall not be published.

<sup>193</sup> Law on Children's Justice – "Official Gazette of the Republic of Macedonia", N<sup>o</sup>148, October 29, 2013 (Art. 91, 99)

are in accordance with the Law on Children's Justice that has the character of *lex specialis*.<sup>194</sup>

### **SANCTIONS FOR CHILDREN AND THE CRITERIA FOR THEIR IMPLEMENTATION**

Throughout the history the process of placing the children in special categories of offenders began with gradual introduction of special sanctions.

The types of sanctions provided for the children and their implementation are the main criterion in the estimation of the value of each juvenile justice system. The Beijing Rules are composed of numerous recommendations for the member countries referring to the adoption of certain types of sanctions for the juvenile offenders, the principles of the implementation and the types of treatment of the sentenced ones.

In this paper we shall revise the children's sanctions system within the Law on Children's Justice and we shall determine to what extent is the system based upon the leading principles of the Beijing Rules, such as the principle of proportionality, the need for a number of different measures, total freedom of the court in their implementation and the exceptional implementation of institutional treatment in the case of child offenders. The special treatment of the Law on Children's Justice for the child offenders is due to the psychophysical condition, the age of the child and the maturity needed to comprehend the consequences of its own actions. That kind of treatment sets the focus on the wellbeing of the child and provides that when communicating with the child one should have in mind the interests of the child and to contribute to the educational, i.e. the reeducational process and his proper development. The legislator tends to give advantage to the preventive, the protective and the educational measures, and consider the sanctions to be an exception.

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<sup>194</sup> Law on Children's Justice - "Official Gazette of the Republic of Macedonia", N<sup>o</sup>148, October 29, 2013 (Art. 86 Par. 1)

One of the following sanctions could be implemented in the case of a child offender: educational measures, sentence or an alternative sanction, and under the conditions provided by the Criminal Code along with the educational measure or the sentence, a security measure can be implemented as well. The Law on Children's Justice provides special conditions for sanctioning depending on the age of the child: a child from 14 to 16 years of age can be sanctioned only with an educational measure for an action the regards as a criminal act, and a child from 16 to 18 years of age can be sanctioned with an educational measure for a criminal act, with the exception when under special conditions provided by the Criminal Code he/she can be sentenced or an alternative measure can be implemented, or he/she can be exculpated.

In addition, a child offender can be sanctioned with the following educational measures: a) disciplinary measures: reprimand or referral to a center for children, b) measures of enhanced surveillance: by the parents or by the foster parents, by the foster family or by the Social Care Centre and c) institutional measures: referral to an educational and correctional facility or to a correctional home. When talking about the sanctions for a child from 16 to 18 years, they can be formulated as: a) child prison, b) a fine, c) prohibition to drive a motor vehicle of a certain kind and d) expelling a foreigner from the country.<sup>195</sup>

This representation of the sanctions for the child offenders clearly shows that the Macedonian law provides a broad spectrum of diverse and well differentiated sanctions in accordance the rule N<sup>o</sup>18 from the Beijing Rules.<sup>196</sup>

As regards the implementation of these sanctions the Macedonian legislator has invested great freedom in the hands of the court when it comes to the selection of the most appropriate measure that will realize the goal of the sanctioning in the best possible way. For situations like this our law precisely provides that the sanction selected for the child should correspond to his/her personality, to the seriousness of the act the law refers to as a criminal act or an offence and to its consequences, to the need for education,

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<sup>195</sup>Law on Children's Justice – "Official Gazette of the Republic of Macedonia", N<sup>o</sup>148, October 29, 2013 (part 3)

<sup>196</sup> The competent institution will be able to choose from various measures, in that way enabling flexibility in order to avoid institutionalization at the greatest extent possible.

reeducation and development with the aim to protect the child's best interests.<sup>197</sup>

Having as a starting point the idea that the family is the most natural environment for the development of a young person, at present the penal law favors the sanctions which can be implemented in the social milieu of the child. The same idea is proclaimed in the Beijing Rules in a way that recommends the child not to be separated from the parents' surveillance unless it is necessary due to the circumstances in the specific case (rule N<sup>o</sup>18.2). Besides, the rule N<sup>o</sup>19.1 states the principle standpoint for the least possible implementation of the institutional measures, so the referral of the child to an educational and correctional institution is a measure of last resort and should last as shortly as possible.

The execution of the criminal sanctions is the final and most difficult phase to perform of the complex process of the legal reactions towards the offenders, where at the end follows the evaluation of the success or the defeat of the society in the fight against crime. One particularly sensitive link of this social chain reaction is the execution of the children's sanctions, since every mistaken or inappropriate treatment of the sentenced child could have as a result permanent and irreparable consequences on his/her life.

The execution of the institutional sanctions are elaborated in point 26 of the Beijing Rules, underlining that the overall treatment of the offenders living in such institutions should provide them with the necessary care, protection, education and vocational skills; the juveniles should live separately from the adults and there should be no gender division – the female offenders should receive the same kind of treatment as the young male offenders (at the same time satisfying all of their essential needs).<sup>198</sup>

The Republic of Macedonia has definitely failed in the area.

It is a general impression of the competent people that prior to referring the children in such institutions the space has not been adapted, nor cleaned properly, thus the living conditions have not yet met the requirements, and the inventory is lacking too. It is their impression that the

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<sup>197</sup> Law on Children's Justice - "Official Gazette of the Republic of Macedonia", N<sup>o</sup>148, October 29, 2013 (Art. 35, 36)

<sup>198</sup> United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules), General Assembly Resolution 40/30, November 29, 1985, Rule 26

child offenders are provided with only the food, whereas the successful execution of the institutional measure is lacking, i.e. it has been made impossible to establish a process of true resocialization.<sup>199</sup>

The above stated facts lead us to the conclusion that the legal obligations indispensable for a successful social adaptation of the children and their future integration in the society after serving the sentence are merely formally obeyed.<sup>200</sup>

## CONCLUSION

United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing rules) are the first rules adopted with a purpose to protect the rights and the needs of the juvenile offenders. According to the opinion of the experts dealing with that issue, the Beijing rules are considered to be a crucial document, hence their affirmation has a special meaning for the shaping of the national conceptions of the juvenile criminal justice.

The previous analyses in this research paper resulted to be essential in order to understand that the Law on Children's Justice of the Republic of Macedonia has been formulated and built in a way that it systematically followed the international documents and legislature, due to the need for the newest discoveries to assist in setting concepts of the law. We might as well say that this law is in a complete agreeance with these achievements and has accepted and incorporated the solutions described in the Beijing rules which in a modernistic way determine the position and the treatment of the children when they appear as offenders.

As the law came into force on December 01, 2013, we hope we shall witness maximum dedication of the competent institutions and elimination of the inconsistencies the previous version of the law could not regulate.

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<sup>199</sup> Annual reports about the work of the ombudsman, Skopje, 2009-2012

<sup>200</sup> Ibid

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# **THE AXIOLOGICAL FOUNDATIONS OF THE EUROPEAN UNION FOREIGN POLICY<sup>201</sup>**

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## **Abstract**

This paper is qualitative research oriented towards revealing of the axiological foundations and determinants of the European Union foreign policy. In this sense, within the paper we “challenge” the modern versus the postmodern foreign policy concepts. Likewise, we deeply analyze the essential axiological components of the European Union constitutive treaties regarding the foreign policy. On that basis, we conclude the axiological foundations of the European Union foreign policy, its uniqueness, distinctiveness and its axiological engagement in the international relations.

Key words: EU, foreign policy, values.

## **METHODS**

This paper is qualitative research aiming to investigate the axiological foundations of the EU foreign policy. This research is conducted predominantly upon the content analysis method and partially upon the comparative analysis method regarding the features of the modern vs. the postmodern foreign policy. The main intention of this research is to reveal the axiological foundations of the EU foreign policy and to confirm its

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<sup>201</sup> original scientific paper

axiological determination in the international relations. Hence, this paper seeks to give an answer to the following research question: *What the EU constitutive treaties contain as determinants of its international identity and foreign policy?*

## THE POSTMODERN NATURE OF THE EUROPEAN UNION

The permanent attempts for defining the role of the European Union (Union; EU) in the international relations, assumes the necessity for its constitution as a state (federation or confederation) or its stagnation in the form of atypical political community, as it is today. Therefore, if the EU would constitute itself as a state, we could speak about the political centralization of its powers and competencies and the building of an independent military capacity. Thus, the EU could become a real political actor recognized in the international relations in accordance with the modern or *realpolitik* concept. This concept refers to international relations, based on coercive power and on practical or material factors and considerations, rather than ethical and *axiological foundations*. Apart from this, the EU highly affirms its axiological (value) foundations, creating the image of itself as a postmodern actor, which rather cooperates and communicates with other international actors, instead of forcing its way. In this sense, theorist Robert Cooper in the book “The Breaking of Nations” (2003), stated that: “what is called ‘modern’ is not so because it is something new – it is in fact very old fashioned – but because it is linked to that great engine of modernization, the nation state”.<sup>202</sup> Consequently, the EU is not a nation state, and therefore cannot be treated as a modern actor (Table 1). Consequently, several factors confirm the EU postmodern nature: “*first*, blurring of the distinction between foreign and domestic politics; *second*, voluntary mutual intrusiveness and mutual verification; *third*, a complete repudiation of the use of force in settling disputes; and *fourth*, security built on *transparency, mutual openness and interdependence*”.<sup>203</sup> More precisely, the postmodern foreign policy means a break with the modern concepts. In this sense, nationalism and national markets are “being increasingly replaced by cosmopolitanism and the globalized economy, national interest is complemented by humanitarian or environmental concerns, principles of non-interference and sovereignty

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<sup>202</sup>Steven Van Damme, *The European Union as a Post-modern Security Actor? Defence Reform in the Democratic Republic of Congo*, 2013, p. 2, [www.ies.be/files/repo/.../EUinIA\\_VIII\\_2\\_VanDamme.pdf](http://www.ies.be/files/repo/.../EUinIA_VIII_2_VanDamme.pdf) [2013]

<sup>203</sup>Rokas Grajauskas and Laurynas Kasčiūnas, *Modern versus Postmodern Actor of International Relations: Explaining EU-Russia Negotiations on the New Partnership Agreement*, 2009, p. 4, [www.lfpr.lt/uploads/File/2009-22/Grajauskas\\_Kasciunas.pdf](http://www.lfpr.lt/uploads/File/2009-22/Grajauskas_Kasciunas.pdf) [2013]

are being undermined by the pooling of sovereignty, *realpolitik* is being complemented by ideational/normative/*axiological* considerations”.<sup>204</sup>

Table 1.

	<b>Modern foreign policy</b>	<b>Postmodern foreign policy</b>
<b>Means</b>	Military instruments and hard power	Non-military instruments and soft (structural) power
<b>Actors</b>	Sovereign nation-states	Nation-states of contingent sovereignty, international (supranational) organizations, non-governmental actors
<b>Sovereignty</b>	Protective about sovereignty; avoiding mutual verification mechanisms	Less cautious about sovereignty; positive about transferring part of sovereignty to an international regime
<b>Raison d'état</b>	Emphasis on the nation state and on the defense of national interests (instead of values or norms)	<i>Emphasis on norms and values</i>
<b>Openness</b>	Efforts to minimize dependence on other international actors, as well as to maintain as more self-sufficient the political and the economic life as possible	Open to international cooperation and positive about increasing interdependence (seeing interdependence as a key to security)
<b>Centralization</b>	Substantial state control over the political, economic, and social life; tendencies of centralization	More pluralistic, democratic and decentralized domestically
<b>International law</b>	Skeptical about international law; predisposed to using force in international relations	Attaching great importance to international law (no fear of being bound by international legal norms)

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<sup>204</sup> Ibid.

Source: Rokas Grajauskas and Laurynas Kasčiūnas, *Modern versus Postmodern Actor of International Relations: Explaining European Union - Russia negotiations on the New Partnership Agreement*, 2009, p. 85, available at: [www.lfpr.lt/uploads/File/2009-22/Grajauskas\\_Kasciunas.pdf](http://www.lfpr.lt/uploads/File/2009-22/Grajauskas_Kasciunas.pdf) [2013]

Taking into account the EU postmodern nature, the author Rokas Grajauskas underlined that the EU “acts as an umbrella, placing EU Member States under a postmodern framework. When EU countries want to act in a ‘modern’ way, they go on their own. In other words, *in those areas where the EU is acting as a single actor, EU's action is postmodern*”.<sup>205</sup> Today, this debate has “become less dominant in the integration literature and most scholars agree that the EU should be characterized as something in between an international organization and a federal state”.<sup>206</sup> Otherwise, the postmodern states are “generally striving to establish a post-Westphalian order where state sovereignty is constrained through legal developments beyond the nation-state”.<sup>207</sup> Accordingly, in a post-Westphalian or postmodern world:

[F]oreign policy transcends the state-centric view of international relations, and there is a wider specter of foreign policy actors, ranging from nation-states of contingent sovereignty to international (supranational) organizations to non-governmental actors. Postmodern international actors are not interested in acquiring territory or using force and rather choose to build their security relationships on cooperative grounds. They prefer to use non-military foreign policy instruments and focus on soft power, as well as structural power. More generally, postmodern foreign policy tends to focus more on structures, contexts and immaterial aspects of power and influence (such as identity, beliefs, legitimacy).<sup>208</sup>

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<sup>205</sup>Rokas Grajauskas, *Federal Europe: A Postmodern Force in International Relations?*, 2011, <http://www.federalist-debate.org/index.php/component/k2/item/63-federal-europe-a-postmodern-force-in-international-relations> [2013]

<sup>206</sup>Pernille Rieker, *Towards a Postmodern European Security Actor? The development of political and administrative capabilities*. Norwegian Institute of International Affairs, 2007, p. 3

<sup>207</sup>Helen Sjursen, *What Kind of Power?* In Helen Sjursen (ed.) *Civilian or Military Power? European Foreign Policy in Perspective*. Abingdon: Routledge, 2007, p. 2

<sup>208</sup>Stephan Keukeleire and Jennifer McNaughton, *The Foreign Policy of the European Union*. Basingstoke: Palgrave Macmillan, 2008, p. 20

As a result, the *affirmation of norms and values* is becoming equally important as the affirmation of national interest (*raison d'état*). Foreign policy in the Westphalian modern age, “was characterized by states as the main actors, by a clear distinction between foreign and domestic politics, by the protection of sovereignty and by the pursuit of national interest, power and *raison d'état* using mostly hard power, military means”.<sup>209</sup> As opposed to the modern concept, we can define the EU interest as a *raison de valeur* or a *value* interest, directly derived from its axiological foundations, stipulated in its constitutive treaties.

### THE AXIOLOGICAL FOUNDATIONS

Considering the EU axiological foundations, we will investigate the EU constitutive treaties, in order to extract and to reveal the axiological provisions regarding the EU foreign policy. In this sense, the Lisbon Treaty prescribed the systematized *axiological (value) framework* that requires the EU and its Member States to affirm and to respect its values. Such values are not always named as “values” but sometimes referred to by terms such as “objectives”, “tasks”, “principles”, “duties” and so on, which have an indisputable axiological essence. The *Treaty on European Union* (TEU) specified the EU values in Article B, stating that the EU shall: “promote economic and social progress which is balanced and sustainable, in particular through the creation of an area without internal borders, through the strengthening of economic and social cohesion and through the establishment of economic and monetary union, ultimately including a single currency in accordance with the provisions of this Treaty”.<sup>210</sup> Likewise, the *Treaty establishing a Constitution for Europe* (TeCE) in Article I-2 listed the following *values*: respect for human dignity, liberty, democracy, equality, the rule of law, and respect for human rights, including the rights of persons belonging to minorities.<sup>211</sup> This Treaty also confirmed the values of the previous *Treaty establishing the European Community* (TeEC), such as: “promotion of scientific and technological development, opposition to social exclusion, the promotion of social justice and social protection, equality between men and women, solidarity, the promotion of economic, social and

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<sup>209</sup>Rokas Grajauskas and Laurynas Kasčiūnas, *Modern versus Postmodern Actor of International Relations: Explaining EU-Russia Negotiations on the New Partnership Agreement*, 2009, p. 4, [www.lfpr.lt/uploads/File/2009-22/Grajauskas\\_Kasciunas.pdf](http://www.lfpr.lt/uploads/File/2009-22/Grajauskas_Kasciunas.pdf) [2013]

<sup>210</sup>*Treaty on European Union*, (database on-line); available at: <http://eur-lex.europa.eu/en/treaties/dat/11992M/htm/11992M.html> [2013]

<sup>211</sup>*The Treaty establishing a Constitution for Europe*, (database on-line); available at: [http://europa.eu/scadplus/constitution/objectives\\_en.htm#VALUES](http://europa.eu/scadplus/constitution/objectives_en.htm#VALUES) [2013]

territorial cohesion, and respect for cultural and linguistic differences”.<sup>212</sup> Article 21 of *the Lisbon Treaty* (LT) noted that the EU's actions on the international scene shall be guided by the principles which have inspired “its own creation, development and enlargement, and which it seeks to advance in the wider world: democracy, the rule of law, the universality and indivisibility of human rights and fundamental freedoms, respect for human dignity, the principles of equality and solidarity, and respect for the principles of the UN Charter and international law”.<sup>213</sup> This article also confirms that the EU shall define and pursue its common policies and actions and shall work for a high degree of cooperation in all fields of international relations, in order to achieve the following *objectives*:

- (a) safeguard its values, fundamental interests, security, independence and integrity;
- (b) consolidate and support democracy, the rule of law, human rights and the principles of international law;
- (c) preserve peace, prevent conflicts and strengthen international security, in accordance with the purposes and principles of the UN Charter (...) promote an international system based on stronger multilateral cooperation and good global governance.<sup>214</sup>

On this basis, the Union itself finds as a “savior” of humanity and the fundamental axiological system of the western civilization in the new millennium, while propagating its concept of principled, constructive and effective multilateral world order, constituted on the mutual respect, international cooperation and global solidarity.

## CONCLUSION

The EU foreign policy derives its own legitimacy from the values installed in its constitutive treaties, as its axiological foundations. Moreover, this kind of axiological construction of the EU foreign policy is supplemented by its postmodern nature, which highly differentiates the EU in relation to other international actors, especially the states. Taking into account the research question, we can conclude that the EU constitutive treaties contain a set of values (axiological foundations) which promotes and affirms cooperation instead of conflict, and also, respect for international law instead of the power politics (*realpolitik* and *machtpolitik*). Unlike other international actors (the states, in particular), which promotes the national interest or *raison d'état*, moreover, the EU possesses *raison de valeur* or

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<sup>212</sup> Ibid.

<sup>213</sup> *The Treaty of Lisbon*, (database on-line); available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2008:115:0013:0045:EN:PDF> [2013]

<sup>214</sup> Ibid.

*value* interest, which is directly derived from its axiological foundations, established in the constitutive treaties.

Many theorists noted that such axiological foundations of the EU foreign policy, enables an opportunity for promoting a good global governance and democratization of the international relations, in order to remodel / transform the current American type of (unipolar) world order in a new, more just, more democratic and a more cooperative world order. Those values make the EU foreign policy distinctive and authentic in comparison with other international actors on the international political scene, and thus, emphasizing its axiological engagement in the international relations.

