UNIVERSITY "Ss. CYRIL AND METHODIUS" in SKOPJE

INSTITUTE FOR SOCIOLOGICAL, POLITICAL AND JURIDICAL RESEARCH

# ANNUAL of ISPJR 2015

Volume XXXIX Number 4 Skopje, 2015

INSTITUTE FOR SOCIOLOGICAL, POLITICAL
AND JURIDICAL RESEARCH
UNIVERSITY "Ss. CIRYL AND METHODIUS" - SKOPJE

# ANNUAL of ISPJR
# 2015

Volume XXXIX Number 4 Skopje, 2015

**Published by:**
University "Ss.Cyril and Methodius" - Skopje
Institute for Sociological, Political and Juridical Research – Skopje
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Partizanski odredi bb, 1000 Skopje
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**ISSN 1857-7350**

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# FOREWORD

International Conference Challenges of Contemporary Society takes place in the year when the Institute for sociological, political and juridical research celebrates 50 years of existence. Over the years the Institute continuously encouraged and opened research questions and issues in the different fields of social sciences, and, as a result, large number of scientific and applied projects were conducted. Within this half century of existence around 500 applied and scientific research projects had been conducted and more than 200 different publications were published. As a result of this continuous work the Institute has been involved in the management, promotion and development of socio-economic conditions in the Republic of Macedonia.

The Conference Challenges of Contemporary Society was in this spirit of anticipating societal changes and challenges. The aim of this Conference was to provide a forum for an interdisciplinary discussion for contemporary social issues.

The agenda of the Conference covers a wide range of very interesting issues related to the modern society and challenges from important social phenomena such as:

- Challenges for democracy and democratization;
- New media, new communication, new identities;
- Social challenges for contemporary society;
- Management, business and workforce issues in the 21st Century.

Contributions from the fields of sociology, political science, communication science, law, management, psychology, and also contributions regarding methodological issues related to how to study these phenomena, made this Conference significant and inspiring.

In this edition of the Annual of the ISPJR are several works of whose papers were successfully presented at this International Conference in the Section: Social challenges for contemporary society.

PhD Mirjana Borota Popovska

UDC 323(4-12)(049.3)
Sceintific paper / Научен труд

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# STATE CAPTURE AND POLITICAL CLIENTELISM IN CENTRAL AND EASTERN EUROPE

Abstract

This paper reviews theory, research literature and data with respect to state capture phenomena in the Central, Eastern European democracies. Specific aspects of state capture in the Eastern European post-communist polities are described and analyzed based on data provided by international and European organizations and joint survey projects.

**Key words**: state capture, political clientelism, political corruption, post-communist polity, Eastern European democracy

*Motto*:
"As we approach the fourth decade of the Third Wave of global democratization, global democratic progress remains at something of an impasse. […] Since 2005, the rest of the world has witnessed not a springtime of democracy but a democratic recession, in which levels of freedom have fallen for several consecutive years and democratic reversal has become more common".
(*Preface*, by Larry Diamond, in:
Brun, D.A., Diamond, L. (2014) *Clientelism, Social Policy and the Quality of Democracy*, John Hopkins University Press)

## THE ISSUE OF "STATE-CAPTURE" IN EASTERN EUROPEAN POST-COMMUNIST POLITIES

After the fall of the iron curtain at the end of the 1980s, the Eastern European former communist countries have enrolled in complex processes of transition to democracy. Later on, the countries which have joined EU and N.A.T.O. have further enrolled in processes of democratic consolidation. All of them have followed the same EU integration map and, in spite of similarities in the type of democracy and democratic institutional architecture, the quality of democracy differs from one Eastern European country to another.

Beyond history and political culture differences, there are characteristic aspects of these democracies which address their very democratic institutional architecture and functioning, quality of governance and quality of democracy. One such characteristic is political corruption.

In this paper we approach the state capture phenomena in Eastern Europe. The Eastern European polities are typically undergoing simultaneous processes of democracy-building and state-building. In this context, state capture phenomena become most interesting: the role these phenomena play in the Eastern European democracy-building and state-building has not been completely understood. We aim at extending the "state-business" approach to a "state-business-media" approach in which state capture is tempted (and, eventually, achieved) by combined actions of complex groups including state officials, high administrative officeholders, politicians, private business, and media actors at the national and transnational (regional) levels. To this aim we make extensive use of both perception-based indexes and real data reported by national and international institutions and organizations involved in the control and/or monitoring of democratic state-building in the eastern half of Europe.

## ON THE RATIONALE, GOAL AND METHOD OF APPROACH

The Third Democratization Wave has often been evaluated by political analysists as proving early "reverse" tendencies. One possible source of failure is often identified in the particularities of the state capture phenomena in the Eastern European post-communist polities. We further investigate the state capture phenomena by extending its reach over the relationship between business, governance, legislative, judiciary system, press and democratic institutions. We aim at aggregating a cross-country comparative perspective on the Eastern European democracies of the "third wave" and explain the roots of a potential democracy failure in these states. State capture is a special type of systemic political corruption which has a

particularly negative impact on the Eastern European young democracies: these democracies are involved in complex simultaneous state-building and democracy-building processes. Characterized as weak democratic polities, they might provide the proper context for the emergence of political corruption phenomena which may weaken them even more, and eventually induce their failure.

The main goal of this research is to identify the so-called "grey areas" in the construction of the Eastern European polities, that is, the key structural, functioning and coordination pointers between the parts of a polity and between polities themselves in a particular geopolitical area.

In this paper we aim to develop a necessary preliminary research on the basic modeling elements: the type(s) of political phenomena which might best reveal the polity evolution dynamics, and the means to put in a quantifiable relationship the individual perceptions on the political phenomenon, on the one hand, and the real functioning of the polity, on the other hand. To this goal, we first need to achieve a description of the polity (macro level) in terms of its perceived functioning at the micro level. We make intensive use of various perception indexes on corruption, democracy quality, support for democracy, democratic institutions, governance, and the media as these indexes have been defined and constructed by various international organizations. We expect to identify the indicators which could describe, either directly or indirectly, how the parts of a polity are designed in the Eastern European young democracies, and how do they interact and coordinate with each other. One research question approached in this paper is therefore which indicators could be used in order to achieve a (partial or global) perspective over the dimensions of the state capture impact on the (sectorial or global) functioning of an Eastern European polity. Another research question addresses the issue of whether a lack of-, or a bad coordination between the parts of a polity might result in the emergence of polity failure.

From a political economy perspective, both the theoretical and the empirical research addressing the state capture issue combine so far two fundamental dimensions: democratic governance and its relationship to the firms and business area. In this paper we further develop the analysis of state capture phenomena by taking into consideration empirical evidence on the relationship between political leadership, governance, firms and business, and other democratic institutions: the parliamentary and the justice systems, and also the civil society and the media.

## HISTORICAL AND POLITICAL CULTURE ISSUES

Some authors identify the roots of the differences between the Eastern European democratic polities in the historical differences which impacted the formation

of nation-states in the Eastern Europe, in the political culture and regional sub-cultures of the east, central, northeastern or southeastern Europe, or in the different communist heritage of these societies. (Markowski, 2015; Klingemann et al., 2006).

State capture temptations in Eastern Europe have deep roots in the authoritarian past (Markowski, 2015; Bernhard, 1993). Civil society seems to get more aware of its own status, while collectivistic tendencies are characterized by Markowski as diminishing the quality of democratic understanding (2015).

Our approach takes into consideration the historical differences emphasized by the research literature and standard measurement projects between the democracies in the eastern half of Europe. The research literature and the measurement international and European projects are often based on typical groups of countries. In this paper we adopt this organization of countries in groups of comparative democratic performances and corruption evidence.

## STATE CAPTURE: DEFINITIONAL AND MEASUREMENT APPROACHES

State capture is a systemic form of political corruption which distorts the functioning of a polity. It is considered as the strongest form of political corruption and the most dangerous for a democratic state.

As Robert Harris approaches its definition, political corruption is made possible by the political system itself: it "captures" its functioning and operations by making it working not for the public welfare, as it should, but for the private welfare and private interests.

Political corruption emerges and grows fast in the so-called "grey areas" shaped by the incompletely or wrongly specified relationships between the different functions of a government and the different components of a polity, flourishing when facilitated by the ambiguity in laws, lack of institutional coordination, and manipulation of governance, legislative and/or judiciary structures and functioning by private interests (Harris, 2003: pp. x). Though usually approached as associated to the private economic interests of firms and private business, political corruption covers a much wider area, which goes from fraud to state capture, from national to transnational issues(Heywood, 1994, 1997).

While scholars emphasize the relationship between the notion of state capture and the concepts of governance, democracy and institutions, international organizations define it in operational terms which allow measurement. Such definitions point explicitly to the capacity of the private firms and business to distort the functioning of the fundamental democratic institutions - governmental, legislative and juridical – in favor of their goals and benefits by providing gifts and direct or indirect payments

to the politicians or to the public officials holding key positions in such institutions. In these definitions, the European and international organizations emphasize the essential aspect of state capture in transitional democracies: its destructive power is associated with incomplete consolidation of democracy, low level of development of the civil society, and insecure property rights (PREM-World Bank, 2010).

State capture could play a major role in weakening a democratic state and finally induce a state failure. The Ukraine case provided a threatening example of political and private business leadership tempting to capture the state with the goal of extracting individual and group benefits. However, it was not the Ukraine case to introduce and define this type of political corruption, but it was actually the case which confirmed the analysis and predictions concerning the potential causes of democracy failure in transition countries in the Eastern Europe.

The World Bank approach has defined the "state capture" as the final result of the illegal actions of individuals and/or collective agents to provide private benefits to political officeholders or high governmental and/or public administrative officials in exchange of influencing and controlling law formation and/or policy design and implementation in their own favor. Using this definition, the "corruptor" and the "corruptee" are characterized as follows:

This type of "capture" phenomena addresses first and foremost the institutions which are fundamental for a state: executive, legislative, judiciary and any other type of regulatory institution which is designed to control state's functioning.

The "corruptor" agent is defined as any individual and/or collective agents (interest groups, firms) interested in escaping control of regulatory institutions with the explicit scope of maximizing private and/or group interests against state's interests and against the public good. Moreover, such individuals or groups actually "buy" policy making, laws, decrees and any other form of regulatory acts/processes by providing private benefits to the officeholders in charge with policy or law formation. The typical situation is usually associated or appears in close connection and/or in particular state-building, democracy-building or state development contexts characterized by weak control institutions and legislation, weak channels of political intermediation to governmental, presidential, and public administration institution, and weak or underdeveloped public structures which are supposed to provide support and protection to the societal interest at large (World Bank, 2000: pp. xv-xvi).

The typical situation for the Eastern European post-communist countries appeared as soon as they have involved in complex transition-to-democracy processes at the beginning of the 1990s and continued later as well. At that time, as the World Bank observers noted (World Bank, 2000: p. vii), the economic and political context in Eastern and Central Europe as well as in the North-Eastern Europe or in the

Central Asia covered simultaneous processes of political (democratic) institutions and market economy emergence and development, and processes of privatization which have provided for the emergence and growth of corruption phenomena. This context has stimulated the international organizations, like World Bank, and European structures, like the European Union and its associated institutions, to enact and develop corruption studies and anticorruption strategies aimed at eradicating these phenomena and assist the democracy-building and state-building processes in these regions. State capture has been systematically investigated by the World Bank which transformed it into an institutional priority due to its potentially fundamental impact on the quality of democracy in Eastern European transition and developing countries, and also due to its potentially particularly dangerous role in state failure.

The first systematic survey research on this issue (BEEPS) has been initiated by the World Bank and the European Bank for Reconstruction and Development, which have jointly initiated and developed starting with the 1990s the first project on finding empirical evidence on state capture type of corruption, defining the state capture phenomena, and provide the solution for avoiding and/or eliminating it.

By the end of 1990s when the first stages of the transition-to-democracy processes in the Eastern European countries have provided consistent data collections and stimulated the survey research, the World Bank has initiated a project concerned with the measurement of particular actions by business actors which have been considered as directed to state capture goals: EBRD-World Bank Business Environment and Enterprise Performance Survey (BEEPS).

**Definitions based on abuse and illegal use of office able to distort democratic state functioning**

In BEEPS, state capture may be identified by examining a number of indicators revealed by survey research. There is a class of illegal activities which have been identified and included in the definition of state capture (World Bank, 2000; p.vii): exchange of Parliamentary votes and/or presidential decrees for private benefits and interests; exchange of courts decisions for private benefits/interests; abuse and/or misuse of central bank funds; illegal funding of political parties, illegal funding of electoral campaigns by private actors (i.e., persons, business companies, small firms).

In the BEEPS project, state capture has been investigated by means of the unofficial payments required/received by the state officials and politicians from the private business companies/firms in exchange of modifications to governmental regulations, court decrees and legislative outcomes (i.e., laws). Such unofficial payments appear as the corruption level perceived by the firms from their experience

of interaction with key economic, political and juridical officeholders.