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**GLOBALIZATION AND ITS IMPACT ON  
INTERNATIONAL POLITICS, NATION-STATE  
AND STATE SOVEREIGNTY<sup>215</sup>**

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**Abstract**

Globalization is an actual phenomenon covering all major fields of social life. This paper focuses on the specific impact that globalization has upon nation-state as a central element of international politics.

Globalization symbolizes the increasing intensity of worldwide interconnectedness. It is an uneven process which creates not only a more cooperative world, but also many reasons for instability, resistance and conflicts between the countries.

The world order and politics are facing a new “danger” – the sovereignty of states is under question. According to some theorists there is a constantly growing dependency and interconnectedness between the states, and the governments have become weaker and less relevant than ever before. Therefore, one question arises: to what extent globalization affects the sovereignty and autonomy of the nation-states and does globalization mean the end of state sovereignty?

Although the globalization has many forms, in this paper will be critically examined only the political and economic dimensions of globalization. Also, the focus will be on the impact of globalization on state sovereignty and international politics.

**Key words:** globalization, nation-state, sovereignty, international politics.

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<sup>215</sup> original scientific paper

## INTRODUCTION

Globalization has become an important topic in the last few decades, which represents a multi-dimensional process of hybrid, uneven transformations.<sup>216</sup>

Globalization is defined as a complex and multidimensional process “...of increasing interconnectedness between societies such that events in one part of the world increasingly have effects on peoples and societies far away.”<sup>217</sup>

Globalization creates a context for the transformation of the role of the state in world politics without being a direct cause. By influencing internal political processes, it undermines state’s monopoly in international relations; and creates a context for a further deterioration of state sovereignty as a key principle of the world order.

In the study of globalization there are two “streams” of theoreticians which define the relevance of globalization on international politics in different ways. The so-called hyperglobalists claim that it is about the demise of the sovereign nation-state, because the global forces undermine the ability of governments to control their societies and economies. Kenichi Ohmae<sup>218</sup> and Jan Aart Scholte<sup>219</sup> are representatives of this group of theoreticians. On the other side, the so-called skeptics reject the idea of globalization as a power and argue that states and geopolitics remain the principal forces shaping the world order. Robert Gilpin<sup>220</sup> and Stephen D. Krasner<sup>221</sup> represent these “stream”.<sup>222</sup>

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<sup>216</sup> Wimmer, Andreas, *Globalisations Avant La Lettre: A Comparative View on Isomorphization and Heteromorphization in an Interconnecting World*, *Comparative Studies in Society and History* 43(3): 435-66, 2001.

<sup>217</sup> Baylis, John, Smith, Steve, and Owens, Patricia, “Introduction”, In: Baylis, John, Smith, Steve, and Owens, Patricia (eds.), *The globalization of world politics: An introduction to international relations*, 5<sup>th</sup> edition, Oxford: Oxford University Press, p.8, 2011.

<sup>218</sup> Ohmae, Kenichi, *The end of the nation-state: The rise of regional economies*, New York: Free Press, 1995.

<sup>219</sup> Scholte, Jan Aart, *Globalization: A critical introduction*, Basingstoke: MacMillan, 2000.

<sup>220</sup> Gilpin, Robert, *Global Political Economy*, Princeton NJ: Princeton University Press, 2001.

<sup>221</sup> Krasner, Stephen D., *Sovereignty: Organized hypocrisy*, Princeton NJ: Princeton University Press, 1999.

<sup>222</sup> McGrew, Anthony, “Globalization and World Politics”, In: Baylis, John, Smith, Steve, and Owens, Patricia (eds.), *The globalization of world politics: An*

The universal concept of globalization needs to be defined more precisely, because it is more about a dynamic process and is therefore more a cause than a result of the ongoing political changes in the international politics.

### GLOBALIZATION IN INTERNATIONAL POLITICS

Globalization is a complex and multifaceted concept, which can be explained in various ways. Within an international relations framework there are numerous theoretical explanations, which follow the realism (neorealism), neoliberal institutionalism and neomarxism.

For realists, globalization is a reflection of the struggle for supremacy between great powers. As a result, globalization is just another background for eternal struggle for hegemony.<sup>223</sup>

Neoliberals treat globalization as the gradual construction of a liberal world order and a deepening of global interdependence. Globalization brings absolute gains to the top of world politics, thus encouraging more peaceful and less violent interactions.<sup>224</sup> Neoliberalism considers globalization as a unique and universal process. Its universal character means that globalization cannot be attributed to a particular region. It is a world-wide process of structural change and it has an effect even on the states which seem to be out of the influence of globalization. Globalization is unique in the sense that there are no historical precedents of the process of globalization.

Neomarxists attribute globalization to the logic of capitalist expansion and evolution. From this perspective, globalization is seen as a new form of imperialism,<sup>225</sup> which means deepening the imbalance in the international

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*introduction to international relations*, Oxford: Oxford University Press, p.16, 2008.

<sup>223</sup> Gilpin, Robert, *The Challenge of Global Capitalism*, Princeton University Press, 2000;

Mearsheimer, John, *The Tragedy of Great Power Politics*. New York: W.W. Norton, 2003.

<sup>224</sup> Keohane, Robert, *Power and Governance in a Partially Globalized World*, New York: Routledge, 2002;

Eichengreen, Barry, *Globalizing Capital: A History of the International Monetary System*, Princeton, NJ: Princeton University Press, 1996.

<sup>225</sup> Callinicos, Alex, *Against the Third Way*, Cambridge: Polity Press, 2001.

relations, enforcing the concept of violence and neo-colonial exploitation, stimulating conflicts and increasing the social polarization worldwide.

Therefore, theoretical dilemmas start with the definition of globalization. For the realists, globalization is a transformation of environment, in which power politics among states is being carried out. For the neoliberals, globalization is a growing economic interdependence. For numerous others, globalization is about technological and communicational changes, which make the world smaller, while increasing all political interactions.

These theoretical approaches to globalization have one thing in common: all of them pay attention to material aspects of globalization - the way it changes the balance of power, enhances mutually cooperation or deepens inequality.

Constructivism offers an alternative solution for understanding of globalization based on the hypothesis that political concepts obtain meaning only within a social context. Constructivists doubt the objective nature of anarchy in international politics, considering it a product of the realist way of thinking.<sup>226</sup>

## GLOBALIZATION AND NATION-STATES

Globalization affects the status of the nation-state in the international system. Nation-states, as international actors, are facing a challenge of losing their monopoly on international affairs and parts of their sovereignty.

Losing their monopoly on international affairs is the result of a growing level of interdependence. States' domination over international relations rested upon the ability to control all vital spheres of cross-border interactions.<sup>227</sup>

Along with losing monopoly in international affairs, states are experiencing a weakening of their sovereignty. The key attribute of a state is its sovereignty. The state sovereignty, as highest priority, suddenly has turned into a barrier to maximizing other state priorities, such as membership in international organizations. Precisely, sovereignty was not lost, but transferred from national to other levels – regional and supranational. Internal sovereignty implies that no other authority within the state can be higher than the state authority. External sovereignty guarantees formal equality of state in international relations and lack of any other supreme political authority or power which could be imposed on the states.

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<sup>226</sup> Wendt, Alexander, *Social Theory of International Politics*, Cambridge: Cambridge University Press, 1999.

<sup>227</sup> Kapitonenko, Mykola, *Globalization, nation-state and global security arrangements*, EuroPolis, 6: 592, 2009.

The transfer of sovereignty on supranational and regional level leads to integration and regionalization.

Two opinions should be considered about integration and regionalization.

First, they are not universal. Both trends could be observed among highly developed states, because poor states have nothing to exchange their sovereignty for.

Secondly, there is no direct causal link between transformation of state sovereignty and globalization. The effects of globalization could be observed both when state sovereignty was still under formation and when it has already become a fundamental principle of world politics. State sovereignty appeared as a result on internal political developments. These developments could not be stopped by globalization alone, and for quite a period of time sovereignty remained the most effective way of providing states' security.

Erosion of state sovereignty is driven by internal social developments, surfacing of new ideologies and the rise of non-state actors, both national and transnational. Globalization provides a new context for these developments, making a state-centered foreign policy less effective.<sup>228</sup>

According to Guigo Wang, the concept of sovereignty refers to the three-fold capacity of a state: the absolute supremacy over internal affairs within its territory; absolute right to govern its people; and freedom from any external interference in the above spheres.<sup>229</sup>

On the other side, Michael Mann argues that globalization has not ended the rise of the nation-state. He claims that the state is an independent source of power (along with ideological, military and economic power) and since states vary greatly, globalization has a differential effect on them: "the nation-state's rise has been global, but modest and very uneven".<sup>230</sup>

#### POLITICAL GLOBALIZATION AND THE STATE

Globalization from the political aspect has an impact on the state. Both the autonomy and sovereignty of the state have been weakened by globalization through various international and transnational institutions.<sup>231</sup>

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<sup>228</sup> Kapitonenko, Mykola, *Globalization, nation-state and global security arrangements*, EuroPolis, 6: 596, 2009.

<sup>229</sup> Wang, Guigo, "The impact of Globalization on State Sovereignty", *Chinese Journal of International Law*, 3/2: 473-483, 2004.

<sup>230</sup> Mann, Michael, "Has Globalization Ended the Rise and Rise of the Nation-State?" In Held, David, and McGrew, Anthony, (eds.), *The Global Transformations Reader*, Malden, MA: Polity Press, p.139, 2001.

<sup>231</sup> Held, David, *Democracy and Global Order: from the Modern State to Cosmopolitan Governance*, Cambridge: Polity Press, 1995;

The interdependence is not limited to international relations but extends to all spheres of social life. Therefore, globalization involves trends toward reduced capacities for governance at the state level. Globalization has resulted in the emergence of a so-called global state, where the juridical sovereignty of states is undermined.

### ECONOMIC GLOBALIZATION AND THE STATE

Globalization was not a universal phenomenon. In the period before 1914 it was captured in economic terms of growth in trade and interdependence and it involves predominantly highly developed states. To some authors it may be a reason to claim that globalization is a destabilizing factor in world politics, since it challenges balance of power mechanisms of international order. However, bringing more inequality to the international system does not mean making it unstable.

If a state believes that economy is an important determinant of power and if globalization is mainly about economic development, the states will tend to place economic competition higher in the list of foreign policy strategies.<sup>232</sup>

### GLOBALIZATION AND STATE SOVEREIGNTY

The process of globalization for some authors, represents that the world order and politics are facing a new danger - the sovereignty of the nation states is under question.

According to some theorists there is a constantly growing dependency and interconnectedness between the states, and the governments have become weaker and less relevant than ever before. But what does this dependency and interconnectedness mean and to what extent does it affect the sovereignty and autonomy of the state? In other words does globalization mean the end of state sovereignty?

Globalization and state sovereignty are very wide and contested notions. As the impact and growth of globalization has changed, so has its meaning during the last decades.

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McGrew, Anthony, "Democracy beyond Borders" вo: McGrew, Anthony, (ed.), *The Transformation of Democracy? Globalization and Territorial Democracy*, Cambridge: Polity Press, 1997.

<sup>232</sup> Gilpin, Robert, *The Challenge of Global Capitalis*,. Princeton, NJ: Princeton University Press, p.29, 2000.

There are many definitions for globalizations, and among them are: “the globalization is a time-space compression”,<sup>233</sup> “it is a de-territorialization – or...the growth of supra territorial relations between people”,<sup>234</sup> “the integration of the world economy”,<sup>235</sup> “the intensification of worldwide social relations which link distant localities in such a way that local happenings are shaped by events occurring many miles away and vice versa”,<sup>236</sup> “globalization is a journey, but toward an unreachable destination, the globalized world. A globalized economy in which neither distance nor national borders impede economic transactions. A world where the cost of transport and communication were zero and the barriers created by differing national jurisdictions had vanished”.<sup>237</sup>

It is obvious that globalization embraces the political, economical, social and cultural interdependency of states. It also refers to the integration and interaction between different people and nations.<sup>238</sup>

On the other side, as previously mentioned, the concept of sovereignty refers to the three-fold capacity of a state, which means that a state is sovereign if it has the ability to make and implement laws within its territory, and can function without any external power and assistance, and does not acknowledge any higher authority above itself in the world of independent states. Sovereignty is defined as the absolute power, the supremacy and right of the government in a given state.<sup>239</sup>

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<sup>233</sup> Harvey, David, *The condition of postmodernity: An enquiry into the conditions of cultural change*, Oxford: Blackwell, 1989.

<sup>234</sup> Scholte, Jan Aart, *Globalization: A critical introduction*, Basingstoke: MacMillan, p.46, 2000.

<sup>235</sup> Gilpin, Robert, *Global Political Economy*, Princeton, NJ: Princeton University Press, p.364, 2001.

<sup>236</sup> Giddens, Anthony, *The consequences of modernity: Self and society in the late modern age*, Cambridge Polity Press, and Stanford Cal.:Stanford University Press, p.21, 1990.

<sup>237</sup> Wolf, Martin, “*Will the nation state survive globalization*”, *Foreign Affairs*, 80/1, pp. 178, 187-190, 2001.

<sup>238</sup> The European Union is an example, where the member states share the same democratic values and norms, or the convergence and similarities of the constitutions of the member states, which (could) lead to a European law or European constitution.

<sup>239</sup> Badakhshani, Ofran, *Globalization: The end of state Sovereignty?*, Free University of Amsterdam, Faculty of social sciences, Department of political science, p.4, 2008.

But, there are theorists who agree on the collapsing autonomy of states, but deny the impact of globalization on state sovereignty. One of them is Steven D. Krasner, who argues that “the state has a keen instinct for survival and has so far adapted to new challenges, even the challenge of globalization”. He also argues that globalization is not a new challenge or a new phenomena. Even though, the question that remains is whether contemporary globalization is likely to have a different impact on the nation state then that of the past? According to him, “today’s globalization distinguishes itself from that of the past in terms of rapid communication, market liberalization and the global integration of goods, services and production”.<sup>240</sup>

Realists agree with the argument that globalization is not a new phenomenon. The realist paradigm is that the state has a central role in international politics. This explains the belief that the world had already experienced a sharp growth in trade and investments in the end of the 19<sup>th</sup> and the beginning of the 20<sup>th</sup> century.<sup>241</sup>

## CONCLUSION

Globalization is a complex and multidimensional process, which transforms the atmosphere in which states function, creating new opportunities and challenges. The basic aim of globalization is bringing the states closer, geographically and temporally. The globalized world seek faster decision-making and immediate reactions from the states, so globalization can bring destabilization and can easily increase the possibility for mistakes in the process of decision-making in international relations.

The acceleration of global interconnectedness in the last thirty years has become more evident in every sphere – from political, economic and security to social, technological and cultural sphere. However, the concept of globalization is much more than interconnectedness, because it implies that the rapidity and depth of interconnectedness is gradually dissolving the importance of the borders and barriers that separate the world in states or national, political and economic regions. Thus, the concept of globalization carries an unfolding process of structural change in the sphere of human social, political and economic organization.

Globalization is linked with internationalization and regionalization. However, internationalization refers to increasing interdependence between

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<sup>240</sup> Krasner, Stephen D., *Sovereignty*, Foreign Affairs, 122: 20-29, 2001.

<sup>241</sup> Kapitonenko, Mykola, *Globalization, nation-state and global security arrangements*, EuroPolis, 6: 587, 2009.



states and assumes that states remain small national units with clear borders. Contrary, globalization refers to a process in which there is no difference between national (domestic) and international. It does not mean that borders and distances are meaningless, but it means that in globalization era they have relative significance – only as borders for practicing the power. On the other side, regionalization can be a beginning for intensification of models of interconnectedness and integration between neighboring states and states that have common borders (such as member-states of the European Union).

State sovereignty, authority and sovereign power of the state are not in decline, but in a process of transformation. States impose their sovereignty more as a negotiating tool and less as a right to authority and supreme power. Sovereignty is shared at different levels – from local to global. Previous conception of sovereignty as an inseparable and territorially exclusive form of power is replaced by a brand-new regime of sovereignty, in which sovereignty is defined as common exercise of authority and power. In this respect, state sovereignty is transformed parallel with the dynamics of globalization.

At the same time, globalization requires a conceptual transformation in thinking about international politics – from a geopolitical perspective (or state-centric politics) to the perspective of global politics (or geocentric politics, as politics of worldwide social relations).

The last conclusion would be in favor of globalization as a power for global transformation, which can vary from politics of hope for more democratic and human politics to politics of fear from inequality which can be described as a precursors of distorted and asymmetric global politics.

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## **EXPERT REPORT AS EVIDENCE IN LITIGATION PROCEDURE<sup>242</sup>**

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### **Abstract**

This paper will present an analysis of the decisions of the Law on Amendments to the Law on Litigation procedure of 2010 related to expert report as evidence by which the principal “engagement of expert by the client” has been accepted for the first time. For that purpose an analysis of the legal amendments and their positive i.e. negative influence on the principal of trial in a reasonable timeframe will be made, procedure quality, hearings principle, procedure concentration principle, including time as well as content concentration of procedure, for increasing the efficiency of the procedure and improving the degree of protection of civil rights and other legal subjects.

**Keywords:** expert report, expert, efficiency, litigation procedure

### **INTRODUCTION**

After perennial application of Law on Litigation procedure<sup>243</sup> with initial purpose of increasing the efficiency of the procedure, better realization of the principle of trial in a reasonable timeframe in practice, improving the

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<sup>242</sup> review scientific paper

<sup>243</sup> Law on litigation procedure, Official Gazette of Republic of Macedonia, no. 79/05, hereinafter LLP.

procedure quality and thus improving the extent of protection of civil and other legal subjects' rights, in September 2010, the Law on amendments to the Law on Litigation procedure<sup>244</sup> was adopted which was applied to intervene in many parts of basic law. Taking into consideration the role of expert report in contemporary litigation procedures where it functions as process action that can hardly be avoided and without it no single meritory decision can be reached, as well as the dominant role of this evidence while determining the factual condition, the subject of analysis of this paper will be the amendments to the Law on Litigation related to expert report as evidence, through the prism of evidence procedure as well as implementation and reviving of principles of the procedure by such changes.

In order to study this issue more thoroughly and from many aspects, the analysis of the Law on Expert report<sup>245</sup> has imposed itself as a necessary matter and the law was passed in August 2010 as first systematic law in our area which governs the expert report in material terms. How much will the legislator succeed in its purpose and idea by these latest changes remains to be seen in future, but at the beginning of application of LALLP of 2010, and even today, some of the solutions cause implementation and interpretation problems among parties themselves and in courts also.

## EXPERT

Expert report as evidence gets greater importance and role in proper decision making of the courts with more complex social and economic relations, rapid progress of science and technology, and thus increased need for expert knowledge in different areas. Today, in almost every court procedure the need for special expertise, thus the need for getting evidence by expert report is imposed as necessary and not all courts have that type of expertise. Expert (lat. expertus-highly experienced, skilled) in theory is defined as "a person summoned to court, using his expertise to present their

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<sup>244</sup> Law on amendments to the Law on litigation procedure, Official Gazette of Republic of Macedonia no. 116 dd. 01.09.2010 (hereinafter LALLP).

<sup>245</sup> Law on expert reports, Official Gazette of Republic of Macedonia no. 115 dd. 31.08.2010.

current observations (findings) and facts opinion that might be important for determining the truthfulness of the claims that are subject of proving”<sup>246</sup>.