Modeling the state capture phenomena, the BEEPS approach has been initially based on the state-business relationship investigation and on economic principles and indicators. Firms' perceptions on Governance are confronted with perceptions over corruption and/or difficulties in doing business. The survey research investigates several state capture activities, like: "*problems doing business*", with a special focus on the "*unofficial payments in sectors",* and in particular on the unofficial payments aimed "*to influence the content of new legislation, rules, decrees, etc."* **In Table 1** such data are extracted from the BEEPS database for several countries from each grouping specified in our approach. The data in **Table 1** are but a brief example of how this research defines and employs (composite) indexes of firms' perceptions on the political corruption situations which they have encountered.

**Table1.** *State capture activities describing state-firms relationship and composite indexes of corruption.*

| | **2002-2005** | | 2013 | |
|---|---|---|---|---|
| **country** | **problems doing business**<br><br>(corruption, functioning of the judiciary, macroeconomic instability, uncertainty about regulatory policies)* | **unofficial payments and corruption/unofficial payments in sectors:**<br><br>to influence the content of new legislation, rules, decrees, etc. | Graft Index | Bribe Tax Index** |
| Central Europe | | | | |
| Czech Republic[1] | 25%-75% | <5% | 3%-4% (2009)<br>4%-5%(2013) | approx 30%(2009)<br>10%-12%(2013) |
| Hungary[2] | 0%-75% | <5% | 6%-7% | 50%-60% |
| Poland[3] | 25%-100% | 5%-10% | <2% | 15%-20% |
| Slovenia[4] | 0%-50% | 2%-3% | <1% | 30%-35% |
| Western Balkans | | | | |
| Albania[5] | 50%-75% | | <10% | < 35% |
| Macedonia[6] | 25%-75% | 5%-10% (2002);<5% (2005) | 8%-10% | < 5% |
| Croatia[7] | 25%-75% | 5% (2002);<br><br><5% (2005) | 4%-6% | approx. 15% |

| | | | | |
|---|---|---|---|---|
| **Eastern Europe** | | | | |
| Bulgaria[8] | 25%-100% | 5%-10% | approx. 14% | approx. 5% |
| Romania[9] | 25%-100% | <5% (2002); 5%-10% (2005) | 8%(2009)<br>6%(2013) | 30%-40%(2009)<br>5%-10%(2013) |
| **ex-USSR countries** | | | | |
| Ukraine[10] | 25%-100% | 5%-10% (2002);<5% (2005) | 15%-20% (2008)<br>40%-50%(2013) | 40%-50%(2008)<br>approx.100% (2013) |

*Sources: EBRD-World Bank Business Environment and Enterprise Performance Survey (BEEPS),(World Bank, IFC, Enterprise Survey)*

**The figures in* **Table1** *show the largest interval simultaneously covering the values for all four selected indicators;*

***For the Bribe Tax Index,* **Table1** *has selected only the set of indicators which identify" the extent to which specific regulatory and administrative officials require bribe payments in order to secure a government contract" (BEEPS-at-a-Glance).*

A major advantage of this approach relies in the way in which state capture phenomena are measured by means of the firms' perceptions and direct experience: instead of employing the number of firms engaged in these activities, the approach quantifies the share of firms which are directly affected by the outcomes and/or the impact of these activities (World Bank, 2000; p.vii). On this basis, the approach constructs several aggregate indexes (BEEPS) and composite indexes (Enterprise Survey) which measure the impact of state capture phenomena across several transition countries (2002-2005) and consolidating democracies (2008-2013) in the eastern half of Europe (see **Table 1**). One major disadvantage is that it considers exclusively the relationship between state and firms and the economic background of this relationship. Moreover, this model takes into consideration the illegal activities which fall under the incidence of state capture phenomena leaving apart other types of relationships between the state, government, Parliament and juridical system of a democratic regime which might become the target and the vector of state capture phenomena.

**Definitions based on legal use of office aimed at distorting state functioning**

Initial approach has targeted illegal actions and illicit benefits. Further theoretical and empirical studies developed in scholarly approaches on state capture have advanced the definition of state capture so as to include a broader class of political corruption phenomena based on resource extraction from the state / officeholders to private benefits of individuals and groups/firms, and eventually redistribution in exchange of votes, influence and control over law and policy makers and over the fundamental state institutions. This class of political corruption phenomena includes several forms and combinations of corruption phenomena based on rent extraction, resource redistribution and competition: (i) political clientelism, (ii) institutions and resource predation, (iii) fusion, (iv) exploitation of resources, institutions and people, and (v) formation of specific state institutions and capacities aimed at making state capture procedures operational and effective (Grzymala-Busse, 2008).

Moreover, later approaches have introduced a new class of state capture activities which have a legal character notwithstanding their negative effects on the public good. In this respect, Daniel Kaufmann and Pedro Vicente introduced the notion of legal corruption (Kaufmann and Vicente, 2005). Their definition of corruption covers a more general perspective over this class of phenomena by including both illegal and legal actions. The authors replace the classical perspectives over corruption as "abuse of public office for private gain" and as "influence of the public policy in exchange for votes" (Stokes 2009, 2011; Bardan, 1997; Rose-Ackerman, 1978) with the idea of "appropriation of public office/policy for private purposes" (Kaufmann and Vicente, 2005: p.2) which covers the state capture phenomena as well (Kaufmann and Vicente, 2005: p.3).

Based on their definition, they develop a political economy model of political corruption which is able to explain the state capture phenomena as a consequence of the relationship between politician and private sector actor(s) which is exploited by both parts for their personal benefit. This relationship consists in the two parties exchanging favors which may include procurement / acquisition contracts, formation of law, allocation of legislation, electoral campaign funding, an explicit change of power from one elite actor to another following previously established (hidden/ unofficial/private) agreements, etc. Basically employing an allocation mechanism as a means to explain the various processes of "capture", the model succeeds to explain the state capture by the legal corruption as the mutual agreement between some of the economy actors to the disadvantage of the population (Kaufmann and Vicente, 2005: p.4).

In our comparative analysis of this type of state capture phenomena in the Eastern European countries we have included political clientelism approaches.

STATE CAPTURE MODELING

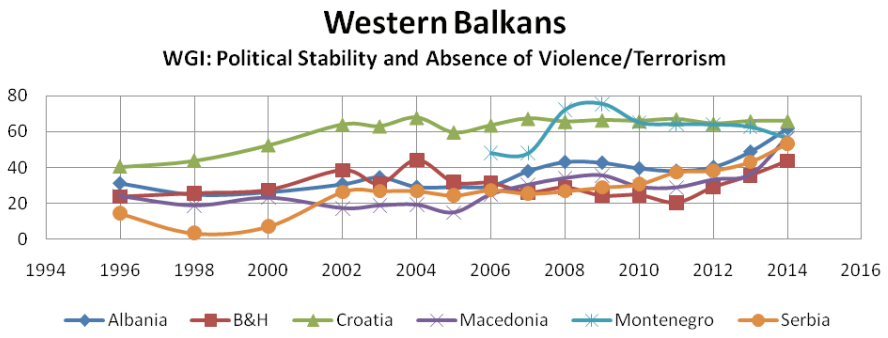
**Governance-Based Models**

In the World Bank measurement model, governance is modeled as a set of rules, mechanisms and institutions which provide for the exercise of authority in a country. Governance is achieved from the convergence of the appointing, controlling and replacing processes, the policy making capacity, and the institutional resources and norms. The model associates them with six standard variables in the survey research. Government formation and control processes are described by two variables, that is, (a) voice and accountability, and (b) political stability and absence of violence/terrorism. Government's policy making capacity is described by other two variables, namely (c) government effectiveness, and (d) regulatory quality. The rules with regard to the interaction between the citizens and the state, and between the citizen and the government are described by two more variables: (e) rule of law, and(f) control of corruption (Kaufmann, Kraay and Mastruzzi, 2010; pp.4-5).

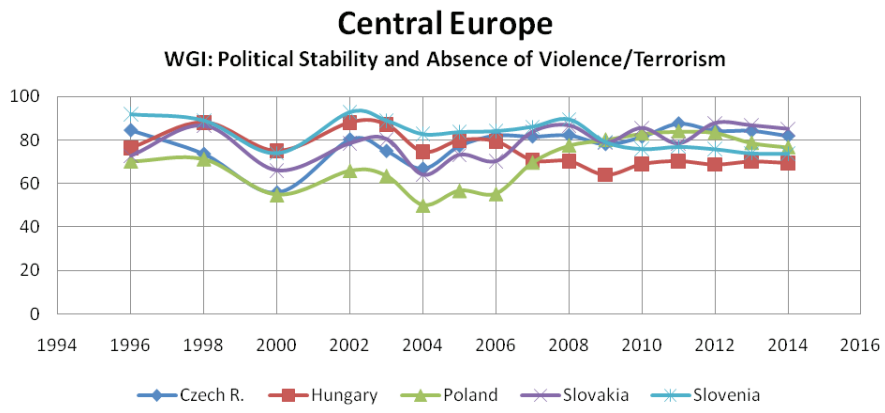
Our approach aims at an extended modeling approach on the state capture which could include both legal and illegal forms of corruption. Moreover, we try to extend the state-capture-by-business model by further investigating other relevant relationships beside the classic state-business one. We further extend some conceptual relationships described by various authors in the state capture and political influence research literature.

**Figure 1 (a), (b), (c), (d), (e). Political Stability (WGI, World Bank).** *WGI (WB): Governance Indicators in Central, Northern, Eastern, and South Eastern Europe and in former USSR states.*

(1a)

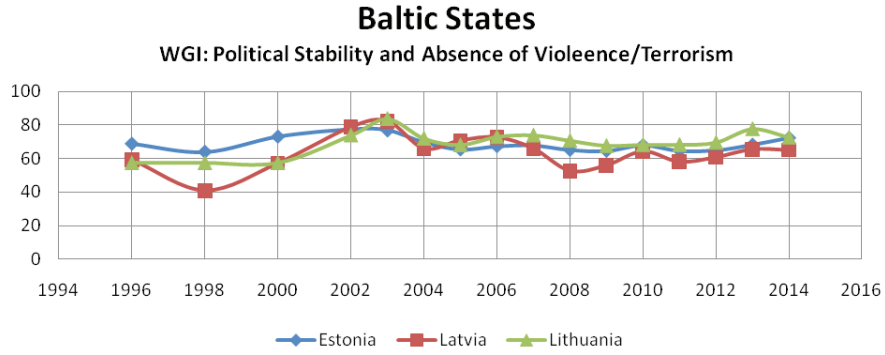



(1b)

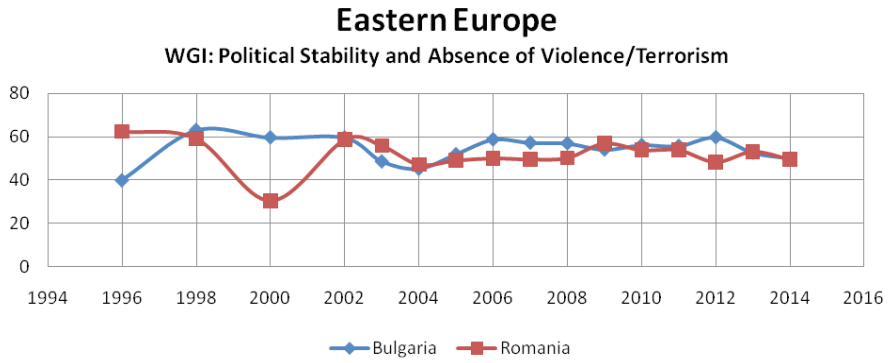



(1c)

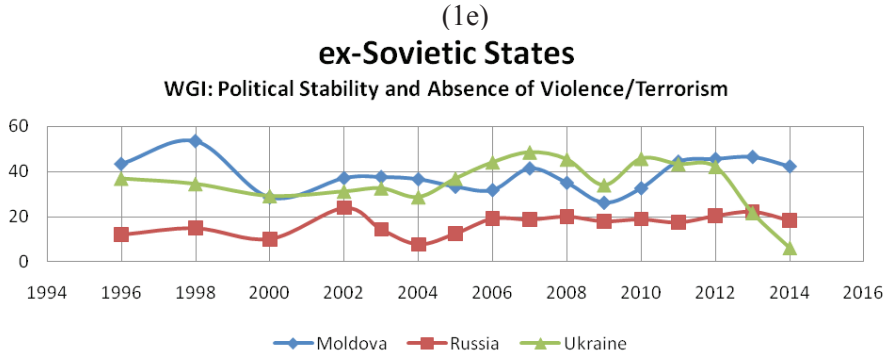
One possible extension is to associate the relevant variables in the governance-based modeling of state capture (Hellman, Jones, Kaufmann and Schankerman, 2000) so as to emphasize the context(s) which might facilitate, stimulate or actually produce state capture phenomena. To this aim we have identified the political instability data in the World Bank governance-based model and have associated it with the variables of governance and rule of law. The data provide support to the association between state capture and political instability induced by low quality of governance and weak rule of law for the countries in the eastern half of Europe (see **Figure 1 a, b, c, de** and **e,**).