The procedure for recruiting persons qualified for experts in certain area by adopting the Law on expert report differs in great part from the previous decision of the Court Rules of Procedure<sup>247</sup> when before appointment as permanent legal assessors, interested persons had to apply in public notices published in at least two official gazettes and based on collected data regarding their expertise and qualifications, the President of Court appointed them and a list of regular legal assessors was compiled, publicly available on the court’s web site and in the “Official Gazette of Republic of Macedonia.”

A positive step has been taken by adopting the Law on expert report, when for the first time a single legal framework regulates performance of expert report, obligatory professional exam, licensing and other issues related to expert report, regardless of the type of procedure in which the expert report would be used as evidence. Pursuant to the Law on expert report, a person can be appointed an expert only when they have had a license for expertise in the relevant field and have been registered in the register of experts, or a company, higher education institution, scientific or a specialized institution that has sufficient number of employees who possess expert report license<sup>248</sup>. In order to reduce or eliminate inappropriate and

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<sup>246</sup> Triva S., Dika M; Civil litigation procedure law, Narodne novine, Zagreb, 2004 str.526.

<sup>247</sup> Court Rules of Procedure, Official Gazette of Republic of Macedonia no. 71/2007, 157/2009.

<sup>248</sup> In Bosnia and Herzegovina, Luxemburg, Slovakia, Sweden, courts appoint experts from the official list formed in the Ministry of Justice. In Montenegro experts are being selected by the committee formed by the President of the Supreme Court, constituted of 5 members (two judges, two representatives of the Experts Chamber, one member of the Ministry of Justice).European judicial systems, Edition 2012 (2010 data), Efficiency and quality of justice, European Commission for the Efficiency of Justice, CEPEJ, Council of Europe Publishing, page 364. In Croatia there is an official list of regular experts for which in both practice and theory the applies the opinion that it has only instructive role, and not obligatory, and it should be understood as reminder-address book of people appropriate for doing expert report, and that court can appoint another person outside the list (Triva S., Dika M;

unprofessional conduct of expert witnesses, the law obliges them to get a compulsory annual liability insurance. Their more comfortable position so far has been disrupted also by the ability of competent authority in proceedings in which the expert performs the expert report to issue a fine, which may be a basis for license revocation, if an additional two fines have been issued to the expert during the same calendar year. The Law gives due consideration also to the continuous professional improvement, i.e. continuous training of experts which is mandatory. The Law regulates the establishment of the Chamber as an independent and professional institution of experts whose role is to protect, promote quality, expertise, ethical duties and rights and experts protection. When performing the expert report, experts are required to adhere to the principles of legality, expertise, honesty, impartiality, professionalism, independence, effectiveness, responsibility, diligence and efficiency, which would indirectly allow for appropriate realization of the principles of trial within reasonable term, process economy, determination of truth and hearing principle in litigation. However, the legal provisions that will strengthen the professionalism and responsibility of the experts, will most certainly contribute to the quality of expert reports, thereby better court decisions.

#### PROPOSING AND PERFORMING AN EXPERT REPORT

Taking into consideration that the Law on litigation procedure largely reduces and abandons the research principle by which the court had active role in factual condition determination and could decide for presentation of evidence ex officio, now, the proving burden is left exclusively to the parties in the procedure. The hearing principle that has been regulated in the basic provisions of LLP (art. 7 par.1) stipulated that parties are obliged to present all facts based on its requests and to suggest evidence that confirm those facts. In paragraph 2 of the same article an exception has been stipulated according to which the court is authorized to confirm the facts that have not been presented by the parties and to present evidence that parties had not suggested if dispute results and proving show that parties tend to handle claims that can not be handled. That means that court can, ex officio; confirm facts only in terms of whether the handling is contrary to the provision of art. 3 par. 3 of LLP, but it can not base its decision on those

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Civil litigation procedure law, Narodne novine, Zagreb, 2004 crp. 530; Opatić N., Experts – as evidence in civil litigation procedure, Zagreb, 2004 page 8).

evidence for which parties are not given the right to speak out. Hearing principle has been also elaborated in article 205 par. 1 of LLP, where it has been stipulated that every party is obliged to present facts and to suggest evidence as a base for its claim to refuse findings and evidence of the opponent.

By LALLP the hearing principle was introduced and in terms of expert report as evidence. The new concept of expert report of LALLP leaves behind the traditional concept in countries of continental law to "neutral expert determined by court" and the expert engaged by the party system has been implemented. This kind of regularity is well known for the legal systems especially the common law system, where experts are appointed and are under parties' control. But, the radical application of this principle has its own drawbacks. So, as a result of this principle, litigation in these systems bears a resemblance to "battle of the experts". The large number of experts involved in one procedure, in practice results in court overwhelmed with enormous number of opinions by different experts, and the final effect affects the procedure duration and costs. Figuratively, in common law system countries, the term "saxophone" is used when appointing experts which vividly illustrates the lawyer playing the tune, manipulating the expert as if the expert was a music instrument that lawyer uses for playing the notes<sup>249</sup>.

Article 41 of par. 1 of LALLP stipulates that court will present expert report as evidence if the client submits the expert finding and opinion with the complaint or response to the complaint. This provision refers to completely different regulative in terms of expert report as evidence regulated in art. 235 of LLP that was applied until the adoption of LALLP on

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<sup>249</sup>Zoroska-Kamilovska T, Review of new expert report concept in litigation procedure in Republic of Macedonia, Collection of papers in honor of Prof. Dr. Nikola Matovski, Skopje, 2011, page 853-854.

01.09.2010<sup>250</sup>. Now the valid LALLP provisions should not cause any serious issues for the prosecutor, because the prosecutor is the one that when intends to protect some of their rights prepares the following: collecting evidence and often the prosecutor chooses the time when to address the court regarding protection of some violated right. If the prosecutor believes it is necessary, before filing a complaint they will ask for and provide expert finding and opinion by an appropriate expert.

Practical issues appear when the lawsuit has been send to the defendant due to submitting lawsuit response. Contrary to the prosecutor who chooses and plans the timeframe necessary for lawsuit preparation and providing necessary evidence by themselves, the defendant has a deadline stipulated in art. 269 par. 2 of LLP. The cited provision stipulates that by the lawsuit subpoena for a lawsuit response, the defendant will be warned that they are obliged to submit written response to the lawsuit within term determined by court, not shorter than 15 days, nor longer than 30 days from the date of lawsuit receipt. In the subpoena the court is obliged to warn the defendant regarding the legal consequences of not submitting written response to the lawsuit within the determined term (art. 319). Within the given term for lawsuit response, the defendant, who in most cases understands for the first time that they have violated some prosecutor's right, should provide evidence, "ask for" and provide appropriate expert report if necessary, as a response or inspection of the finding and opinion submitted by the prosecutor or as a finding and opinion to challenge prosecutor's findings, a if necessary to engage an associate. All of this should be done within the term of the subpoena. The defendant's position complicates the provision of art. 245 par. 1 even more, which stipulates an obligation for the expert to prepare finding and opinion in written within 45 days for more simple cases, i.e.

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<sup>250</sup> Namely, in the previous provisions it has been stipulated that court will present evidence by expert report upon party's proposal when for confirming and clearing some fact an expert knowledge is necessary that is not at court's disposal. By exception, the court could present evidence by expert report and without party's proposal, if while presenting some evidence as disputable fact some expert knowledge was necessary that is not at court's proposal.



within 60 days for more complex cases<sup>251</sup>. Hence, the question is whether this setting puts both parties in the case – prosecutor and defendant in equal position. This legal provision opens the dilemma whether it is better to make quality and comprehensive expert report even at the cost of term “violation”, or to respect the legal term at the cost of need for complementing the finding and opinion afterwards.

The legislator tried to mitigate this condition by introducing the provision of art. 235 par. 2 of LLP, where it has been stipulated that if the party proposes expert report as evidence, but if there are facts and circumstances for which the party can not obtain expert finding and opinion, the court will determine expert report/assessment by written order. In the order the court will state which facts and circumstances the expert report refers to and upon party's proposal it will determine who will do the expert report. From practical point of view, the question what presents a justified reason for application of this provision of LLP poses a dilemma. The court, within its legal authorizations, will assess whether the reason that the party refers to is justified in accordance to art. 235 of par.2, in any specific case and depending on the facts, the court will determine whether it will allow the parties to submit expert finding and opinion in further course of the procedure.

In this condition the dilemma is how thin is the line between justified reasons of art. 235 par. 2 and the substantial violation of the provisions of the litigation procedure of art. 343 par. 2 point 13 of LLP which was introduced as substantial violation by LALLP. Our opinion is that disputable situations, if supported by adequate evidence, should be solved in favor of the defendant, by accepting the submitted prepared expert report even on the preliminary hearing or on the first hearing for main deliberation i.e. by determining expert report/assessment by a written order. All of that will serve the purpose of complete and regular truth determination, as well as regular application of material law.

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<sup>251</sup> Comparatively: Regulative for term of preparation a finding and opinion: in Albania the maximum time limit varies from 16 days to 6 months, in Italy the maximum is 60 days, in Portugal 30 days, in Turkey between 3 and 6 months.

Provision of art. 235 compared to art. 271 par. 2 of LLP where it has been stipulated that parties are obliged to present all facts and evidence on the preliminary hearing the latest, as well as the expert report evidence proposal, as basis of their findings, as well as to submit documents and files that they intend to use as evidence in the procedure, is more restrictive and in practice causes or may cause issues if the prosecutor or the defendant suggest or submit expert finding and opinion as evidence on the preliminary hearing. Does the court make a substantial violation of the provisions of LLP by accepting and presenting as evidence the finding and opinion and whether that violation is relative in terms of art. 343 par. 1 in relation to art. 235 par. 1 of LLP or it represents an absolute substantial violation of art. 343 par. 2 point 13 of LLP. Our opinion is that in this situation accepting the expert report does not represent a substantial violation of LLP. An interpretation of the legal provisions in one logic unit is part of this paragraph which indicates that expert report may and should be accepted as suggested and submitted evidence even on the preliminary hearing. In addition to this paragraph is the provision of art. 284 of LLP according to which the parties can present new facts and suggest new evidence as well as refer to submissions where they will state new facts and new evidence on first or any of the following hearings for main hearing only if they could not be able to present them i.e. to suggest them in the previous course of the procedure, and if its not their fault.

#### SUPER EXPERT REPORT

Practice shows that expert findings and opinions submitted by the plaintiff/prosecutor in the suit/lawsuit, or the defendant's response to the lawsuit, often differ because at the time of filing the suit, the plaintiff, and thus the expert, has at their disposal only "his "evidence. In such situation, the finding is based on incompletely established facts which as a consequence might have incorrect or incomplete opinion of the expert. The defendant in turn, can use the facts and evidence suggested by the plaintiff, as well as the evidence at their disposal, which can cause quite contradictory findings and opinions of the experts. These disadvantages can be eliminated by re-examination of expert witnesses in terms of art. 246 paragraph 2 of the Civil Procedure Law and adaptation, and if it is not the case by a super expert report/assessment determination. In this context there is a dilemma about what needs to be harmonized. This is because, the expert report assumes preparation of expert findings as well as opinion based on application of scientific and professional methods, technical developments, expertise and experiences. By literal application of Article 246 of the same law, adjustment should be carried out only in respect of the part of the

finding that by rule should be derived from objective facts and not in terms of expert opinion because it is based on professional knowledge and experience of the expert.

But it should be mentioned that a more significant alteration of the finding after its compliance would result in opinion alteration. Regarding the issue for compliance of experts opinions court practice believes that when experts differ in their opinions regarding the disputable issue, the court, by its own persuasion, can accept one of the opinions or to form its own opinion regarding the subject of expert report.

If despite explanations and hearings of the experts, the drawbacks and deviations of the findings can not be removed, the court can determine super expert report. In compliance to the Law on expert report, super expert report represents expert report of higher degree, which is professional criticism – expertise of two contradictory expert reports that can be done by a team of at least three appropriate experts of a state authority body, higher education institution, scientific institution or specialized institution. An additional practical issue in determining the super expert report is caused by the provision of art. 246 par. 3 of LLP, where it has been stipulated that super expert report is determined by the president of the council, i.e. an individual judge chosen online by random selection of the experts register in the presence of both parties, i.e. their proxy holders. The issue is that currently neither experts register has been established yet, nor such option has been stipulated in the automated computer system for handling court cases AKMIS. In this situation, courts practically can not consistently comply to this provision.

#### ASSESSMENT OF EXPERT REPORT

Based on the principle of free evaluation of evidence, the court by its own persuasion decides which facts to consider as proven on the basis of conscientious and careful evaluation of every specific proof and all the evidence together, and also on the basis of the results of the entire procedure. There is a dilemma whether the court can consistently apply this principle and among the evidentiary expert report tool, or whether the court might not accept the facts as proven, facts indicated by the experts in their opinion and findings, especially considering the fact that experts possess specialized knowledge and opinions of areas that are not so well known to the court. Most often in practice for pragmatic reasons, the court fully believes in the facts established by the expert report evidence. In that sense explanations of

court verdicts are stereotypical. Almost every verdict contains the sentence: "The court fully accepts the findings of the expert and his opinion as professional, complete and objective."<sup>252</sup> From the comparative experiences of Croatia and Serbia, several verdicts are worth it is worth mentioning. Of the practice of Croatian court there are different views on how to proceed in court if there are findings and opinions of two experts which are different. So, according to one of them when experts differ in opinion, the court is authorized to form its own attitude for the problem (VsSrGz 917/72-PŽ 11/72-76), and according to the other, court in this case can not accept the opinion of none of them, but must appoint a third expert hearing (VsSrNsGz 510/67-GLA 9/67-24)<sup>253</sup> According to the jurisprudence of the High Commercial Court of Serbia for assessment of expert report as evidence, distinctive for the system of the civil law and concept of "neutral expert designated by the court," but in accordance to legislation in the Republic of Macedonia the paragraph contained in the decision Pzh 7567/05 of 09.01.2006 Year is inapplicable: "The verdict can not be based on the findings and opinion of the expert who has been hired by one of the parties voluntarily, and not the court by decision for the determination of an expert, so it is not considered a proof in civil proceedings. "

#### SUMMARY:

The starting point and idea of the legislator when adopting LALLP was to create legal assumptions for faster and more efficient litigation procedure. The role of the expert report in evidentiary procedure thus in the procedure as a whole, the fact that courts when deciding fully accept the findings and opinions of the experts as professional, complete and objective, the fact that time needed for expert report preparation largely influences the overall

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<sup>252</sup> Zoroska-Kamilovska T, Review of new expert report concept in litigation procedure in Republic of Macedonia, Collection of papers in honour of Prof. Dr. Nikola Matovski, Skopje, 2011, page 865.

<sup>253</sup> Triva S., Dika M; Civil litigation procedure law, Narodne novine, Zagreb, 2004 page.531.

length of the evidence and also full procedure, were the base for such legislator's action.

1. Abandoning the principle of "neutral expert determined by court", present in civil law, and in the basic text of the Law on litigation procedure also, and instead accepting the principle of "expert engaged by the parties" present in common law system, is related to strengthening the hearing principle and further clear positioning of the court on the one hand and the parties in the procedure on the other.

2. Determining timeframe for doing the expert report and timeframe in which parties should submit the expert report, the legislator intended to establish even more, the concentration principle, both time and content concentration of the procedure, process economy and reasonable timeframe trial principle.

3. A positive step has been taken by adopting the Law on expert report, when for the first time a single legal framework regulates performance of expert report, obligatory professional exam, licensing and other issues related to expert report, regardless of the type of procedure in which the expert report would be used as evidence.

4. For the first time was implemented a measure for forcible bringing the expert in case of unjustified absence. This measure is unique and unknown in comparative law. Also the fines which might be imposed for the expert and responsible person in the legal entity are increased.

5. Taking into consideration the especially important role of the experts in the litigation procedure, as well as their role in determining the material damage amount and factual situation, by implementing the expert obligations of LE and LALLP (taking professional exam, disciplinary responsibility, fine increase, forcible bringing in case of unjustified absence, revoking the license, obligatory responsibility insurance, determining timeframe for doing an expert report, continuous training etc.) greater discipline and responsibility are being introduced while carrying out their function as professionals in certain area, which is of course a large step forward.

6. The analysis presented in the paper and the short application time of these provisions, can lead to the conclusion that these legal solutions in certain way, at least during these first years of application, not always refer to accelerating the procedure, increasing the efficiency and effectiveness of the procedure, but sometimes can cause additional procedure extending by

additional hearings of experts, determining super expert reports, submitting request for expert exemption even after receiving the prepared finding and opinion, which negatively affects the process economy.

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### **Abstract**

The testator can declare his last will and through oral will, which enforcement cause particular attention in the researching area. In this article, apart from Macedonian succession law, we will make research about this kind of will according to some specified decisions which are present in compared succession law. Namely, in this article, we study and research the oral will and we suggest appropriate decision according to the circumstances for validity of this testament. So in this article for validity of this will we propose to require, not only the testator declares his last will verbally in front of two witnesses, but to declare the testator his last will verbally in front of two witnesses simultaneously present. This decision leads to providing of the real testator`s will. After all that is the intention and goal of article.

**Key words:** oral will, witnesses, exceptional circumstances

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<sup>254</sup> review scientific paper

## INTRODUCTION

With the oral will, in our succession law, the testator declares his last will verbally in front of two witnesses, so unless required existence of exceptional circumstances, need the testator is unable to make written will. The legislator didn't say clear that the testator is obligated to assert his last will in front of two witnesses simultaneously present. Therefore in this article we will give precise and defined decision, so that validity of oral will to depend from simultaneous presence of two witnesses, whereupon will be remove any doubts for a different interpretation when it comes to the presence of witnesses, during the form of oral will. This is aimed to providing of the real and last testator will and that's the intention and goal of this article.

Regarding to the research that we made in this article about oral will, the same has multidimensional approach. In this paper in the area of our interest we make research and study, except the Macedonian positive succession law and succession legal regulations were adopted during the former Yugoslav federation, comparative we make analyze and study and succession laws of Serbia, Croatia, Germany and Switzerland. Also, in this article we make research on one side, about theoretical dilemmas represented in legal science, and on the other side the solutions represented in objective law. Therefore the importance of this article, for science, and for all legal practitioners in life.

### TERM FOR ORAL WILL AND CONDITIONS FOR VALIDITY

Not every verbally declared will represent oral will. Oral will is statement of the last will given verbally in front of two witnesses under exceptional circumstances, when the testator is unable to make written testament. Namely, In this context, in the Law on Succession from 1996 year<sup>255</sup> in article 90, paragraph 1 provide that: "the testator can declare his last will verbally in front of two witnesses only if there are exceptional circumstances unable to complied written will." In this sense was the legal

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<sup>255</sup> "Official gazette of Republic of Macedonia" number 47/96.



decision provided in Federal Law on Succession<sup>256</sup> from 1955 year (art. 78, par. 1), and in the first Republic Law on Succession from 1973 year<sup>257</sup> (art. 76, par. 1).