(1d)




(1e)




*Source: EBRD-World Bank Business Environment and Enterprise Performance Survey (BEEPS) http://data.worldbank.org/data-catalog/BEEPS.*

One such context is the political instability induced by activities which could be classified as state capture intended. In order to associate a facilitating context with the state capture situation, we have investigated its potential relationships to vote buying (in Parliament) and policy buying (in Govern) by mixed interests groups consisting of politicians, business actors, juridical actors and media partners in situations in which all actors involved (or, at least, some of them) hold key positions in the Parliament, Government, administrative, judiciary and control institutions. As a matter of fact, this is a classical scenario of state capture by state officeholders with the particular aspect of the joint actions between state officeholders/ state high officials and political leadership, business, and media actors. It is associated to contexts in which political instability is facilitated by (low quality of) governance and by the specific dynamics of rule of law.

Though this type of situation is often approached in a transnational (geopolitical) perspective, the data provides support to the idea that indicators of state capture

could be defined and constructed from the association of variables describing the dynamics of the coordination between parts of a transitional polity.

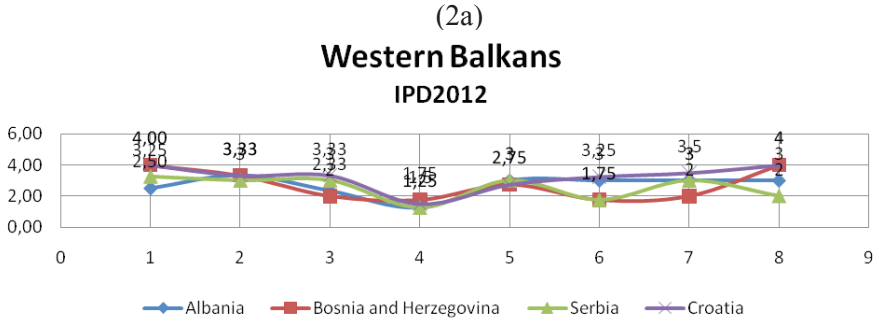
### Institution-Based Models

Political clientelism is one of the possible ways in which state capture may occur and operate. While there is not a general consensus with regard to its definition, different authors have emphasized some aspects which are relevant: dyadic relations, contingency, hierarchy, and iteration (Hicken, 2011). Other authors construct a quantifiable relationship between political clientelism and the ways in which institutions in a democratic regime are affected by its impact (Volintiru, 2012a, 2012b).

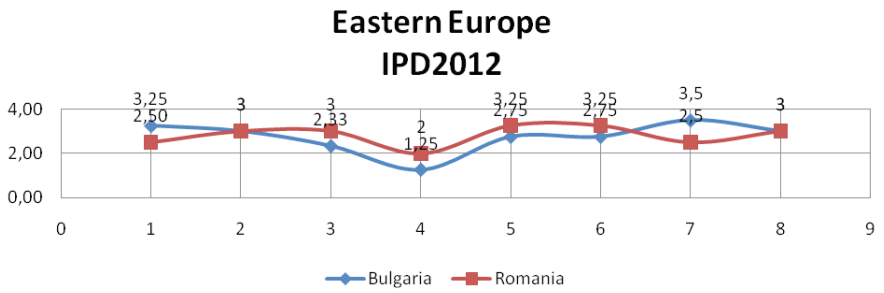
Our approach models the facilitating context for state capture phenomena by selecting the indicators which describe the institutional architecture, its quality and flexibility as well as its performance in terms of democratic function. We have selected a number of 8 variables from the IPD database (Institutional Profiles Database, 2012):A100 = Functioning of political institutions; A104 = Freedom of information; A107 = Legitimacy of the political authorities; A203 = Internal conflicts; A302= Level of corruption; A311 = Capacity for state reform; A505 = Priority of the elite in relation to development and growth; A506v = Political authorities' decision-making autonomy. These variables are taken into consideration as describing structural elements of contextual facilitation of state capture phenomena. Their values are congruent with the situations of political instability and weak rule of law in the young democracies in the Central and Eastern Europe and prove that they act as quality of democracy conditionals in these countries.

**Figure 2 (a), (b), (c), (d), (e).** *The values of the selected (eight) IPD variables for the countries in the eastern half of Europe (2012).*

(2a)

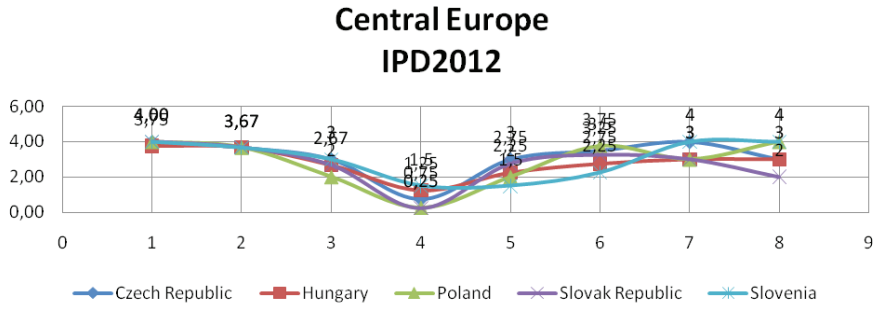


(2b)

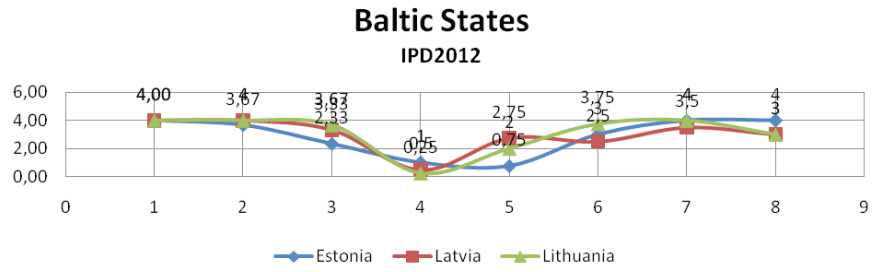


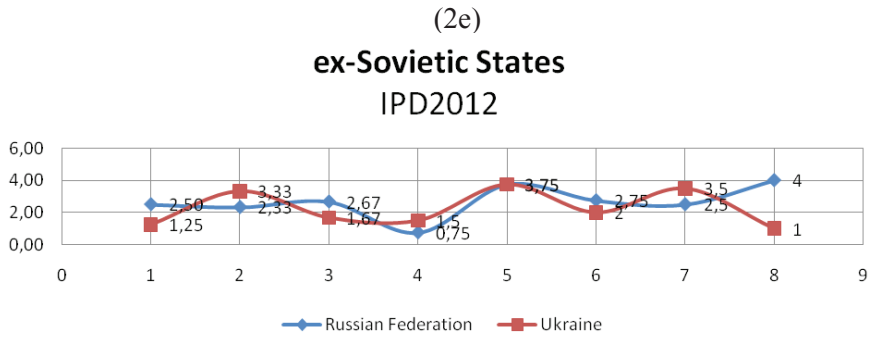

(2c)

The values of these variables and their dynamical relationship have provided for a quantitative comparative analysis in the countries of the eastern half of Europe as reported by IPD 2012 (see **Figure 2 a, b, c, d** and **e**).




(2d)






*Source: Institutional Profiles Database 2012*

**State Capture and the Judiciary System**

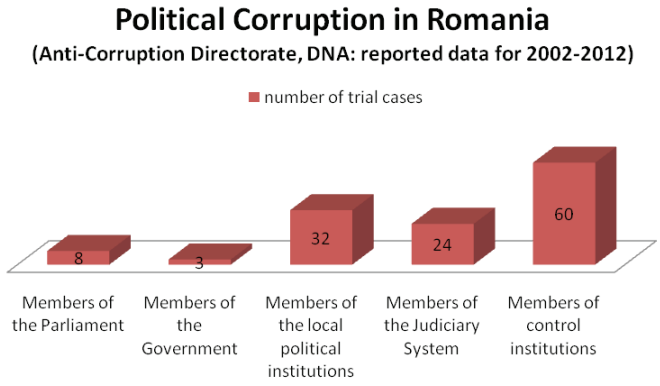
As a difference from the indexes based on perceptions of corruption, data available in Romania on the individual cases of political corruption provides for a different perspective on this phenomenon, though data is not sufficient as to draw general conclusions.

Romanian Anti-Corruption Directorate (DNA) has succeeded to prove independent from the political influence and political clientelism phenomena and report most relevant casesof political corruption starting with prime-ministers and members of the Romanian parliament. Many of these cases fall under the state capture specification and prove to have appeared as early as 2002-2005 when the judiciary system was rather weak and subjected itself to corruption attempts from both political and business leadership.

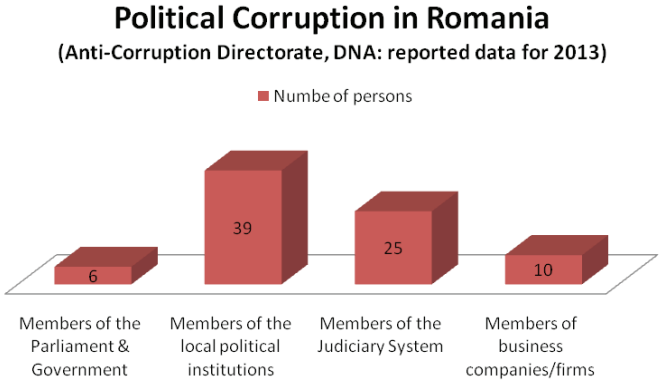
Romanian DNA data have been included in this paper as a feedback to the perception-based evaluations performed by the European and international measurement projects. For a transitional country, Romania was characterized in 2002-2005 by a warning level of state capture activities. This level has ever increased until 2009 (see **Table 1**). The judiciary cases reveal that the level identified in 2002-2005 by means of perception-based firms' experience reporting data was real, though much lower than it really proved to have been (see **Figure 3 a, b**). It is only nowadays that we realize that the reliability of this survey research is being confirmed after almost twenty years. This only means that the state capture data should be intensively employed in correlating actual processes with their context and initial conditions of 2002.

**Figure 3 a, b.** *Romanian DNA reported data in judiciary cases from 2002-2013. DNA has lately completed the trials of judiciary cases of grand political corruption activities which often fall under the specification of state capture phenomena.*

(3a)




(3b)




*Source: Romanian Anti-Corruption Directorate (DNA). Available at: <http://www.pna.ro/faces/results.xhtml>. Accessed: 6 January, 2016.*

As reported by several judiciary institutions, the politicians and private business actors sentenced in Romania (after 2012 only) have been trialed and convicted for abuse in office, for buying Parliamentary votes concerning legislation and other decisions, bribing high officials in the judiciary systems for obtaining favoring courts decrees, and bribing high officials in the Government for private business groups benefits against the public good and societal interests[11]. Looking at the data, one conclusion which can be nevertheless drawn is that in Romania, for example, the persons convicted in the current judiciary cases of grand corruption

have been active in the political realm as early as 2002-2005, the period of time for which BEEPS project has provided the first clues on state capture activities. This makes a relevant point for the critics of the perception-based indexes of corruption or democracy: the BEEPS indexes succeeded to reveal that the state capture activities have certain characteristics and are identifiable in various degrees in almost all transitional democratic regimes in Central and Eastern Europe.

### Political Clientelism and State Capture Temptations as Mirrored by the Eastern and Central European Media

Based on various measurement projects and data collections developed during the past years by international organizations, we further extend this class of activities so as to include other types of actions and actors, like (i) mass communication and media companies, press media (newspapers, radio, television), and internet media (socializing networks), as well as (ii) actions by foreign state actors in the realm of international relations. The corruption and state capture in the Yanukovych case in Ukraine (Katchanovski, 2015; Baldwin, 2015), and the latest political developments in Moldova show that this latter factor could be relevant in state capture phenomena (Katchanovski, 2006).

In several Eastern European countries, the danger of state capture is almost always associated with another type of phenomena which could be aggregated under the label of "media capture" by business and political leadership. State capture has been defined as a particular type of relationship between business and state officeholders which mutually exploit it in order to "capture" (i.e., to control it for personal benefit) law or policy formation, legislation, judiciary decrees and resource allocation. However, media proved to play a pivotal role: it has often been used in transitional countries of Eastern Europe for inducing resistance to democratic reforms (Hegedűs, 2006), and lower the trust in state, governance and social justice (Podumljak, 2014; Örnebring, 2012). The occult relationship between high officials and officeholders in private business, political leadership and judiciary system is often magnified by the capacity of the elites to use media in order to hide corruption from the population. Against this type of political clientelism an Eastern European media project has been initiated (Civil Response to Clientelism in Media) and is currently implemented in Croatia, Romania, Bosnia and Herzegovina, Serbia, Macedonia, and Montenegro (see also Expert Forum and Macedonian Institute for Media).

## CONCLUSIONS AND FURTHER MODELING RESEARCH WORK

We aim at further extending the definition of media capture by politicians and business.

While some polity models are aimed at explaining uprisings and insurgence (Cederman, 1997), they cannot explain the democratization phenomena. Following Tilly's theory about the mechanisms and processes explaining the revolution, our approach aims to identify a different design of a polity model.