The position adopted in our literature that the oral will is private and extraordinary will.<sup>258</sup> The private nature of this will can see that the testator can comply the will without any presence, or participation of some government authority or some other public authority, while if you see the fact that oral will the testator has compiled under exceptional circumstances, bring us to the second extraordinary dimension of this will. If you resume all this, and if you consider other characteristics, this kind of will in the legal science is also known as exceptional will.<sup>259</sup> Therefore, in our succession law, is not about regular forming of will, like the case with Roman law, where the roots of oral will.<sup>260</sup> Namely, in our country every person testamentary capable can form oral will, if there are exceptional circumstances can't compose a written will. However with reference to characteristics of this will, and by the nature of things, in the capacity of testator in this will can be the person who is not dumb or deaf. Thus, according to the legal provisions, for validity of the oral will there are two essential conditions that had to be fulfilled: first: there has to be exceptional circumstances relevant to reassembly oral will when the testator declares verbally his last will and secondly: the testator give statement about his last

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<sup>256</sup> "Official gazette of SFRJ" no. 20/55, 12/65 and 42/65 (consolidated version).

<sup>257</sup> "Official gazette of SRM" no. 35/73 and 27/78.

<sup>258</sup> See more at: Љиљана Спировиќ – Трпеновска, *Наследно право*, 2 Август, Скопје, 2009 година, p. 182-183.

<sup>259</sup> For this and for division of regular, extraordinary and exceptional will see at:

Borislav T. Blagojević, Oliver B. Antić, *Nasledno pravo*, Nomos, Beograd, 1990, p. 307 – 308, 325.

<sup>260</sup> Like regular and private willt, oral will – testamentum nuncupativum, was declared in front of seven adult citizen called specifically for that purpose. See more at: Иво Пухан, Мирјана Поленак – Акимовска, *Римско право*, Универзитет „Св. Кирил и Методиј“ Скопје, Правен факултет, Скопје, 1996 година, p. 340. For more see also: Миле Хаџи Василев – Вардарски, *Наследно право*, Култура, Скопје, 1983 година, p. 227.

will in front of two witnesses who fulfill all conditions to be witness during the form of the oral will.

According to *the first condition* for oral will, the testator must give statement about his last will under exceptional circumstances, and from hence the testator for these exceptional circumstances is unable to form written will, for example holographic will. It is very important that the testator here is unable to use some other legacy form.<sup>261</sup> Namely, the exceptional circumstances disable the testator to use written form of testament. In our country not specified explicitly and expressly cases that would qualify as exceptional circumstances important for reassembly valid oral will. These circumstances which are important for making oral will, can be of objective and subjective nature. It is essential that we talk about exceptional circumstances.<sup>262</sup>

According to *the second condition*, the testator need to give statement about his last will in front of two witnesses, who are allowed to be witnesses

during the form of the oral will.<sup>263</sup> The legislator determined that testator have to give his statement in front of two witnesses, not expressly stipulating

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<sup>261</sup> See more at: Миле Хаџи Василев – Вардарски, *op. cit.*, p. 228.

<sup>262</sup> On the importance for making oral will, as exceptional circumstances of an objective nature, are those situations where more people are in danger (Example: fire, train accident), while such exceptional circumstances subjective nature are those situations in the life of the testator, where except compiling oral will, it is not possible to compile a written will (Example: homicide attempt, suicide). See more at:

Љиљана Спировиќ – Трпеновска, *Наследно право...*, p. 184; Миле Хаџи Василев – Вардарски, *op. cit.*, p. 228 – 229.

<sup>263</sup> In our positive succession legislation, according to the Law on Succession from 1996 year, the witnesses of the oral will have obligation to make promptly written statement and proceed the same to the court, or to repeat the same verbally in the court, explaining, where, when and under which circumstances the testator declared his last will (art. 92, par. 1). However, execution of this this duty is not condition for validity of oral will (art. 92, par. 2).

simultaneous presence of these witnesses.<sup>264</sup> That means that the testator's statement for last will can give first verbally in front of the first witness and then verbally in front of the other witness, whereupon comes to the complication the whole situation, in view of presence the exceptional circumstances during the form of the oral will. Namely, there is opinion in the judicial practice which state that: "For legal validity of the oral will it is not decisive whether the witnesses of the will were present simultaneously during the form of the oral will."<sup>265</sup> So, In the theory when we are interpreting the legal provisions it is said that, "the last will have to be declared verbally in front of two witnesses – not require simultaneous presence of two witnesses, because It is not provided that the testator should declare last will in presence of two witnesses."<sup>266</sup>

The ability of the testator to form oral will, with declaring his last will verbally first in front of one witness, and later in front of the other witness, cause serious concern about effecting of his real will. According to the exceptional circumstances where the testator forms the oral will, there is possibility statement given in front of one witness disagreed with the statement made in front of the other witness. In this context the both of statements are with different content. This can be avoided if the testator declares his last will verbally in front of the two witnesses present simultaneously.

Furthermore, a serious risk to the security the last authentic will, there is possibility witnesses didn't understand the statement of last will of

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<sup>264</sup> According to our Law of Succession from 1996 year, witnesses can be people who are allowed to be witnesses in will compiled by a judge, and they don't need to know to read and write (art. 91). For more, about impossibility of the testator to leave something with oral will on witnesses and their closer relatives, see article 93 of Law on Succession from 1996 year.

<sup>265</sup> District court decision in Zagreb (...) 4955/76 from 28.09.1976, cited by Љиљана Спиrowиќ Трпеновска, Дејан Мицковиќ, Ангел Ристов, *Наследно право во Република Македонија*, Блесок, Скопје, 2010 година, p. 187..

<sup>266</sup> Кирил Чавдар, *Коментар на Законот за наследувањето со обрасци за практична примена*, Агенција „Академик“ – Скопје, Скопје, 1996 година, p. 168. More about the second condition for validity of the oral will, regarding presence of witnesses see at: Миле Хаџи Василев – Вардарски, *op. cit.*, p. 229 – 230; Љиљана Спиrowиќ-Трпеновска, *Наследно право...*, p. 184 – 185.

the testator. Namely, in case, the testator declares his last will first in front of one witness and later in front of the other witness, it is possible the statement of the last will of one or the other witness is not given in identical conditions and there from witnesses didn't understand the last will of the testator.<sup>267</sup>

From all these reasons we think that simultaneous presence of witnesses and how it is important for the validity of the will. Thus, in view of the different types of exceptional circumstances, with existence of different life situations, especially when it comes to tough and strict exceptional circumstances the question arises whether this determined the presence of witnesses is a condition without which there can be no oral will? On this issue we think that we need to respond positively. Namely, we should not forget that in the law is not precisely enumerated or explicitly defined exceptional circumstances. Thus, it's a question of wide formulation. Hence, in view of above mentioned arguments, in view of opportunity the witnesses to influence each other, with a view to later to balance and harmonize the content of the statement of the testator's will, as well as in view of impossibility intently to determine when there are such tough exceptional circumstances, we propose to require for validity of oral will by the way the statement is given in front of two witnesses present simultaneously. This solution, when we explain later finds its leverage and in comparative law.

Therefore, we propose *de lege ferenda*, to supplement Law on Succession from 1996 year, so that in article 90, paragraph 1 after the words "two" to be added the words "present simultaneously", since than to be valid oral will needs by the way two witnesses present simultaneously, and this in order to achievement the intention and goal of this article.

In Serbia according to the Law on Succession from 1995 year<sup>268</sup> the testator can declare his last will verbally in front of three witnesses present simultaneously when he is unable under exceptional circumstances to form written testament (art. 110, par. 1 ).<sup>269</sup> While in Croatia, according to their

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<sup>267</sup> For example the noise was increased when the testator declare his will to the second witness.

<sup>268</sup> The text of the Serbian Law on Succession from 1995 year can be seen at the following internet address: <http://www.scribd.com/doc/17209293/zakon-onasledjivanju>.

<sup>269</sup> For more see article 111-113 from Serbian Law on Succession from 1995 year.

Law on Succession from 2003 year,<sup>270</sup> the testator can declare his last will verbally in front of two witnesses present simultaneously only under exceptional circumstances when the testator is not able to make any other relevant form (art. 37, par. 1).<sup>271</sup> In the succession law of Germany, according to German Civil Code<sup>272</sup> the testator can make emergency will with verbal declaration in front of three witnesses (oral will), only if the testator is under exceptional circumstances or it is extremely difficult to make the statement at notary.<sup>273</sup> From the same reasons the oral will can be made in front of the mayor of the municipality.<sup>274</sup> Therefore in German succession law the emergency will can be made with verbal statement in front of three witnesses, when the life of the testator is in danger and it is probable that making a emergency will before the mayor is no longer possible.<sup>275</sup> In succession law of Switzerland according to Swiss Civil Code<sup>276</sup> the testator is entitled to make oral will with statement of last will given in the presence of two witnesses and instruct them to have it drawn up as required in the form of a deed, when there are exceptional circumstances such as the imminent risk of death, breakdown in communications, epidemic

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<sup>270</sup> The text of Croatian Law on Succession from 2003 year can be seen at the following internet address: <http://www.zakon.hr/z/87/Zakon-o-naslje%C4%91ivanju>.

<sup>271</sup> For more see article 38-40 from the Croatian Law on Succession from 2003 year.

<sup>272</sup> The text of German Civil Code can be seen at the following internet address:

[http://www.gesetze-im-internet.de/englisch\\_bgb/englisch\\_bgb.html#BGBengl\\_000P2249](http://www.gesetze-im-internet.de/englisch_bgb/englisch_bgb.html#BGBengl_000P2249).

<sup>273</sup> See a more details article 2250, paragraph 1 from German Civil Code.

<sup>274</sup> See a more details article 2249, in relation to article 2250, paragraph. 1 of the German Civil Code.

<sup>275</sup> See a more details article 2250, paragraph 2 from German Civil Code. For more look also at next paragraph 3 from the article 2250, while for emergency will made at sea, see also and article 2251 from German Civil Code. For details article 2250, paragraph 2 from German civil code. For more look also at next paragraph 3 from the same article 2250.

<sup>276</sup> The text of Swiss Civil Code can be seen at the following internet address: <http://www.admin.ch/ch/e/rs/2/210.en.pdf>.

or war, the testator is not able to compile any other form of will.<sup>277</sup> In this context, in theory among the other things it is said that “The testator must declare his last wishes in the presence of two witnesses simultaneously...”<sup>278</sup>. Namely, undeniable is importance of simultaneous presence of witnesses during verbally stating of last will, by the testator.

### TEMPORAL RELEVANCE OF THE ORAL WILL

As extraordinary will, oral will is time limited in terms of importance. Namely, according our inheritance – legal legislation from 1996 year, the oral will cease to be valid when it past 30 days of termination of exceptional circumstances in which oral will is component (art. 90, par. 2). In this sense, the inheritance – legal solution was share of the representatives as in the former Law on Succession from 1973 year (art. 76, par. 2), so also in Federal Law on Succession from 1955 (art. 78, par. 2). If however, after this time period, the testator is alive, in that case the oral will cease to be valid. Namely, oral will continues to be valid if death of the testator occurred during a period of exceptional circumstances or before the expiration of 30 days.<sup>279</sup> In this direction as our positive succession law, the solutions are present in the new inheritance – legal legislation in Srbija from 1995 year (art. 110, par. 2) and new inheritance - legal legislation in Croatia from 2003 year (art. 37, par. 2). In succession law of Germany, according German Civil Code, the oral will is deemed not to have been made, if three months have passed since it was made and the testator is still alive, where starting and running of this period are suspended, while the testator is incapable of

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<sup>277</sup> See article 506, paragraph 1 and 2 from the Swiss civil code. For more look at article 506, paragraph 3, article 507, paragraph 1 and 2, and for the oral will made at the time of military service look at article 507, paragraph 3 from the Swiss Civil Code.

<sup>278</sup> Louis Garb, *International Succession*, Kluwer Law International, The Hague/London/New York, 2004, p. 575.

<sup>279</sup> See more at: Кирил Чавдар, *op. cit.*, p. 169 – 170.

making a will before a notary.<sup>280</sup> In this context in succession law of Switzerland, if the testator has the opportunity to make up will in another form, the oral will ceases to be valid 14 days after such opportunity arises.<sup>281</sup>

## CONCLUSIONS

The testator in our succession law, form the oral will, with declaring his last will verbally in front of two witnesses, only if under exceptional circumstances the testator can't make a written will. In this context, every testamentary capable person who is not dumb or deaf can to form oral will and the same has a limited time of validity.

Namely, for the relevance of oral will haven't meaning whether the statement of the last will the testator given in front of two witnesses "present simultaneously", hence possibility not to respect the real and last will of the testator. Therefore, in this article, de lege ferenda, we propose:

1. appropriate amendments in the addition of Law on Succession from 1996 year, to that in article 90, paragraph 1 from the Law on Succession from 1996 year, after the words "two" to be added the words "present simultaneously", thus determining for validity of oral will, among other things, to require the statement of the last will, the testator given verbally in front of two two witnesses present simultaneously, and
2. irrespective of the type of exceptional circumstances when the testator is unable to make written testament, we believe that this proposed solution emphatically to represent condition for the validity of any oral will, in the context of strengthening its form, in order to realize the authentic will of the testator.

Simultaneous presence of the two witnesses for validity of the oral will is also found in compared law (Serbia, Croatia). We think that this

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<sup>280</sup> See a more details article 2252, paragraph 1 and 2 from German Civil Code. For more look at next 3 and 4 paragraph from the same article.

<sup>281</sup> See article 508 from Swiss Civil Code.

suggested decision leads to providing of the true testator will, and this come as result of study and research made in this article.

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# PROTECTED WITNESS IN THE CRIMINAL LEGISLATION OF THE REPUBLIC OF MACEDONIA<sup>282</sup>

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## Abstract

The international entities have directed their activities towards creating a global strategy and developing particular mechanisms for efficient combat against the organized crime, after it was recognized that the conventional and traditional approaches, means, methods and techniques were inadequately efficient for successful combat against the organized crime. Witness protection is one of the most current topics receiving most attention both internationally and nationally. The necessity of implementation of witness protection system is undisputable given the increasing organized crime and other severe criminal acts being perpetrated in our country as well. This is so owing to the expansion of new, more sophisticated forms of crime, and increasing violence and witness intimidation. Therefore, witness protection is one of the most important instruments for achieving justice in a modern society where many various forms of organized crime occur.

**Key words:** protected witness; organized crime; national legislation; international regulations.

## INTRODUCTION

Elimination of crime as a permanent action of the legal state, apart from upgrading the legal frame in the area of the material law and the criminal procedure law, has to be accompanied by further development of the organizational and functional setting of the state organs authorized for detecting, prosecuting and sentencing perpetrators of crime. Emergence of new forms of crime and its organized structures imposed the necessity of intensifying the reform of the penal legislation in the Republic of Macedonia. The grounds for reform of the penal legislation is, by all means, observation of the basic freedoms and rights of the citizens of the Republic

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<sup>282</sup> professional paper

of Macedonia stipulated in the Constitution and in the international agreements as well as creation of appropriate mechanisms for efficient elimination of the organized crime and improvement of the efficiency and effectiveness of the criminal procedure.

The Law on Witness Protection addressed the necessity of establishing a legal frame which is to provide efficient protection of a person possessing information of significance for the criminal procedure and whose life, health, freedom or property has been threatened and his/her close persons as well as the victims, if they appear in the capacity of witnesses, and collaborators of justice.

The necessity of adopting the Law on Witness Protection was overwhelming also for implementation of the provisions of the UN Convention for Elimination of the Transnational Organized Crime and the two protocols, and the recommendations of the Committee of Ministers of the Council of Europe for intimidation of witnesses and the right to defense.

The basic hypothesis for developing of this paper is *“enhancing and improving the legal framework for regulating the status of a protected witness is the major postulation for efficient upgrading the organizational and institutional setting of the authorized organs for application of the norms, and their mutual cooperation”*

## **NOTION OF PROTECTED WITNESS AND THE NECESSITY OF WITNESS PROTECTION**

The real opportunity for implementation of the institution witness protection presented itself for the first time in the USA in the 1970s when it was used in combination with the program for destruction of the mafia criminal groups. A person with status of a protected witness is the one who can provide the key testimony on the trial and whose security may be threatened. Another criterion for implementation of the witness protection program is eligibility of a witness to be included in the program, which is determined, based on his/her psychological, social and medical condition.<sup>283</sup>

The protected person is a witness<sup>284</sup>, collaborator of justice<sup>285</sup>, a victim appearing in the capacity of a witness, and his/her close persons, which, by

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<sup>283</sup> Reports on witness protection, adopted by committee PC-CO, February 199, p.13

<sup>284</sup> A witness shall be any person who, according to the Law on Criminal procedure, has the capacity of a witness and possesses information on the perpetration of the crime, its perpetrators or other relevant circumstances, i.e. data and information of importance for the criminal procedure, which is necessary for proving the crime, and

decision of the Witness Protection Council, has been included in the Witness Protection Program and has concluded an agreement for protection with the Witness Protection Department.<sup>286</sup>

Collaborator of justice is a person who has been indicted, convicted or is a member of a criminal group, gang or a criminal organization or has taken part in perpetrating an organized crime offence, but has agreed to cooperate with the authorized organs for detecting, prosecuting and sentencing perpetrators of crime, especially to give a statement in the capacity of a witness in the criminal procedure for prosecuting a criminal group, gang or other criminal organization for any criminal offence related to the organized crime<sup>287</sup>.

With regards to the issue of whether a member of a criminal organization may or may not be granted status of a protected witness, many legislations has adopted the standpoint that a member of a criminal organization may be granted status of a protected witness if he/she has had a secondary role in perpetrating the criminal activities. A planner/manager of a criminal organization or a person who has taken part in perpetrating a severe criminal offence<sup>288</sup> may not be granted status of a protected witness.

In implementing the institute “witness protection” the defendant’s guarantees during the procedure must be observed. Accordingly, the rights of the defense, right of the defendant to examine the witnesses and ask them questions must be observed and guaranteed versus the request for absolute anonymity of the witness, his/her absence from the court room, secrecy of the witness’s identity etc<sup>289</sup>.

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if revealed could threaten the life, health, freedom, physical integrity or property of the witness

285 Collaborator of justice is a specific category of a witness whose statements may be crucial in proving most severe criminal offences, and bring up questions as to the cases and the degree to which the witness may be granted the witness protection status; how to motivate him/her to cooperate with the prosecution organs and still prevent him/her from evading justice and punishment; which is his/her motive to decide to cooperate with the prosecution organs

<sup>286</sup> Article 2 item5 of the Law on Witness protection, Official Gazette of Republic of Macedonia No. 38/2005

<sup>287</sup> Article 2 item5 of the Law on Witness protection, Official Gazette of Republic of Macedonia No. 38/2005.