The final result of this preliminary research is that the study of all these variables presented above might enhance a new look at the problem: a polity model could be designed by taking into account the structural, functional and complex dimensions of the consequences produced by political clientelism and its associated processes which diminish the quality of democracy in the studied countries.

***Notes***
***(Endnotes)***

[1] Czech Republic BEEPS-at-a-Glance 69243, Czech Republic (Enterprise Survey - Czech Republic Country Profile 2013)

[2] Hungary BEEPS-at-a-Glance 69266, Hungary (Enterprise Survey – Hungary Country Profile 2013)

[3] Poland BEEPS-at-a-Glance 69288, Poland (Enterprise Survey – Poland Country Profile 2013)

[4] Slovenia BEEPS-at-a-Glance 69336, Slovenia (Enterprise Survey – Slovenia Country Profile 2013)

[5] Albania BEEPS-at-a-Glance 69212, Albania (Enterprise Survey – Albania Country Profile 2013)

[6] Macedonia BEEPS-at-a-Glance 69285, Macedonia (Enterprise Survey – Macedonia Country Profile 2013)

[7] Croatia BEEPS-at-a-Glance 69242,Croatia(Enterprise Survey-Croatia Country Profile 2013)

[8] Bulgaria BEEPS-at-a-Glance 69241, Bulgaria (Enterprise Survey-Bulgaria Country Profile 2013)

[9] Romania BEEPS-at-a-Glance 69323, Romania (Enterprise Survey-Romania Country Profile 2009, 2013)

[10] Ukraine BEEPS-at-a-Glance 69343, Ukraine (Enterprise Survey-Ukraine Country Profile 2008, 2013)

[11] See full list of convicts on: https://en.wikipedia.org/wiki/List_of_corruption_scandals_in_Romania. Accessed: January 6, 2016).

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UDC 316.4-054.73)(4-672.EU)(497.7)
Sceintific paper / Научен труд

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# MACEDONIA'S COMPLIANCE WITH EU POLICIES AND REGULATIONS FOR IRREGULAR MIGRATION AND ASYLUM

Abstract

Migrants and refugees coming from Africa, the Middle East, and South Asia have presented European leaders and policymakers with their greatest challenge since the Europe's' economic crisis. Mediterranean external borders of the EU have been largely affected with tragic events and overwhelming management of huge migration flows, which in the last two to three years have changed their course through the territory of western Balkan countries. In 1999, the Heads of State and Government agreed that all EU MSs should share the responsibility for the refugees and irregular migrants; unfortunately, until today, an establishment of a single unified European asylum system based on the principle of shared-burden and solidarity is still waiting for execution. The paper, following an extensive documents review and analysis, attempts to presents in structured manner, the European Union policies and regulations, and poses the question on to what extent Macedonia, as one of the western Balkan countries affected by huge number of illegal immigrants, is in compliance with certain EU migration policies and regulations. The paper concludes

that EU immigration legal framework documents *de facto* reflects the whole rigidity and the failure of the European bureaucratic labyrinths as well as the EU legal inertness and cumbersome operational migration policy; it states some main concerns in relation to the development of the EU migration and asylum policies in the near future. In the case of Macedonia, it argues upon its position in the current migration flows and its main actions and responsibilities in complying with EU regulations and policies.

**Key words:** migration, asylum, EU, compliance, Macedonia.

## INTRODUCTION

Western Balkan, as a region surrounded by EU MSs, continue to be largely a transit area for irregular migratory flows between different MSs and Schengen Associated Countries (FRONTEX, 2014). The ongoing dynamics of war conflicts in Syria and Iraq represents a source and main cause of the increased number of migrants transiting the western Balkans on their way to EU MSs as their final destination. These increased movements have significantly affected transit countries, especially Turkey, Greece, Serbia and Macedonia. There are several illegal migration routes identified; Frontex data from 2015 (comprising the period from January to September) revealed alarming numbers nearly identical as previous year however for a period of only eight months for the same routes.[1]

The number of intentions to request asylum has been an indicator for the number of people crossing the Macedonian territory.After the adoption of the amendments of the Law on asylum and temporary protection in 2015, the category of 'intention to request asylum' was introduced (Law on Asylum and Temporary Protection 101/15) and since then, the Ministry of Interior reports regularly the number of issued intentions to request asylum. Since 19th of June until 31st of October this year, 200 238 intentions were issued to foreign nationals, whereas since that date, there were only 70 asylum requests, based on the previously issued intention.[2]

Taking in consideration the position of Macedonia as a transit country for migrants progressing towards western Europe on one side, and its EU accession status on the other, the paper poses the question of whether and to what extent the country's regulatory framework is in compliance with the EU measures in the area of irregular migration and asylum policies by utilizing a simplified comparative approach. The methodology applied is based upon a double field of intervention: EU (international) - scrutinizing the irregular migration and asylum *acquis* in general, and EU directives and regulations; and the Macedonian (local) - transposition efforts by the target country to resemble the EU *acquis* in these two policy areas. By investigating the transposition effectiveness in Macedonia, the subject of analysis in the paper are the Directives which the target country is obliged to incorporate into the domestic legislation as part of the EU accession process. In addition, the paper also takes in consideration the International agreement concluded with the country to strengthen the cooperation in combatting illegal immigration. In this regard, the paper covers 4 policy topics from irregular migration policy area:securing EU external borders, return procedures, combating smuggling, and readmission procedures; as well as 4 policy topicsencompassed in the common European asylum policy area:applicants' reception conditions, general common procedures for granting international protection, definition of refugee status (qualification) and

granting temporary protection. We also analyse the identification and examination of applicants as part of the asylum policy on EU level, without doing an analysis on local level, as the policy topic is regulated primarily with Regulations which are applicable only to EU MSs.

## A BRIEF OVERVIEW OF EU MIGRATION AND ASYLUM POLICIES

When we analyse population movements in Europe, we see two different general concepts: 1) open borders and free movement of persons (regular migration movements) within the EU; and 2) closed borders, highly control external borders, known as creation of a "Fortress Europe" (securing external borders, irregular migration and asylum). The thesis of "Fortress Europe" (Gaddes, 2000) is formulated from the widespread view that European integration in general and the common EU asylum and refugee policy in particular, has a negative impact on protection regimes in Europe, making it more difficult for migrants to reach Europe. The European Union's asylum initiatives have often been seen as sitting somewhat uneasily with the overwhelmingly economic nature of the European integration project (Guild, 2006). Chalmers (2006: 606) notes that the common policy towards non-EU nationals 'has been framed to a large extent by the economic benefits or costs these are perceived to entail'.