<sup>288</sup> Marija Grozdanovska, “Witness protection: international aspects and the legislation in the Republic of Macedonia”, Master’s paper, Faculty of Law “Justinian Primus”, (2010):6-8

<sup>289</sup> These guarantees stem from article 6 of the European Convention on Human Rights

## **WITNESS PROTECTION IN THE MACEDONIAN PENAL LEGISLATION**

Witness protection is regulated by the Criminal Act of the Republic of Macedonia, the Law on Criminal Procedure; Law on Witness Protection; Law on Interior; Law on Prevention of Corruption; Law on Sanctions and the sub laws regulating the witness protection.<sup>290</sup>

### **WITNESS PROTECTION IN THE MATERIAL PENAL LAW**

The Criminal Act of the Republic of Macedonia<sup>291</sup> foresees offences which could be perpetrated in order to harm the witnesses. The basic offence<sup>292</sup> refers to an action of forced or other influence over a person being summoned as a witness, to present himself/herself in the court or not, or to make a certain statement or not.<sup>10</sup>

Beside the threat, influence over the person could be exercised also by offering a bribe, obstructing or otherwise. Object of such action is a person, whose statement about a certain fact may be used as evidence in a court

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<sup>290</sup>Provisions of the Law on Interior referring to witness protection are general provisions for protection of life, personal safety and property of citizens, prevention of criminal offences, detection and detention of perpetrators of criminal offences, and taking other measures required by law for prosecution of the perpetrators of criminal offences. The Law on Prevention of Corruption includes a provision for protection of collaborators of justice and witnesses according to which a person who has revealed information about existence of corruption shall not be prosecuted or be held liable in any respect. According to the Law on Sanctions, a collaborator of justice serving imprisonment sentence in the Republic of Macedonia shall be granted special protection stipulated by a special legal act approved by the minister of justice. A collaborator of justice from another state shall be accepted to serve imprisonment sentence in RM in compliance with the procedure stipulated in legal regulations and a ratified international agreement. The most relevant sub laws referring to the witness protection are: List of Regulations on Establishing and Keeping Records on Protected Persons; List of Regulations on the Manner of Storing Original Documents on the Identity of Protected Persons; List of Regulations on the Manner of the Use of Financial Resources for Implementation of the Law on Witness Protection, and List of Regulations on the Form and the Contents of the Questionnaire for Persons Included in the Witness Protection Program

<sup>291</sup>Criminal Act, integral text-preface, short explanations and glossary, second edition, Official Gazette of Republic of Macedonia, Skopje, 2011

<sup>292</sup> Article 368 –a of the Criminal Act of the Republic of Macedonia

procedure or an administrative procedure, which implies that the person has certain knowledge on the fact. What is relevant for the offence is that the act of perpetration prevents giving a statement in general or giving a true statement.

### **WITNESS PROTECTION IN THE LAW ON CRIMINAL PROCEDURE**

The Law on Criminal Procedure<sup>293</sup> regulates the witness protection during the criminal procedure and taking measures for witness protection during the criminal procedure. Witness protection during the criminal procedure is carried out during the pre-criminal and the criminal procedure<sup>294</sup>. Upon proposal of the public prosecutor the court decides on the measures to be taken for protection of a threatened witness during the criminal procedure<sup>295</sup>. In case the threatened witness refuses to reveal information on his/her name, surname, his/her father/s name, occupation, residence, place of birth, age and relation with the defendant and the injured party as their disclosure could expose himself/herself or his/her close person to danger, the investigative judge or the president of the council shall notify the public prosecutor without delay and submit minutes requesting a written proposal on use of a special manner of hearing and participation in the procedure.

The special manner of hearing of a threatened witness can be implemented through concealing the identity and appearance of the threatened witness. The persons, who, in any capacity, have come to know information about the threatened witness, shall treat them as classified information, in compliance with the law<sup>296</sup>.

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<sup>293</sup>Law on Criminal Procedure, Official Gazette of Republic of Macedonia No. 15/97, Law on Amendments and Modifications to the Law on Criminal Procedure, Official Gazette of Republic of Macedonia No.44/02, 74/04 and 83/08, and 67/09

<sup>294</sup> The Novelty of 2004 to the Macedonian Law on Criminal Procedure introduces special chapter with provisions on witness protection, collaborators of justice and victims

<sup>295</sup> According to article 270 -a of the Law on Criminal Procedure, Official Gazette of Republic of Macedonia No. 15/97 Law on Amendments and Modifications to the Law on Criminal Procedure, Official Gazette of Republic of Macedonia No.44/02, 74/04 and 83/08, and 67/09

<sup>296</sup>In article 27—a the Law on Criminal Procedure stipulates that the witness protection out of the procedure is carried out through special inclusion of witnesses into the Witness Protection Program, which is regulated by a separate law, that is, the Law on Witness Protection. This article offers the legal basis for implementing

Beside the provisions organized in a separate chapter referring to the witness protection, collaborators of justice and the victims, the Law on Criminal Procedure includes other provisions regulating the witness protection, which are organized in other chapters<sup>297</sup>.

## **WITNESS PROTECTION IN THE LAW ON WITNESS PROTECTION**

The Law on Witness Protection<sup>298</sup> was adopted on the session of the Assembly of the Republic of Macedonia held on 19 May 2005 despite of the presence of opposing positions regarding the necessity of its adoption.

Witness protection is preconditioned by the fact that the process of proving the offence may face severe difficulties or it may not be carried out without a statement of a person who disagrees to give a statement in a criminal procedure as he/she could be exposed to intimidation, threat of revenge or threat to his/her life, health, freedom, physical integrity or property<sup>299</sup>.

The measures for protection prescribed by this Law are measures for protection including activities for physical protection, and operational and technical measures to guarantee security of protected persons. The main goal of the measures for protection is to provide maximum protection and security for the protected person by minimum intrusion into his/her private life, that is, to provide natural, normal and usual environment for the protected person.

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out-of-procedure measures for protection stipulated in the Law on Witness Protection

<sup>297</sup>Those are: article 142-c organized in the part referring to special investigative measures of Chapter XV-Pre-investigative procedure; article 146-a, which is also organized in the part referring to special investigative measures of Chapter XV- Pre-investigative procedure and article 295-a organized in the part referring to assumptions for holding the main trial under Chapter XXI-Main trial

<sup>298</sup> Law on Witness Protection, Official Register of Republic of Macedonia No. 38/05 and Law on Amendments and Modifications to the Law on Witness Protection, Official Register of Republic of Macedonia No. 58/2005

<sup>299</sup> Offences for which the use of measures for protection may be approved, which are offences against the state, against humanity and international law, organized crime offences and those which hold minimum of four years imprisonment according to the Macedonian Criminal Act



One of the basic principles of this Law is the principle of secrecy<sup>300</sup>, which is a general characteristic of the issue of witness protection. Therefore, information obtained by the persons pursuing official duty, related to the measures for protection, are classified information of certain degree of secrecy regulated by law<sup>301</sup>.

For the purpose of protecting witnesses the Law on Witness Protection prescribes establishing the following bodies: Witness Protection Council is a body to make decisions on inclusion of persons into the witness protection program and its termination, and on use of the measure of identity change. The Department for Witness Protection is a part of the Sector for Organized Crime within the Central Police Office of the Ministry of Interior<sup>302</sup>.

The procedure of inclusion into the Witness Protection Program is composed of two phases: inclusion of a person into the Witness Protection Program and implementing measures of protection.

Inclusion of a person into the Witness Protection Program is composed of three sub phases: request for inclusion into the Witness Protection Program; proposal for inclusion into the Witness Protection Program, which is submitted to the Council for Witness protection by the Public Prosecutor of RM, and decision upon the proposal for inclusion into the Witness Protection Program submitted to the Council for Witness Protection by the Public Prosecutor of RM.

Measures of protection stipulated by the Law on Witness Protection are: providing secrecy of the witness's identity; providing personal protection; change of residence and change of identity. The Law also stipulates the possibility of use of urgent measures. The goal of the urgent measures is to provide appropriate protection for the persons included in the Witness Protection Program. Duration of the urgent measures is restricted up to the moment the decision upon including the person into the Witness Protection Program is made by the Council for Witness Protection. According to the Law, the following measures of protection may be used as urgent: providing secrecy of the identity; providing personal protection and change of place of residence<sup>303</sup>.

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<sup>300</sup> Promoted by the recommendation Rec (2005) 9 of the Committee of Ministers of the EU member countries, for protection of witnesses and collaborators of justice

<sup>301</sup> According to the Law on Classified Information there are four classification levels: state secret, strictly confidential, confidential and internal.

<sup>302</sup> Marija Grozdanovska "Witness protection: international aspects and the legislation in the Republic of Macedonia, Master's paper, Faculty of Law "Justinian Primus" (2010): 27-46

<sup>303</sup> Ibid, Marija Grozdanovska, p. 47

The difference between the regular measures and the urgent measures is the grounds for their use.

In the part referring to the penal provisions the Law on Witness Protection stipulates unauthorized reveal of information and data about a witness, collaborator of justice, victim appearing in the capacity of witness or his/her close persons as well as other information, which may lead to his/her identification and threaten his/her life, health, freedom, physical integrity or significant property amount. The stipulated penalty for this form of a crime is a minimum of four years imprisonment<sup>304</sup>.

Two qualified forms of this offence have been stipulated: if revealing information and data about the person have led to severe physical injuries of the witnesses, collaborators of justice and the victims appearing in the capacity of witnesses and their close persons the penalty for the perpetrator is minimum eight years imprisonment, and if revealing information and data about the person have led to death or suicide of the witnesses, collaborators of justice and the victims appearing in the capacity of witnesses and their close persons, the penalty for the perpetrator is minimum 15 years of imprisonment or a life imprisonment.

## CONCLUSION

Successful witness protection in any country considerably depends on the financial resources allocated for the purpose. Therefore, the inevitable conclusion regarding the financial resources necessary for implementation of the Law on Witness Protection is that implementation of this Law is costly for the state. On the other hand, the expenses for witness protection are relative in comparison with the expenses that may occur if no measures are taken for witness protection.

In comparison with other states Republic of Macedonia has the most severe penalties in the region. Regarding the penalties, the legislation of Bosnia and Herzegovina stipulates minimum of three months imprisonment, that is, the person who will communicate, reveal or tell on data on the identity or information to reveal the identity of a person being evidence or providing evidence and is protected person, shall be penalized by three months to three years imprisonment. If the perpetrator is a judge he/she shall be penalized by six months to five years imprisonment.

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<sup>304</sup>Article 42 of the Law on Witness Protection, Official Gazette of Republic of Macedonia No. 38/2005

The Criminal Act of Serbia stipulates maximum penalty of three years imprisonment for revealing the identity of a protected witness but it does not stipulate a minimal penalty. Six months to five years imprisonment is stipulated in case of harmful consequences.

The Croatian legislation stipulates penalty of minimum of six months to five years imprisonment if the identity of a protected witness is revealed.

Therefore, it is necessary to instigate modification of the Law on Witness Protection in the Republic of Macedonia; it should commence by determining the degree of responsibility of persons who will make public any data about a protected person (a person who comes to know the identity of a protected person in the line of duty should be held responsible for higher degree than a person who comes to know it in a different manner).

Penalty of six months to five years imprisonment for revealing the true identity of a protected person should be stipulated for an official – judge, public prosecutor, member of the Police or other person who obtains information on a protected person and on other persons in the line of duty minimum of four years imprisonment in case it has led to severe physical injuries, and minimum of eight years imprisonment in case it has led to death. It is necessary to fulfill a protective function by penalizing a witness whose identity is concealed as follows: a witness whose identity is concealed and commits perjury shall be penalized by minimum of five years imprisonment; if the perjury of a witness whose identity is concealed has led to severe consequences, and the defendant has been sentenced to imprisonment of more than 10 years, he/she shall be penalized by minimum of 10 years imprisonment or life imprisonment. If the perjury of a person whose identity is concealed includes an official (judge, public prosecutor, member of the Police or other person who comes to know information on a protected person and on other persons in the line of duty) the official shall be penalized by minimum of 15 years imprisonment. It is necessary to introduce a provision to stipulate a penalty of maximum one year imprisonment or a fine in cases when data has been revealed but not published, transferred or made public.

Special consideration should be given also to upgrading the organizational and institutional setting of the authorized enforcement organs and their mutual cooperation and coordination as well as to the need of permanent education of authorized persons for enforcement of the Law.

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# **PROFESSIONAL ETHICS AND PROFESSIONAL LIABILITY OF ATTORNEYS IN THE REPUBLIC OF MACEDONIA<sup>305</sup>**

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## **ABSTRACT**

Attorneyship as one of the basics elements of the judicial system plays a key role in highlighting and the protection of human rights and freedoms and their realization. Attorneys are obligated of high ethical and professional behavior and any deviation from these principles means the possibility of their responsibility under the law.

**Keywords:** Advocacy, ethics, professional liability

## **INTRODUCTION**

Attorneyship is the basic guarantee that ensures protection of human rights and freedoms and opposed irregularities in the society and the state.

In a country like Republic of Macedonia, attorneys with their clear attitudes, professional standards and free thinking can be the prime mover of advancement of european and world values that will lead to fulfilling the aspirations of our society.

In moments when Republic of Macedonia reforms entire judicial system: the method of selection of the judges, the way of their advancement, court procedures, when the Academy for the education of the judges and prosecutors is formemed, the attorneyship appears as a factor which requests scientific analysis of normative legal and ethical aspects, which will offer specified proposals and solutions to overcome some of negative changes.

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<sup>305</sup> review scientific paper

Ethics is the foundation of society, it is the base that should upgrade every profession, system, society. On the other hand, disregard of the ethical and professional standards and professionalizing can impose liability and consequences.

Considering the fact that the attorneyship is not even close to the center of scientific processing of critical perspective, this text aims to indicate briefly some phenomena that are present every day, and to affirmate the idea of the importance of attorneyship and legal principles in social and scientific circles . An additional motivation for this is that on the University " St. Kliment Ohrdski " Bitola , in the Law School, is studied subject Advocate law which is a positive legal precedent in Macedonian higher education.

The specific nature of the attorneyship is imposing for attorneys increased obligation for attention towards the interests of the client and toward third person. Legal monopoly enjoyed by attorneys that is guarantee of the state that they are highly competent and professional people, create a positive obligation to protect the interests of all those who are entitled to believe in the competence and professionalism of the members of this profession. Therefore it is especially important to consider the issue of professional liability of attorneys.

## **PROFESSIONAL ETHICS OF ATTORNEYS**

The legal position of attorneyship is regulated by Constitution of the Republic of Macedonia from 1991 as one of the guarantees of basic freedoms and rights. According art.53 from Constitution of the Republic of Macedonia, attorneyship is autonomous and independent public service that provides legal aid and carrying public mandates according to law. Attorneyship is the only public service in the field of human rights. It is the only public service that regulated in the Constitution of the Republic of Macedonia from 1991. Exclusive place makes attorneyship an influential corporation in the constitutional system of the Republic of Macedonia, like the attorneyship in ancient Rome (Шкарик / Силјановска - Давкова (2009), 745). From constitutional definition of the attorneyship are standing out two terms, its autonomy and independence. Independence of the attorney means that the attorney freely decides what legal means will be used in the process and his work. Attorney independently determines the method of use of the legal means in providing legal aid to the applicant, thus he is limited from



the provisions of the law, his knowledge, his conscience and order of the client. Independence in attorney's work means that on his work should not and can not affect any individual or social factors.

The position of attorneyship and the attorney is connected with the role, activities and importance of the Macedonian Bar Association (AKRM). Thanks to the chamber organization there is well determination of the attorney's activity as a collective work (advocacy) due to the the organization of the activity in a particular organization of attorneys, which organizes attorneys to achieve their interests easily. One of the tasks of the Bar Association is carrying for the existence and applications of moral values among attorneys ie adoption and implementation of the Code of professional ethics of attorneys. Despite the legal defined role of the judicial system, it should be emphasized that this system is a set from permanent contacts, activities and integrating of the individuals who in realization of their professional work contribute to increased probability of occurrence problems, deviant behavior and immoral situations as biased decision making, bribery, fraud, forgery, abuse of trust, a bad attitude towards colleagues and so on. Dynamics of developments and intensive relationships between people, also the increased volume of work of the judiciary, are shown as a sufficient reason for a clear definition of ethical values, and establishing mechanisms for their respect.

To overcome such phenomena appears professional ethics regarding the role of the person in performing any activity. In professional ethics primarily is discussed the question of the professional behavior towards knowledge / skills and the obligations, as well as the contacts with the other people, in which one person comes in contact when he is performing duties. Its evaluated interest, determination and resilience of professional in task completion. (Темков (2011), 12).

Basic Act who regulates the ethical values of an attorneyship is Attorney's Law since 2002, which in particular (see Article 17) provides basic information and assumptions of ethical behavior and respect for moral values of the attorneys. Attorneys in Republic of Macedonia, the question of professional ethics solved through the adoption and implementation of the Code of professional ethics of attorneys. This Code is the most important act of AKRM that regulates moral values and ethical questions about the work of attorneys and others involved directly or indirectly in the attorneyship.

It is divided into several parts, which are separate worked out entities with its specificity. Special attention in this Code is given to items dedicated to relation of the attorney and the client, the relation between attorney, court and other authorities, relation among attorneys and the Bar Association, and not less important points of the professional secrets, the professional development, preservation and raising of personal and moral reputation, the ratio of lawyers and legal interns way around, relation of the attorney and towards the law firm's office.

The Code, inter alia, provided that attorney is not allowed to perform public authority or advocating of the co-litigants or defendants if their mutual interests are opposed. If such cases occur during the advocacy or defense in a criminal case, the attorney is obliged to cancel advocacy or defense of one of the parties. (Code, item 3). Special attention deserves provision (Code, Article 8) whose permanent practical implementation could mean respect of the ethical principle: no one to remain without quality legal assistance because of inability to pay the award of the attorney. Under the Code, attorney is obliged to indicate respect for the court and the institutions, but also in the interest of the the reputation of the attorneyship he is obliged to prevent incorrect attitude of the representatives of the these institutions toward him and his clients.

Attorneyship has been valid and is valid as one of the profession in which are participating respectable professionals and persons. According to the Code attorneys are obliged to acquire and maintain a level of personal and moral reputation at any time, while they are professionally involved and also in their personal life.

Unfortunately, despite of positive trends in the development of the attorneyship, in the last period of the independent Macedonia were noted a few isolated cases of the destruction of the reputation of the Attorney caused by reckless and dishonest practicing of attorneyship, contrary to the moral and ethics in attorneyship, therefore few attorneys in recent years have been convicted with final judgments as perpetrators of crimes and punished with fines and some of them were imprisonment. In addition, such actions of the some attorneys were mostly motivated by material gain. (Главинче/ Главинче (2011), 189).

Except the mentioned cases of violation of ethical values, one issue also deserves attention it is issue for public (media) performances of the attorneys and their statements before or after a trial held. The question is whether the majority of this statments are based on assumptions about a

possible court decision or they should be understood as indirect pressure on adjudication, and public self-advertising attorneys!?

Interesting from the ethical aspect is the issue of registration of the former judges or prosecutors in the register of attorneys. Most often, after the procedure is conducted and the decision for dismissal of the judge because of unprofessional acting and working is made, many of deposed judges or prosecutors are registered in the register of the attorneys. Similar to the previous problem is the voluntary transition of the former judges, prosecutors and the police employees in the attorneyship. Science should offer a solution to this problem, especially if there is a situation when those people are attorneys with the highest number of cases before the Court of First Instance where previously they were performing judicial or prosecutorial function and now they are in direct contact of friendship, with fellow judges and public prosecutors. In other countries, there is a rule under which a judge or prosecutor who left the office can not be an attorney at least 3 years after leaving the service in court or Public Prosecutor in the area where he worked in the previous period. (Арnaudовски, ( 2011), 347).

It is interesting and the question of hiring a attorneys trainees who are relatives of judges and the prosecutors in the area of the basic or appellate court. The question is whether by it is not generated the perception of citizenship that is easier, simpler and the more efficient to get "justice" if you hire a attorney in whose office practice or volunteer son or daughter of the the trial judge or the court where one parent works of the attorneys trainees ?!

To improve the negative part of the following situations first it's necessary to define and redefine the ethical values among persons or entities participating in the inter-social - legal relations. Ethics should be imposed as an integral part of the functioning in attorneyship and the the judiciary, because it is for the benefit of the community, for improving mutual relations and for easier realization of human rights. Ethical standards should be part of every court, prosecutor's office, law office. It's s necessary fully respecting of the universal ethical values such as mutual respect, understanding, dialogue, solidarity, cooperation and assistance.

Judicial ethic should not be analyzed as a segment, but as an integral part of its functioning as internal content, philosophy of the operation and the functioning in that system. She talks about the greatest values that can express only with a single word: freedom, justice, honor, duty, mercy, hope.

Basic standards of the ethics in the profession refer to enforcement of the particular activity and the correct attitude towards the clients: Execute well your work! Try to be a good scholar! Learn the skills of your profession, to be able to successfully work! Take care of client and the to his needs! Be collegial! Honor your colleagues and the cooperate with them! (ТЕМКОВ (2012), 16/17)

Based on the current situation, we can conclude that ethics should be imposed as a factor that will contribute to improvement of the some negative phenomena and the for keeping the hardly acquired reputation of the this profession. This can be accomplished through continuous activity and the unreserved acceptance of moral values of every individual in this collective, especially with increased involvement of the AKRM an its organs.

### **PROFESSIONAL LIABILITY OF THE ATTORNEYS**

The issue of professional liability of attorneys is one of the most important legal issues relted with attorneyship. It comes for professional liability of attorney every time there is a breach of statutory or contractual obligations of attorney towards the client. There're three types of this liability: civil, criminal and disciplinary liability.

Each of these liabilitys are not mutually exclusive, and in practice can be parallel implemented against the attorney, which means for the same breach of one obligation attorney can be disciplinary, criminaly and materialy responsible. The determination of the existence of the responsibility, the authority who is conducting the procedure and the possible sanctions is done under special and different rules for each of these liability. Unlike civil and criminal liability where the breach is determined and possible sanctions are imposed by state courts, in disciplinary proceedings liability is establish by disciplinary authoritys who are formed in the Bar Association of the Republic of Macedonia, in a separate proceeding, regulated in accordance with the Rulebook for disciplinary liability.

Criminal Code of the Republic of Macedonia explicitly determines the attorney as a person who is performing functions, duties and activities of public interest. (Criminal Code art.122 paragraph 9) However, in macedonian law, criminal liability of attorneys is not a special term regarding the criminal liability of other persons.

There are more criminal acts in which there are more often higher probability to be performed by attorneys and others, considering the relationship of the attorneys to other participants in the judicial system. Example of this would have been these criminal acts: bribery providing (Criminal Code art.358), providing an award for unlawful influence (Criminal Code-art.358 s) submitting fake proofs (Criminal Code art.366-a) and others.

In the Criminal Code of the Republic of Macedonia there are criminal acts *delicta propria* where the attorneys are most potential perpetrators of the acts. The first criminal act is the unauthorized disclosure of confidential information (Criminal Code art.150 paragraph 1). Object of protection of this criminal act is primarily the intimate sphere of the individual, the right to privacy guaranteed by the Constitution of the Republic of Macedonia (art.25), as well as interest in uninterrupted performing of certain professions including and attorneyship that assumes a relationship of full trust with clients. (Камбовски, (2011), 706). Act of committing of this work is the discovery of a secret that must be made illegal, so that it can be considered that there is a criminal act. This article of the Criminal Code, also contains provisions to exclude illegality. For committing this criminal act as a sanction is prescribed fine or imprisonment up to one year. The prosecution of this work is undertaken upon private suit.

Another criminal act that may relate to attorneys is criminal act *abuse the trust* (Criminal Code art.252). This criminal act provides liability for anyone who represents the property interests of an individual or is taking care of his property but will not fulfill his duty or will abuse the authorizations given in order to obtain benefits or will damage the person whose interests is representing or whose property concerns. If as the perpetrator of this crime occurs attorney, it's provided tougher sanctions - imprisonment of three months to three years. The prosecution of this work is also undertaken upon private suit.

The lawyers (except when acting as Defender) may be prosecuted if they allow transaction or business relationship, contrary to its statutory duty or carry out a transaction against the prohibition imposed by court, or failing to report an money laundering, property or property interest, which discovered in the course of their duty or function, for which a sentence of at least five years. (Criminal Code, article 273)

Civil law (material) liability of attorneys constitutes the central question of professional liability of the attorneys and refers to compensation

of the damage that the client incurred by the attorney. The question of material liability of the attorneys arouses particular interest because for such liability are not prescribed special legal norms in the Law on Advocacy. As stated previously, the Law on Advocacy has only one provision (Article 17), which contains basic information and assumptions of ethical behavior and respect for moral values and by the attorney in which provision is defined that attorney gives the legal aid to the client conscientiously and professionally in accordance with the laws, codes of ethics, law and other regulations of the Macedonian Bar Association and keep as secret what the client has entrusted.

Undoubtedly, the attorney in performing of his work can make an error or omission which may cause harm to his client or other persons. The question is which rules will apply to this responsibility? To answer this question it is necessary first to establish the legal relationship that occurs between attorney and the client.

Jurisprudence and judicial practice in Republic of Macedonia, has not seriously dealt with the issue of qualification the relation that occurs between attorney and the client. But if we consider the experience of more developed legal areas of whose logic lies and our law, and if we take into account the legal definition of a warrant agreement contained in paragraph 1 of art.805 from Law on Obligations stems that for our law also would be most adequately to be considered that with signing a power of attorney, or a separate agreement for representation between attorney and the client is concluded agreement for a warrant even agreement for a warrant sui generis.

Taking into account the above mentioned follows that when we talk about the responsibility of attorney for damage caused to the client, this responsibility will usually be subsumed under the provisions of the Law on Obligations that regulate liability for default of obligatio or contractual liability, although in exceptional cases the responsibility of attorney to the client can be subsumed under the provisions of an tort liability. But it should be kept in mind that when attorney is undertaking obligation to carry certain legal services it undertakes etc. obligation of assets which means that he is not responsible for the result, he only is obliged to use all his professional knowledge and experience to accurately and de lege artis advise and inform his client, to protect his interests, but achievement of certain success is not important element of the agreement between attorney and the client because attorney is not obliged to achieving some success for the client. In some cases it could be considered that attorney towards the client took an obligation to achieve a certain success, for example in compiling of the

contract, or the giving of written legal opinions, and in such cases shall be considered that between attorney and the client has been concluded temporary service contract.

The legal and social importance of the duties that perform attorneys, brings with it a special responsibility. It is not just an abstract - so in some cases the attorney may arise obligation to compensate the great damage done to the users of its services. That is why with the amendments of the Law on Advocacy in 2006 was introduced compulsory liability insurance for attorneys as enhanced guarantee that the client to whom is caused damage from an attorney in performing legal profession, can be simply compensated by the insurer. According to the amendments to the Law on Advocacy in 2012 are prescribed minimum sums of insurance to which attorney is obligated to sign and every year to renew the contract of insurance, which amounted to 10,000 EUR for attorneys of 50,000 EUR attorneys for attorney's companies .

Disciplinary liability is link between professional criminal and civil liability and because of that there are similarities and differences between the disciplinary liability on the one hand and civil and criminal liability, on the other hand. Disciplinary liability confronts a professional with professional bodies which care for the proper performance of the profession and who thus control the execution of the activity by any member of that profession. The differences however between disciplinary and criminal liability is not as great as between civil and disciplinary liability because both are primarily repressive character. However the main difference is that while criminal law applies to all citizens, disciplinary law applies only to members of a particular profession. (Knezic - Popovic (2009), 218/219).

Disciplinary liability in all professions also in the attorneyship should ensure protection of collective professional interest. Injuries for which the disciplinary proceedings is initiated at attorneyship are actions that are carried out with breach of duty and reputation of the attorneyship.

As regards of disciplinary liability of attorneys in Republic of Macedonia, it is important to mention a few key things. Namely, articles 30 from the Law on Advocacy determined that attorneys are responsible for the professional and conscientious performance of duty and for keeping reputation of the attorneyship.

As a serious breach of the duty and reputation of attorneyship, especially considered failure or obviously negligent performance of work on

legal aid and the provision of public authorities, failure to act on authority and lack of action that the lawyer is obliged to take in protecting the rights and interests of party and violation of the duty of confidentiality. A more detailed elaboration of disciplinary injuries and other disciplinary injuries in the execution of attorneyship are contained in article 12 and 13 of the Regulation for Disciplinary liability, adopted by the the Bar Association of of the Republic of Macedonia.

Disciplinary procedure is initiated with disciplinary indictment which the Disciplinary Prosecutor submitted to the Disciplinary Court of the Bar Association of the Republic of Macedonia. After the procedure for Disciplinary Court are possible following decisions: declared as guilty and impose with disciplinary measure, accused attorney to be released from indictment or indictment to be rejected. The unsatisfied can appeal to the Appeals Council, whose decision is final, and against whose decision can be initiated an administrative dispute.

For breach of duty or reputation of attorney, according to article 31 of the Law on the Advocacy's, attorney may be subject to disciplinary measures: public reprimand, a fine of up to ten sums at the annual Chamber membership and temporary cessation of the right to perform Attorney activity for a period of one year. The lawyer against whom is initiated a procedure for determining the liability for breach of duty or reputation of attorneyship may be temporarily prohibited to work as attorney during the disciplinary procedure, but not longer than 30 days.

According to article 16 of the Regulation for disciplinary liability disciplinary procedure can not be initiated if passed term of four years after disciplinary breach was committed. If disciplinary breach is committed with a criminal act, disciplinary procedure can not be initiated after expiry of the term of one year from the date the final judgment of the Criminal Court.

## **CONCLUSION**

In a time of significant challenges for the judicial system of the Republic of Macedonia, initiated by a number of reform measures and new relationships between primary stakeholders, the attorneyship appears as a basic guarantee that contributes to the protection of human rights and freedoms and the smooth realization of the objectives of the reform. The success of these new relationships depends from observance of the professional standards from the attorneys, considering that there is a Code



of Professional Ethics for Lawyers and Advocacy Law which are predicting proper liability for attorneys.

This work analyzes this situation in the Macedonian attorneyship and offers specific solutions to overcome some negative phenomena.

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## **COMPARATIVE REVIEW OF CONTRACT FOR ALOTMAN IN REPUBLIC OF MACEDONIA AND REPUBLIC OF SERBIA<sup>306</sup>**

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### **Abstract**

The subject of the paper is processing and comparative analysis of contracts for alotman. The best way to work out these contracts is through analysis of the legal framework which regulates its placement. Try for comparative analysis of legislation in Macedonian and Serbian legislation is made through perceived positive and also negative sides of these contracts, and on the basis of this, conclusions are made, which law deeper regulates this issue and where it has overlap of contractual clauses of both legislation for contracts. Certainly the paper provides appropriate recommendations for improving the situation.

Accetned is the role of the State market inspectorate of the Republic of Macedonia for preventing violation of the provisions of contracts, through control mechanism that has in its competence, regarding of operation and performance of travel agencies in the Republic of Macedonia.

*Key words:* contract for alotman, travel agency, tourist.

### **INTRODUCTION**

One of the most frequent contracts which are concluded in the field of tourism and tourist law is the contract for alotman. Not only in Republic of Macedonia, but also in the Republic of Serbia there is a great representation and frequentation of this contract. By its nature, this contract is a complex

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contract and covers a range of services provided by hoteliers and travel agencies. According to the survey during one calendar year, one of the most frequent contract by conclusion which do travel agencies is a contract for allotment. The frequency of the conclusion of touristic contracts, subject of contracts and scope of services provided, make these agreements to be subject of discussion in this paper.

### CONTRACT FOR ALLOTMENT IN REPUBLIC OF MACEDONIA

Contract for allotment or contract for engagement of hospitality capacities is such kind of a contract which contains a range of services, usually - transportation to accommodation capacities, accommodation, food, travel guides and additional travel and tourist services, which are given or can be given by hotelier. This contract is concluded on one side by a travel agency, and from another by hotelier.

According to the Law for obligations of Macedonia-ZOO<sup>307</sup> with contract for allotment, hotelier is committed during certain times to make available to the travel agency defined number of beds in the defined object, to give hospitality services for people which will be transferred by travel agency and to pay certain commission-provision, and travel agency is committed to seek to fill or to notify in prescribed terms that it can't do that, and to pay the cost of provided services if it use engaged hotel facilities. If with the contract is not prescribed otherwise, it can be deemed that accommodating facilities are made available for the period of one year.

Introductory element in a contract of allotment is filling of accommodating capacities. If the travel agency is not able to fill all engaged accommodation capacities, it is obliged in agreed terms to notify and to submit to the hotelier the list of guests. Those hospitality capacities which are in the list of guests, and aren't marked as completed, are considered free from the day of receiving of this list by the hotelier during the period covered by the list.

This contract is double side contract that produces rights and obligations for contract parties, as for the travel agency and hotelier as well. Before travel agency conclude this contract agency concludes other individual contracts with clients-tourists, in order to fulfill hospitality facilities prescribed by contract of allotment. And because of that this contract is usually concluded for a period of one season, and in this period hospitality facilities are made fully available to the travel agency in order to avoid situations of cancellation of accommodation or traveling.

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<sup>307</sup> Law for obligations of Macedonia-ZOO, Art.941

Contracts for rental of whole facilities and contract for reservation are closely related with contract for allotment. With contract for rental of whole facilities, hotelier undertakes all or separated part of object to lease to the travel agency for a specified period of time. Whether with the object, hotelier will lease other tourist services provided by contract for allotment or not, that is left to be freely determined depending on the will of the contracting parties. Contract on the basis of reservation is that kind of a contract where the travel agency is committed to provide reservation for each client in the accommodation for precisely specified days.

In contract for allotment occurs a specific element. After finishing the service, the cost for services can be paid by agency to the hotelier, or directly tourist to the hotelier. In that case there are three-side contractual element, or two two-sided contracts, where the first conclusion is condition for concluding the second contract, because the agency concludes a contract with tourist and represented his interests in his name and his account in front hotelier.

As for any other contract, also in the contract for allotment exists appropriate related rights and obligations for hotelier and travel agency, which are produced and must be in accordance with the Law for obligations of Macedonia, Law for Tourist activity and General Conditions of travel agencies for concluding of contracts for allotment.

Hotelier undertakes obligation during the specified time to put in use agreed number of beds and to give to tourists transferred by travel agency services listed in separate written document. Hotelier can't arrange with another travel agency engagement of capacities which are already reserved under the contract for allotment.<sup>308</sup>

In terms of rates for services, hotelier can not change it if doesn't notify travel agency for at least 6 months in advance. New rates can be applied one month after delivering to the travel agency. New rates can't be applied to already confirm reservations.<sup>309</sup>

Hotelier is obliged to pay to travel agency a commission-provision of turnover based on contract for allotment. Commission is determined in the percentage of the cost of performed hospitality services. If the percentage of

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<sup>308</sup>Law for obligations of Macedonia-ZOO,art.947

<sup>309</sup>Law for obligations of Serbia also provides that hotelier can't change rates if it fails to notify the travel agency at least six months in advance, except in cases when it comes to changing the course of currency which affects the final price. Laws of Macedonia and Serbia are identical in part that there is no change in rates of the arrangement when the list is delivered to guest. According to serbian legislation, travel agency has an obligation to pay service that offers hotelier after finishing the providing of service.

commission isn't determined by the contract, to the travel agency belongs commission determined by General Conditions for operating of the travel agency, and if there is not that kind of conditions, it is determined by business customs.<sup>310</sup>

Important matter in contract for allotment is possibility of cancellation of accommodation facilities because of certain reasons can be happened. The ZOO-law provides possibility for a temporary cancellation of use of engaged accommodation facilities, without terminating the contract and without obligation for compensation of damage to the hotelier, only if cancellation is sent within the stipulated term. Omission of notice of cancellation within the stipulated term for itself carry responsibility for compensation of damage.<sup>311</sup> If it is prescribed obligation of fulfillment of contractual capacities, and that isn't met, the travel agency is obliged to pay to the hotelier compensation for unused bed per day.

In relation with judicial protection of contract for allotment, it is accomplished through the ability of solving in front of a real and locally competent court which contractual parties will determine by themselves in the contract.

#### CONTRACT FOR ALLOTMENT IN REPUBLIC OF SERBIA

Law for obligations of Serbia<sup>312</sup>, define contract for allotment as a contract with which hotelier obliged in prescribed period to make available to the travel agency a certain number of beds or determined object, to provide hospitality services to tourists which are transferred by travel agency and to pay certain commission. Obligation of the travel agency is to fill or to notify within the deadlines if it is unable to fulfill capacities and to pay the price of provided services, if it used engaged hospitality facilities. It is about a two-sided contract which is concluded on one side between travel agency and the other side by hotelier, and produces rights and obligations for contracting parties.

Characteristic is that according to the Law for obligations of Serbia it is prescribed making available of hospitality facilities for a period of one year unless it is not otherwise specified by contract for allotment. In this part it is left space for contracting parties to regulate their mutual relations otherwise in order to satisfy needs of both parties, but all that should be in accordance

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<sup>310</sup>Law for obligations of Macedonia-ZOO,art.950

<sup>311</sup>Legislations fo Macedonia and Serbia are overlapped in the part for fulfilling of contracted capacities.

<sup>312</sup>Law of Obligations for Serbia, "Official Gazette of SFRJ", no. 29/78, 39/85 , 45/89, Decision USJ 57/89 , "Official Gazette of Republic of Serbia and Montenegro", no. 31/93, no1/03-Constitutional charter

with Law or business customs. Law for obligations of Serbia also provides that hotelier can't change rates if it fails to notify the travel agency at least 6 months in advance, except in cases when it comes of changing the course of currency which affects the price. Anticipated is payment of service to hotelier after finishing service.

For this part, macedonian legislation is different, because in practice, travel agencies require services to be paid before performing of the service.

In this type of contract particularly important is written document. This document may be nominated on the name and also to a particular group, it is non-transferable and it obliged hotelier to provide those services which are listed in it.<sup>313</sup> The separate written document serves as evidence that the person is a client of the travel agency, which signed contract for allotment with hotelier. Based on the special written document, there are performed obligations between the travel agency and hotelier. All services agreed by contracting parties are listed in the written document.

Already reserved capacities, hotelier shouldn't re-booked or put them becoming available to another travel agency. That the hotelier can do after expires term which is provided by the contract and when clients will leave the facility. Opposite proceeding of this is considered as an essential injury, or break of contract for allotment. With unethical proceeding the reputation and professionalism of the hotelier is damaging and ruining. Highlighted in the Law for obligations of Serbia is equality of parties, whether in the case when individuals require a travel service by hotelier, or by a travel agency as a legal entity. Hotelier is obliged to provide services under the same conditions and rates regardless whether it is about travel agency or individual tourist.

There is an option that is provided by the law-the travel agency not to fulfill accommodation capacities within a certain period, but not to terminate the contract for allotment. The agency shall not terminate the contract or to pay damages for the non-fulfillment of accommodation only if in the specified period, it regularly informs the hotelier.

#### ROLE OF THE STATE MARKET INSPECTORATE IN PREVENTING VIOLATIONS OF TOURIST CONTRACTS IN MACEDONIA

Besides the role of the competent court in resolving of eventually dispute, also an active role in protecting the rights of tourist contracts has the State Market Inspectorate. All complaints regarding of non-fulfillment of

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<sup>313</sup>Law of Obligations for Serbia, "Official Gazette of SFRJ", no. 29/78, 39/85 , 45/89, Decision USJ 57/89 , "Official Gazette of Republic of Serbia and Montenegro", no. 31/93, no1/03-Constitutional charter

contractual clauses of tourist contracts or certain irregularities during the traveling are applied to the State Market Inspectorate in the form of a complaint.

Besides tourist and hospitality activity, the State Market Inspectorate supervises the implementation of laws, other regulations and other acts, by trade companies, other legal entities and individuals, as well as citizens which perform activity in the territory of the Republic of Macedonia, which are usually related to activities in the field of trade, crafts, protection of industrial property rights and other things prescribed by law.

In the jurisdiction of the State Market Inspectorate is monitoring of the work and operation of travel agencies through regular and emergency controls, so if certain irregularities are noted, it requests the initiation of infringement proceeding.

In accordance with provisions of the Law for tourist activity, on the territory of Republic of Macedonia, during 2012, there have been 485 regular, 53 control and 1 emergency inspection supervision. For noted irregularities to the competent courts submitted are 18 requests for initiation of infringement proceedings and 8 requests to Misdemeanor Commission. Adopted are 20 decisions in administrative proceedings.

In the procedure of settlement 14 orders of payment are issued in the amount of 1,315,320 mkd-denars<sup>314</sup>. Collected are 2 payment orders in the amount of 227,550 denars. Issued are 13 invitations for collection of fines in the amount of 690,065 denars. Collected are 6 invitations for recovery of fines in the amount of 125,785 denars.

In 2012 is acted on 67 applications or complaints. 11 travel agencies are forced closed.<sup>315</sup>

On the above it is about statistical data obtained from the control of the State Market Inspectorate in the period of 2012. Considering the data obtained from the completed control and supervision it can be concluded that there are no large violations.

The activity of the State Market Inspectorate is control and supervision over the work and operation of travel agencies, which is provided by the Program of working of the Ministry of Economy. Actively is working on the implementation of the Program from 2013 in accordance with the Law of tourist activity. According to this program during 2013 realization of the 300 inspections was prescribed, which should be implemented with enhanced

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<sup>314</sup> 1 euro€=61,5 mkd denars

<sup>315</sup> Извештај за работата на државниот пазарен инспекторат во 2012 година/Република Македонија. Министерство за економија/Државен пазарен инспекторат, Скопје, јануари 2013 година



intensity during the summer holidays, winter holidays and vacations , as well as in the good part is realized.

## CONCLUSION

Based on all what was previously stated, it can be concluded that:

1. The analysis of legislation for contracts shows that their use is apparent in every period of the year, especially during the summer or winter season as well as during various holidays. The implementation of the contracts is followed by meeting the anticipated contractual clauses. Canceling of the traveling is determined by cancellation terms whose consequences are very small depending which time period is given before departure cancellation.
2. Law for obligations of the Republic of Macedonia in contrast to the Law for obligations of the Republic of Serbia is sturdier, but is more clear, and more precise regulates rights and obligations derived from the conclusion of such contracts. It better defines the given institutes and certain situations which might occur, so that and party who hasn't adequate knowledge of the law can understand positive and negative sides for the conclusion of such contracts. But it should be noted that almost 80 % laws of both states for this issue are similar. However this doesn't mean that legislations are perfect and that shouldn't be adapted and changed in according with requirements of all the factors involved.
3. In a survey as a very important data that is obtained, is that the situation with cancellation of tourist contracts in Macedonia is much better than before, thanks to the well formulated Law for obligations because parties are familiar with consequences which are expected from cancellation.
4. Competence of the State Market Inspectorate is acting on complaints which are result of nonfulfilling provided obligations predicted by tourist contracts. That competence is quite diligently conducted by this Inspectorate, but in the next period still have to be done and greater efforts should be done for increasing efficiency and effectiveness of its work, for which it should have bigger support from all involved stakeholders.
5. The development of tourist activity in Republic of Macedonia is a top priority of government institutions also for local institutions, and it must be used in order to find better mechanisms for achieving that goal. Normally, there of legal aspect should be thought about adapting of legislation to new times and daily growing needs of tourists, in this global age when extremely rapidly change many things and relations associated with that. It is obvious that the Republic of Macedonia is on a well road towards a larger tourism development.

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12. <http://pravo.org.mk>

## **DEMOCRATIC DEFICIT IN THE REFERENDUM OF 2004<sup>316</sup>**

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### **ABSTRACT**

Strong civil resistance against the adoption of the Law on Territorial Organization of municipality and Skopje in Macedonia, despite numerous initiatives resulted in the organization and enforcement of a referendum against the law. Pressure from political elites and the international community have condemned the referendum failure. The procedure and the reactions after its holding subject of this paper. The aim of this work is to explain the procedure, influence and reactions after the referendum. This work provides a clear picture of the referendum's influence on the political situation in the country, stressing the relevance of the process not just in political circles but in analysts and experts as well.

In this paper descriptive methodology is used in order to describe the conduction of the referendum in 2004. Was the referendum in accordance with Law Regulations and International Standards and Regulations or was it a part of a political agreement which ended in failure, particularly for not providing a census of minimum citizens who turnout for voting.

**Keywords:** referendum, decentralization, democracy, deficit, citizens.

### **INTRODUCTION**

Spirit of the Ohrid Framework Agreement is to provide a functional democracy to the lowest level- citizen. For this purpose, it is important to have developed and functional local government which will be based on the principles laid down in the Constitution, the European Charter of

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municipalities, and therefore the Constitution guaranteed the possibility of independent citizens to participate in decision- making by local importance. Draft Law on Territorial Organization in the form and manner that is offered, contrary to all these laws and principles adopted in the Republic of Macedonia and democratic Europe. The result is a strong civil resistance, which resulted in the mobilization of the Macedonian public and experts against the proposed legal solution. The final outcome was a referendum against the territorial organization that pressured the government and the international community, as well as inconsistencies in the referendum; it was deemed unsuccessful, which came to making the law. Less than a decade after his passing he still stirs emotions in the Macedonian public.

### **ORGANIZING THE REFERENDUM**

After reactions of Macedonian public and even numerous complaints from 40 municipalities to review the law and its adoption, the reaction of many local communities, experts and numerous non-governmental organizations, the proposal of the World Macedonian Congress after collected over 180,000 signatures citizens entitled to vote , in accordance with the Constitution and the Law of Republic of Macedonia on referendum and Civil initiative of 1998 was announced referendum on territorial organization of local government in the country since 2004. According to the law of referendum voters had the opportunity to declare for or against the referendum question posed:

***Are you interested on the territorial organization of municipalities (local and regional) established by the Law on Territorial Division of the Republic of Macedonia and determining the scope of local government units ("Official Gazette" br.49/96) and the Low of city Skopje ("Official Gazette br.49/96)?***

The voting was conducted at 2,973 polling stations in the entire territory of the Republic of Macedonia was one constituency, but under the Constitution, the referendum was declared a failure because it did not give more than 51 % of the vote, although the vast majority of voters who cast their vote does not support the redistricting. Referendum procedure was performed according to the standards set for such a procedure which characterized period before referendum by a real political campaign in which one side as opposed to the referendum appeared central government only supported by international community, on the other hand, as supporters of the bill are called opposition bloc of parties, some media experts, civil society and above all voters. "Instead of multiethnic and multicultural

environment, the government launched mono- concept model, although claimed he wanted to stimulate the integration of new territory<sup>317</sup>.

### **POSITIVE FEATURES OF THE REFERENDUM PROCESS**

The referendum process was observed following positive features:

- The State Election Commission (SEC) carries out its duties in an effective and consensual manner despite the absence of a permanent secretariat, which will facilitate the operation. Technical preparations and appointment of election boards generally were on schedule. Political parties have not filed any complaint regarding the technical aspects of the referendum process;

- The campaign took place in a peaceful and regular way, without incidents reported in IROM. Campaign activities such as meetings and roundtables were conducted across the country, although the parties and their activists also conducted an active campaign of door -to - door, making visibility campaign was reduced;

- Participants in the campaign through the media had the opportunity to present their views and communicate their messages to the electorate on relatively equal footing;

- The decision of the SEC to print ballots in languages of ethnic groups more than 20 % of the inhabitants of the municipalities (according to the census of 2002) should be highly regarded;

### **FAILURE IN THE REFERENDUM PROCESS**

Despite the positive features referendum process was followed by a series of shortcomings that significantly influenced the outcome.

- Law on Referendum and Civil Initiative is outdated and contains only basic provisions, while the extent of use of the Law on Election of Members of Parliament in the context of a referendum, remains ambiguous and vague. Difficulties in the interpretation and implementation of the

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<sup>317</sup> Siljanovska-Davitkova Gordana, Mitkov Vladimir, "Local Government", MAGOR Skopje, 2004, p.237

various laws governing the referendum process were largely resolved by the State Election Commission (SEC);

- The lack of a clear legal regulatory framework regarding campaigns allow interference by many entities and parts of the community who may not normally participate in campaigning activities, which contributed to the polarization of the issue of the referendum;

- International Referendum Observation Mission (IROM) was notified of the alleged intimidation of voters and although these reports largely were verified, they were widespread and reflected the particular atmosphere of suspicion and distrust in the period before the referendum;

- Accuracy of Voters' List (VL) was again placed under suspicion by the plantation of certain interlocutors, although IROM received information that political parties have used the legal ability to obtain the CA Department of Justice, the deadline to revise or update CA;

- The discourse of the media during the campaign was focused more on policy issues than on substantive issues relating to the referendum and the potential consequences of the referendum, which reduce the informative value of the coverage of the referendum;

- Though voting and counting were generally assessed as positive, was observed the presence of continuing to neglect the details of the implementation of the procedure, with 52 % of the observations.

Election Boards failed to highlight the minutes of the results in accordance with law. On referendum day, observers reported that the implementation of the electoral process was, for the most part, orderly and efficient. However, there were a limited number of cases where polling places were not open on time or were closed early, and several cases of intimidation and ballot stuffing. Counting was generally assessed positively, although it seemed to lack an understanding of procedures for counting, which affected the proper application procedures. Cases of inattention to details of procedures were also observed during the tabulation at the Municipality Election Commissions.

## **REFERENDUM INFLUENCE ON THE POLITICAL SITUATION**

The entire process of making the adoption of the law on the limits of local government was not transparent, away from the public eye and thus did not

receive the approval of the same. So far remained unnoticed in the international practice such a law, a month before its passage remains unknown to the public. In fact, this was a project of three government coalitions of parties (Social Democratic Union of Macedonia, Democratic Union for Integration and the Liberal Democratic Party) who each reached an agreement on the Law on Territorial Organization of Local Self-Government in the Republic of Macedonia, opaque and without the support of the domestic public. This is confirmed by the publication of the media in June 2004, in the resort of Mavrovo absence of appropriate experts, citizens and public administration, shape the boundaries of municipalities, only in the presence of members of the parties of the governing coalition. Reactions came from everywhere, even from civic organizations. MHC mentions that decentralization "should begin and end with the active participation of citizens and their free will". The message was repeating and other civic NGOs. The main reaction was the reaction of the Macedonian World Congress as an organization sided with the citizens that initiated the procedure for the referendum. Irritated Macedonian mass public supported this initiative as against the new law on territorial organization of local government half a million voters voted. The initiative was supported by the main opposition party VMRO- DPMNE, which on July 27 in Skopje held the biggest protest which made clear the harmfulness of such proceedings. In addition it should be noted that 41 municipalities out of 123 municipalities held local referendums that clearly expressed their will to preserve the previous municipal boundaries. Such local referendums were held in municipalities which had mixed ethnic composition. The municipality Ljubanista which is mainly inhabited by Albanians, Turks, Macedonians and Muslims held a successful referendum. Just such a referendum be held in the municipality of Centar Zupa where the majority of citizens are Turks, Albanians and Macedonians then a large percentage voted against the allocation of Debar Municipality. Rostuse Council voted against the merger with Mavrovo and the Mayor Durmishi law enacted described as "hastily" and without "enough arguments". Local Albanian Dzepchishte and Bogovine expressed their dissatisfaction with public disobedience and blocking local roads. The international community is unable to directly criticize the basic democratic right to hold a referendum asked citizens to consider the relationship of Macedonia's accession to the EU implementation of the agreement in a referendum. The possibilities of a successful referendum to the citizens was interpreted as an obstacle to the implementation of the Ohrid Agreement, and therefore step back away from European integration. Hence there is a dilemma to the citizens of integration or isolation, and the second scenario Macedonia would amount to an isolated "black hole", Albania,

Kosovo, Serbia and Montenegro.<sup>318</sup> Government to end use EU support which promotes the phrase "some questions do not deserve an answer", and that accordingly resulted in pressure on citizens to vote. United States have said they are to be carried out in accordance with EU declarations. U.S. diplomats warned that the refusal of the new territorial division of Macedonia would "contradict the words and spirit of the Framework Agreement."<sup>319</sup> Marc Grossman, U.S. Deputy Secretary of State for Political Affairs was more dramatic, with the statement that a referendum, choosing between the past and the future".<sup>320</sup> At the same time US promising 9.5 million dollars in aid for the implementation of decentralization in Macedonia. Efforts of the international community and the Government to influence the will of the people and the results of the referendum, opinion polls showed the general mood of the citizens to support the referendum. Survey conducted Brima- Galub phone showed that 63% of citizens would cast their votes out of which 74% would support the referendum, with 47.8% considered that it would succeed, while 33% thought the opposite. Another poll conducted by the newspaper "Tim" showed that 64.6 % of citizens would cast their votes out of which 51.4% would support a referendum. Another research supported by the government showed that 50% of respondents would support the referendum. Probably scared of this public opinion of U.S. citizens have decided to recognize Macedonia under its constitutional name. Analysts believe that the U.S. decision had a crucial influence on the behavior of voters in the referendum and its outcome. Once the outcome of the referendum was a clear international community and the United States evaluate that Macedonian citizens acted as wisely abstained from participating in the referendum, thereby providing a Euro- Atlantic future of Macedonia.

### **POSSIBLE REFERNDUM CONSEQUENCES ON THE POLITICAL SITUATION IN THE COUNTRY**

The failure of the referendum meant implementation of the Law on Territorial Organization which is one reason for the division of political elites . Accusations between the political players were that the ones are " patriots " and the others are " traitors " .The signatories of this Act or the participants in this " agreement " are those who "sold " the state . Such a rhetoric has emerged among citizens who are divided along ethnic lines, and

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<sup>318</sup> Times for South Europa, "U.S. concerned about Macedonian" ,17 September 2004

<sup>319</sup> South Europien Times, „US Voices Concern Over Macedonia Referendum“, 17 September 2004

<sup>320</sup> South Europien Times, „Prodi Gives EC Questionnaire to Macedonian Government“, 3 October 2004



instead of being a service to the citizens or mechanism of self-governing where citizens would participate directly in making decisions or solving their problems, The Units of Local Self-Government cause a gap between the different ethnic communities living in the municipality . The majority of the ethnic community manages the municipality, for example in Struga , Kichevo, some municipalities of Skopje , where previously the majority of the community were Macedonians . They now face employment by ethnic key, tacked flags of other countries without observing the relevant legal regulations, building monuments without significance or contribution in Macedonian history, renaming streets and institutions at the local level without proper legal procedure etc. Besides, this ethnic division raises the question of the democratic capacity of the state to implement future referendum and whether the Canon will reflect the will of the people , not desires or needs of political parties or the international community. Unilateral rejection of the will of nearly half a million citizens who cast their votes in the referendum is extremely risky procedure that passes consequences even ten years after the referendum. Announcements of future citizens' proclamation is another challenge not only for institutions that need to respond to the challenge , but a challenge to the citizens that should express their democratic culture in the most democratic way to get out and vote in accordance with their views and believes .

## **CONCLUSION**

The goal of decentralization is to transfer some of the responsibilities and de-concentrate power of the central government and to transfer it to the local government, where the citizens themselves take decisions to solve their problems and meet their needs . It means a way of self-governing within the entities and powers of local government. Forms of citizen participation in the decision making is adequately provided for in the Local Government Act 2002 .

The implementation of the Law on Territorial Organization came across resistance from communities of mixed ethnic composition. Without proper analysis, compliance with international standards and documents signed and ratified by area municipalities are repealed, stitching in the neighboring municipalities in order to change the ethnic composition of the same . Such examples are the Municipality of Struga, some villages around Skopje were attached to the Chair , while the same does not happen with Tetovo where neighboring villages were attached to Tetovo but stayed in the

previous or municipality where they belonged or form a new municipality as Jegunovce. The example of Kichevo as one of the municipalities with the greatest territory congregate three municipalities, and such annexation because then escalated the situation and the huge anger among citizens defer and implement ten years later. The implementation of the referendum is characterized by certain disadvantages. This poses a dilemma for integration or isolation, which Macedonia would amount to an isolated "black hole ", Albania, Kosovo, Serbia and Montenegro. The used support from the Government of the EU as promoting the phrase "some questions do not deserve an answer," the U.S. decision to recognize Macedonia under its constitutional name are the key elements for the failure of the referendum. Obviously citizens responded appropriately as domestic and international pressure and abstained from voting. It should also be noted that the diametrically opposite thinking of citizens in relation to the subject of the initial initiative to referendum results only confirmed the thesis that the whole procedure was conducted in accordance with legal norms. The direct involvement of the international community and the Government with appropriate procedures during the procedure itself is maybe not that familiar to such a democratic process. Hence it can be concluded that the referendum was strongly influenced by the political elites , which is more than certain that it was a political agreement and after a decade is unclear and unknown to the public.

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# **THE NEED FOR STRENGTHENING AND DEFINING THE COMPETENCIES OF THE PRESIDENT OF REPUBLIC OF MACEDONIA<sup>321</sup>**

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## **Abstract**

The Republic of Macedonia is established combined (mixed) system of government organization, which included elements of parliamentary and presidential systems. Regarding the position of the President, Republic of Macedonia is a parliamentary-presidential state where the head of state and government are part of a (dual) executive. Because constitutional provisions the Government explicitly defined as a carrier executive, Macedonian President has more ceremonial than effective enforcement powers. And because of constitutional legal point position of the Macedonian president in the executive sphere is closer to the position of President parliamentary system of organization of power than the President of the Presidential system. The actual position of the Macedonian president apart from constitutional provisions depends on the personality of the President and to that therefore established a possibility combined (mixed) system in certain situations to function as a pure parliamentary or presidential system clean . To prevent this possibility, but also to provide the functionality of the existing model is necessary to strengthen the position of President in terms of defining its powers especially the relation of state President - Government of the Republic and President of the State - Assembly of the Republic of Macedonia.

**Keywords:** president, head of state responsibilities, organization of government, government, parliament, executive.

## **Introduction**

The President of a state is usually a head of state in countries with republic manner of governance. The function of the head of state is most

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<sup>321</sup> review scientific paper

frequently determined by few key elements like the scope of his/her jurisdiction, the presidential function in the system of power sharing, the responsibility to which he/she is subjected to, and how he/she is elected. The head of state in some countries is called „chief of state” due to the need to personify and symbolize the state and the state unity from the inside and outside<sup>322</sup>. A question is frequently asked whether in terms of pluralism the head of state cannot only formally and abstractly but also really be a president of all citizens i.e. the „father of the nation”. Unfortunately the answer to this question is mostly negative because in terms of multiparty, when candidates for presidents or elected presidents belong to a political party or to a coalition, the head of state cannot represent unity of the nation because very rarely a president of state is elected with great majority and does not belong to a party<sup>323</sup>.

The head of state in a republican manner of governance is elected by several means as following: directly by the people, by the parliament or by wider electoral boards. The presidential and combined systems use direct elections, and parliamentary systems use indirect elections. The head of state is a formal legal holder of executive function of state government. In presidential system of government the leader of the executive branch is both the head of state and head of government (the President of USA). In the parliamentary system of governance a head of state shares the executive branch with a government, whereas the head of state has ceremonial role, and the government is an effective bearer of executive power (ex. Italy, Great Britain, Germany). In a combined system of government organization, also called by some theorists half-presidential system, a head of state shares the executive branch with a government, whereby a president is more effective and dominant in the executive branch (France, Russia).

Republic of Macedonia which is also a combined system of government organization, where elements of presidential and parliamentary system are represented, the Government has effective executive authority, and the Head of State is moreover a ceremonial persona. The Constitution of Republic of Macedonia under Article 88, Paragraph 1 determines the Government as bearer of executive power. Looking from an aspect of

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<sup>322</sup> prof. dr. Svetomir Skaric and Gordana Siljanovska Davkova, Constitutional Law, Culture 2009, Skopje, p. 635.

<sup>323</sup> In 1962 Charles de Gaulle was elected overwhelmingly for President of France as a non-partisan person (ful name - Charles André Joseph Marie de Gaulle. He was a French general and statesman who led the Free French Forces during World War II. He later founded the French Fifth Republic in 1958 and served as its first president from 1959 to 1969)

President's position, the Republic of Macedonia is a parliamentary-presidential state which in certain situations depending on the personality of the President, his authority and integrity or depending on his position in the party where he belongs to, it is very frequent that the established system of organization easily transforms into presidential or parliamentary system. The established model of organization of power, without intervening in the Constitution, can be more functional if inter-relations between the two branches (President of state – Government) are defined more precisely as well as relations between legislative and executive branch. When précising these inter-relations it is necessary to take into account the need for running a single policy in the sphere of leading foreign policy i.e. the area of international relations, safety and security and the area of state security. In all three areas marked as mutual jurisdiction of the head of state and the government, the President of the republic should have more dominant position and decisive role due to the fact that individual bringing decisions is always faster and more efficient unlike collegiate deciding.

### **The position of the President of Republic of Macedonia**

The Constitution of the Republic of Macedonia<sup>324</sup> in section III named as the Organization of state power under Article 2 „The President of Republic of Macedonia” (Article 79-87), constitutional amendment number XIII<sup>325</sup> and other members, constitutional amendments and certain laws (direct or indirect) determine the position of the Macedonian President. Except for constitutional legal and lawful determination, the position President of Republic of Macedonia is established with other elements and situations like the fact that he is the chief of state and along with the Government of Republic of Macedonia is part of the dual executive power, the source of its legitimacy is reflection of the will of the electorate. In doing his role the President is subjected to partial political and full criminal accountability. The President of the Republic exercises his rights and duties based on and within the Constitution and laws. He represents the country and at the same time is a supreme commander of the armed forces of Republic of Macedonia.

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<sup>324</sup> Official Gazette No. 52 of November 22, 1991

<sup>325</sup> Official Gazette, No. 91 of Noember 20, 2001

The President is elected by direct vote, by secret ballot, for a term of five years. A candidate for President of the Republic can be proposed by at least 10.000 voters or at least 30 Parliament Members. A person can be elected president only twice. The President of the Republic must be a citizen of the Republic of Macedonia and a President appointed must be at least 40 years of age. A President of the Republic cannot be appointed if the person has not been a citizen of the Republic of Macedonia at least ten years in the last fifteen years until the day of elections.

The President of Republic of Macedonia has the following jurisdictions: designates the mandatory for assembling the Government of the Republic of Macedonia, appoints and dismisses by decree ambassadors and representatives of the Republic of Macedonia abroad; accepts the credentials and cancelation letters of credit of foreign diplomatic representatives; proposes two judges of the Constitutional Court of the Republic of Macedonia; nominates two members of the Judicial Council; appoints three members of the Security Council of the Republic of Macedonia; nominates two members of the Radio Broadcasting Council<sup>326</sup>. Also the President of the Republic proposes the Governor of the National Bank of Macedonia, appoints the Parliament, appoints and dismisses the Chief of Staff of the Army of the Republic, appoints and dismisses generals, appoints and dismisses the Director of Intelligence Agency and appoints and dismisses other holders of state and public office established by the Constitution and the law. In his competence is the granting of awards and honors in accordance with law; grants pardons in accordance with the law and performs other duties determined by the Constitution.

Duty of the President of the Republic is incompatible with any other public office, profession or political party. The President enjoys immunity. The Constitutional Court decides on lifting the immunity of the President of the Republic of Macedonia with 2/3 majority vote of constitutional judges.

The President of the Republic is the President of the Security Council of the Republic of Macedonia. The Security Council of the Republic is composed of the President of the Republic, the Speaker of Parliament, the Prime Minister, the Ministers in charge of the state administration in the fields of security, defense and foreign affairs, and three members appointed by the President of the Republic. When appointing the three members, the President must ensure the composition of the Council as a whole to

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<sup>326</sup> Council at the beginning of 2014 renamed the Agency for audio and audiovisual media services

adequately reflect the composition of the population in Macedonia. The Council considers issues relating to the security and defense of the Republic and makes proposals to Parliament and Government.

The President of the Republic and the President of the Assembly sign the decree for promulgating laws. But the President of the Republic may decide not to sign the decree for promulgating a law, if he considers that it is inconsistent with the Constitution or is inconsistent with the confirmed international agreements, and to return it to review in the Parliament. If the Parliament adopts it by majority vote of all the members, the President of the Republic shall sign the decree. The President is obliged to sign the decree, if under the Constitution the law is adopted by a two-thirds majority vote of all members of Parliament.

In case of death, resignation, permanent inability to perform duties, or termination of office by virtue of the Constitution, until electing a new President of the Republic, the presidential role of the Republic is performed by the President of the Assembly. The conditions for termination of office of the President of the Republic are officially determined by the Constitutional Court of the Republic of Macedonia. The Constitution also provides that in the event of incapacity of the President to perform the function, he can be replaced the President of the Assembly.

The President is part of the executive branch and he performs it along with the Government of Republic of Macedonia. From a formal legal point the President of the Republic of Macedonia has more ceremonial than effective executive functions, due to the fact that the state's Constitution under Article 88, paragraph 1, explicitly establishes the Government as holder of the executive power. Because of this constitutional detachment of constitutional legal aspect the position of Macedonian President in the executive sphere is closer to the position of a president in a parliamentary system of government organization than to the status and position of the president in a presidential system.

Given the fact that the President is elected directly by secret ballot the legitimacy of the President of the Republic may be stronger than the legitimacy of the parliamentary majority if the President's election is supported by a greater number of votes of the electorate than behind parliamentary majority.

President of the Republic notifies the Assembly on issues of its jurisdiction at least once a year, but Parliament may also request from the

President of the Republic an opinion on matters within his competence. As head of state, the President of the Republic of Macedonia represents the country both domestically and abroad. Internally he represents the state before foreign officials<sup>327</sup>. Internationally, he represents the state when he meets with representatives of foreign states or when he participates in the work of various international associations and organizations<sup>328</sup>.

### **Jurisdiction and acts of the President of the Republic of Macedonia**

The powers of the President of the Republic of Macedonia referred to under Article 84 of the Constitution of the Republic of Macedonia and the jurisdictions that come out of certain laws and regulations, can generally be classified into three areas as follows: in the area of foreign policy or in the field of international relations, in the field of safety and security and the defense of the country.

Despite the fact that in Macedonia there is dual executive power with dominant position of the Government in the field of foreign policy, the President of the Republic is the main subject of international politics because he concludes international agreements in the name of the state. The Government may conclude international agreements only if it is stipulated by law. But despite the fact that the Constitution stipulates priority i.e. important position and role of the President in this area, the law on concluding, ratification and execution of international agreements the Government is given a privileged position in relation to the President of the Republic. This is clearly visible through the large number of legal provisions

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<sup>327</sup> Under international law, the head of state is the highest authority in the external representation of the state, according to the provisions of the Constitution and under international law represents the state in its international relations on behalf of their country giving statements, contracts and appoints other bodies to represent. The head of state can be; individual and collegial (joint) authority. As an individual body can be: president of state, king, khan, commander, emir, sultan and others, whereas as a collegial body: presidency (presidium), federal council and etc.

<sup>328</sup> The representative office of head of state is a relic of the time when the head of state to exercise state functions, to appear before parliament as a representative body of the citizens, and this is the time of absolute monarchy where the monarch is considered the undisputed holder of an irresponsible government that symbolized the nation (Prof. dr. Svetomir Skaric and Gordana Siljanovska Davkova, Constitutional Law, Culture 2009, Skopje, p. 635-667).



committed to the Government and the large number of areas and issues in concluding international agreements<sup>329</sup>. The President of the Republic concludes agreements on borders of the Republic, association or dissociation from a union or community of states, as well as agreements concluded under international law by heads of states.

In the area of safety and security of the state, the President of the Republic has the ability to appoint and dismiss the head of the Intelligence Agency responsible for collecting information relating to safety and security not only for economic but also for political and other interests for the state and its citizens. As head of the Security Council, President of the Republic influences and affects security related issues of the country and can simultaneously submit such proposals to the legislature and to the Government in order to improve the situation in this area i.e. the safety and security of the citizens to be raised to the highest possible level.

Although slightly reduced powers in respect of 1993 in favor of the Department of Defense (as a result of the decision of the Constitutional Court) in the area of the chosen jurisdiction of the President of the Republic the fact is that he is the supreme commander of the Army of the Republic, he appoints and dismisses the Chief of Staff of the Army of Republic of Macedonia and the generals of the Army, he stipulates the manner of command in the army, sets the strategy and the plan for defense of the state and other matters in accordance with law.

The jurisdiction of the President embraces the right and the responsibility to notify the Assembly at least once a year on matters within its competence, as well as the right of the Parliament to seek opinion from the President on matters of its competence. Regarding the latter, it is important to note that the President may, but is not obliged to respond to the request of the Assembly, because it is not his responsibility because of the fact that he is not subordinated to the Parliament.

The right of veto is solid, but not strong enough mean in the hands of the President of the state, which can be used in the adopted laws with regular or absolute majority of votes, but not with laws passed by 2/3 majority in the Parliament of the Republic of Macedonia. The right to veto

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<sup>329</sup> Government under the signing, ratification and enforcement of international agreements is authorized in more than two dozen areas such as economy, finance, culture, science, education and sports, environmental protection, agriculture, urban forestry, human rights, diplomatic and consular relations, defense and security of the state and other areas

in democratic countries is used as a mean of preventing the arbitrariness of the representative body in the state and some scholars and politicians believe that it is „the most terrible prerogative of the President“.

The right to propose the adoption of a new constitution or amendments to the existing constitution, request of certain state authorities to make certain decisions in their jurisdiction, the right to propose the Parliament to declare war or a state of emergency for all or part of the territory of the state, are also questions within the authority of the President<sup>330</sup>.

The President of the Republic of Macedonia carries out the following acts for executing his constitutional and legal powers: plans, policies, ordinances and decisions. Plans are acts or documents for defending the state and development of the armed forces, and also the strategy is an act of defending the country. The decisions made by the President of the Republic may be in the form of individual and general acts. For example, the decision to equip the army or the introduction of emergency or martial law is common act, and individual acts bear on a particular person, such as a decision for appointing and removing generals and others. The decree may be declaratory general and individual act. The decree is declaratory general act when the President of the Republic promulgates laws and it is individual when deciding on a particular issue.

### **The responsibility of the President of Republic of Macedonia**

The President of the Republic of Macedonia is accounted for partial political and full criminal accountability. The political accountability comes down to breaking the Constitution and the laws in exercising his rights and duties, and criminal accountability comes down to all criminal acts punishable by the criminal law of Republic of Macedonia. In the constitutions of the most countries in the world this applies only for most serious crimes.

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<sup>330</sup> If the Assembly can not meet, the decision for war or emergency taken by the President of the Republic, who submits it to the Assembly for confirmation as it will be able to meet.

The proposal for opening an accountability procedure for the President of the Republic, may be submitted at least by 30 Members of Parliament in the Assembly of Republic of Macedonia<sup>331</sup>. The proposal to institute proceedings to determine accountability contains an explanation of the reasons for initiating the procedure, description and evidences of actions that the President of the Republic has violated the Constitution and the laws in exercising his rights and duties. The President of the Assembly delivers the submitted proposal to the Members of Parliament and to the President of the Republic. If the proposal does not contain the previously described elements, the president of the Assembly, before delivering it to Parliament, asks the proposer to reconcile it within five days.

The Parliament of Republic of Macedonia within five days from the date of submission of the proposal forms an evaluation committee on the merits of the proposal. The Commission consisting of a Chairman and ten members within seven days of their inception submit a report to the Parliament<sup>332</sup>. The President of the Assembly shall immediately notify the President of the Republic for the election of the Commission who can submit a written statement to the Commission of the findings of the proposal to initiate proceedings to establish liability.

When the report of the Commission will be prepared and submitted to the President of the Assembly, he submits it to the Parliament and to the President of the Republic and summons an Assembly meeting to be held not later than seven days from the date of submission of the report. After the proposal for opening a procedure for determining an accountability of the President of the Republic and the report of the Commission, the Parliament starts a hearing. The right to explain a proposal has one of the MPs who submit the proposal, and the right to explain the Commission's report has the President or member of the Commission. Regarding the findings of the report and the proposal from the Commission, the President of the Republic may address at the session not only verbally, but in writing.

The Parliament decides to initiate proceedings to establish responsibility of the President with a two-thirds majority vote of all MPs.

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<sup>331</sup> The procedure for initiating the President of the Republic is regulated by the Act regulating the work of the Assembly (article 205-210). Act that regulates the assembly work is published in the Official Gazette No. 130/2010.

<sup>332</sup> Commission members are elected on the proposal of the Commission on Elections and appointments and elected by the Assembly, with the selection must ensure adequate representation of members of parliamentary groups and MPs who are not organized into assembly groups

The decision to initiate proceedings to establish accountability of the President is immediately submitted to the Constitutional Court of the Republic and the President of the Republic by the Speaker. Upon receiving the decision of the Assembly to initiate the procedure of accountability for the President of the Republic, the Constitutional Court sets up a committee of three constitutional judges to review the facts and evidences of violations of the Constitution and the laws by the President of the Republic. The President of the Republic can participate in the proceedings of the Constitutional Court. The Constitutional Court shall decide the responsibility of the President by 2/3 majority vote of the judges. If the Constitutional Court finds the President of the Republic accountable with the required majority, the president's office shall be terminated by virtue of the Constitution.

From a formal legal point of view the Parliament of Republic of Macedonia can open accountability procedure for the President of the Republic unlimited number of times.

Constitution of the Republic of Macedonia, as a rare number of constitutions in the world, includes criminal responsibility of the President which can be seen through the provision to revoke his immunity if the Constitutional Court decides<sup>333</sup>. So based on this provision the President of the Republic is subjected to criminal accountability for everything and not only for the most serious crimes (treason, corruption etc.) When the President is deprived of immunity, then he can be detained against and faced with investigation and criminal proceedings. The Constitutional Court initiates proceedings to revoke the right of immunity of the President upon the proposal of the competent authority where the application for initiation of criminal proceedings has been filed. The Constitutional Court has a lower and upper limit when deciding to revoke immunity. The upper limit is undetermined, while the lower limit is at the level of parliamentary immunity and because of this wide area to take action the Constitutional Court can lift the immunity right of the President to a level of full protection from criminal offense prosecution.

### **Conclusion**

Starting from the constitutional position of the Macedonian Head of State, and the so far practice of the office of President of the Republic, we

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<sup>333</sup> Article 83, paragraph 3, of the Constitution of the Republic of Macedonia, Official Gazette No.52 of November 22, 1991.

may conclude that in a certain period of operation of the established mixed (combined) parliamentary-presidential system of government organization very frequently this system turned into Parliamentary or Speaker's system very easily. In order of this combined system to become more functional it is necessary to define more accurately the relations between the President of the Republic and the Government, and the President of the Republic and the Parliament of the Republic of Macedonia.

For a consistent and precise definition of these relations it is necessary to take account of the need for running a single policy in the sphere of foreign policy i.e. in the field of international relations, safety and security and defense of the country where relations between the Government and the President of Republic are most entwined. Cooperation in these areas imposes as a necessity of these two institutions on issues of common interest and therefore it is needed: 1). The Prime Minister to regularly inform the President of the Republic on issues of realization of policy enforcement and other regulations of the Assembly, 2). The President of the Republic to use the possibility often and to make suggestions for convening meetings of the Government where he will attend, 3). in certain situations the Government to take a position or to give an opinion on an issue of competence of the President upon the request of the President of the Republic, and 4). Greater initiative, cooperation and transparency of the Government in the area of reporting to the President of the Republic on matters within its jurisdiction.

Also needed is more detailed regulation of relationship between the President Republic - Assembly and vice versa, especially due to the fact that both institutions have legitimacy which derives from the citizens of the Republic. In that manner, more frequent reporting to the Parliament on matters within the competence of the President is needed, and not just once a year. The consistent implementation of the right of veto by the President of the Republic in terms of preventing the legislature to enact unconstitutional laws harmful to the citizens of the Republic is also needed<sup>334</sup>. The President needs to be constantly informed about the agenda of the Assembly, to use the opportunity to participate in its work and to request the convening of a special session of the Assembly. Although the President of the Republic does not arise and is not subordinated to the Parliament, however in certain

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<sup>334</sup> The right of veto (stopping law to enter into force) in the 1991-2008 period has been used 20 times. President Kiro Gligorov (1991-1998) used the veto only 4 times, President Boris Trajkovski (1998-2004) 6 times, President Branko Crvenkovski (2004-2008) 10 times. During the tenure of President George Ivanov (2009 -2014) this right has not been used

situations it is necessary for the Parliament to ask the President of the Republic an opinion on matters within its competence. This particularly applies to situations when it is necessary for the public and its elected representatives to be familiar with certain detailed actions of the President.

In order to execute the constitutionally designated powers in the defense more efficiently, it is legally required to operationalize the position of Supreme Commander and Supreme Command of the Armed Forces of Macedonia and the role of the armed forces of Macedonia and clearly distancing and positioning the position of Defense Minister and Chief of Staff of the Macedonian Army.

In the area of safety and security it is inevitable to start a process of reorganization of the security services in the context of reorganization of the Intelligence Agency and unification with army intelligence, and also precise and consistent regulatory control and oversight of the intelligence of the police and the army.

Due to consistency of positions to accurately determine the position of the President of the Republic and his accountability it is necessary to fill the legal void in the area of control of the constitutionality of acts of the President in the Constitution of the Republic of Macedonia. Completing this legal gap will allow in the future to explicitly define the possible accountability of the President in violation of the Constitution and laws of the Republic of Macedonia.

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