Considering the two general concepts, we are analysing policies and regulations which are essential elements of the thesis of "Fortress Europe", thus distinguishing between: 1) irregular migration; and 2) asylum policies and regulations.

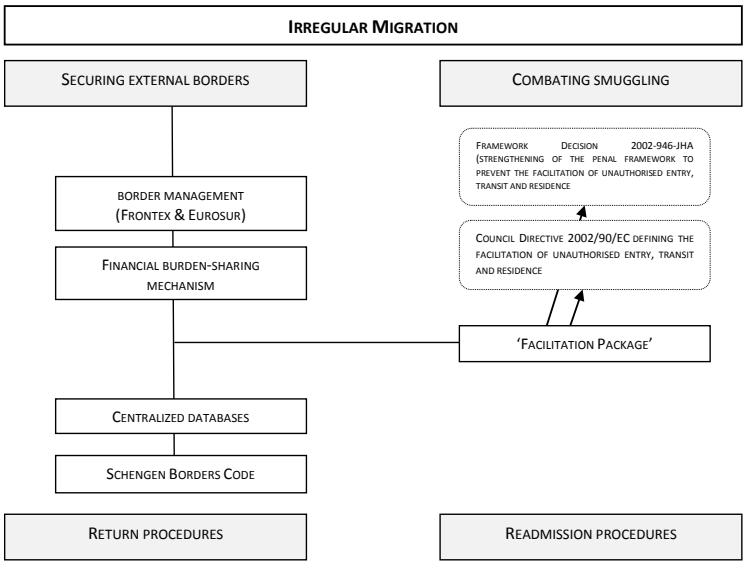
### Irregular migration and the security of EU external borders

EU policies and regulations towards combating irregular migration are divided between four different policy areas (as described in Figure 1).

The Schengen areaas a single area without internal border checks certainly requires a common policy on external border management; therefore the EU sets out to establish common standards with regard to external borders controls and an integrated system for the management of these borders. Such Schengen external border *acquis* (building on the original *acquis* incorporated into the EU legal order by the Treaty of Amsterdam) comprises broad range of measures regulating external borders crossing and conditions for reintroduction of internal borders checks (Schengen Borders Code)[3], financial burden-sharing mechanism[4], establishment of centralised databases[5], set of measures (known as the Facilitators Package) designed to prevent and penalise unauthorised entry, transit and residence and

measures geared towards operational cooperation in border management[6] (Frontex and Eurosur). The Schengen Process as a central element of the Europeanization of migration policies and Frontex the product of this process. The scholarly interest attracted by Frontex has mainly seen the agency as an object of policy study in the field of security and the study of the European harmonization process in the area of Justice and Home affairs; however studies and debates have given Frontex a significant role in migration issues as well (Kasparek, 2010).

**Figure 1.** *Four policy areas regulating irregular migration*




In 2002, the EU adopted rules to clamp down on migrant smuggling.[7] Moreover, the EU has also adhered to the UN Protocol against the Smuggling of Migrants by Land, Air and Sea, supplementing the United Nations Convention against Transnational Organized Crime.[8] The Commission is currently evaluating the effectiveness of the EU legislation on migrant smuggling, expecting results of the evaluation towards the end of 2015. After the tragic Lampedusa events two years ago, the Task Force Mediterranean and stressed the need for a comprehensive EU Action Plan against Migrant Smuggling[9], an idea which has been developed into an Action Plan (European Commission, 2015) as part of the European Agenda of Migration adopted by the EC in May 2015. In this action plan the Commission pledges for improvements of the existing EU legal framework to tackle migrant smuggling (of the so called 'Facilitators package') in 2016.

The readmission agreements are actually established procedures for deportation

of non-EU citizens who without consent and approval of the home country are present on EU territory or they illegally transit. Theirorigin can be found in the Directive 2008/115/EC of the European Parliament and of the Council on common standards and procedures in MSs for returning illegally staying third-country nationals based on the Tampere European Council in 1999 establishing a coherent approach in the field of immigration and asylum, dealing together with the creation of a common asylum system, a legal immigration policy and the fight against irregular migration.

The Common standards of return (so called "Return Directives) were agreed by the EU MSs and entered into force in 2010. They specify common rules for the return and removal as well as use of coercive measures, detention and re-entry of the persons concerned .[10]

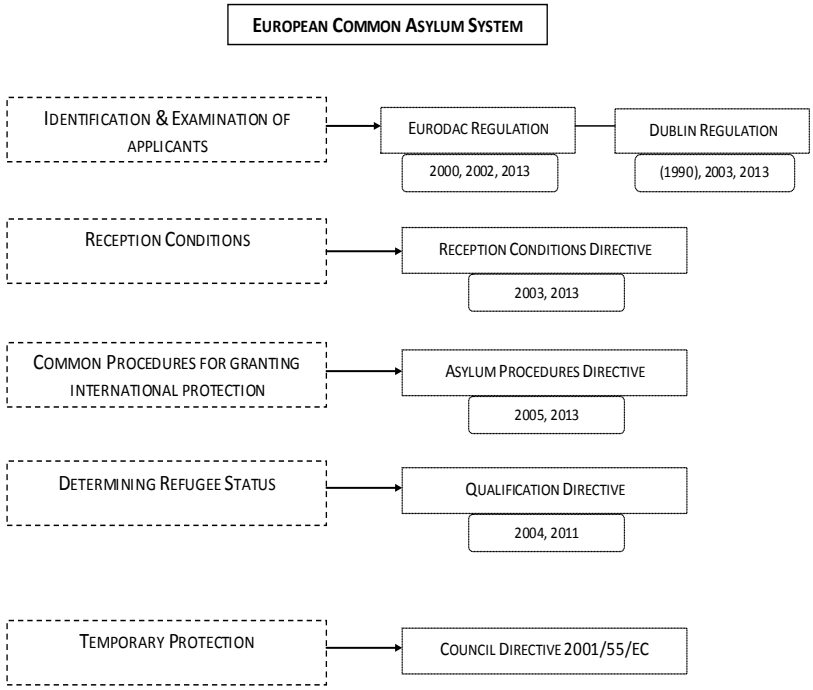
**Common European asylum policy**

The aim of the common European asylum policy was officially projected more than 15 years ago. In the fall of 1999, the Heads of the States and Government of the 15 MSs then were still under the impression of refugee movements caused by the wars in the former Yugoslavia and agreement was made that all EU MSs should share the responsibility for the refugees and irregular migrants coming to the EU. The common European asylum policy has been under a huge test for several years, becoming widely popular discussion topic with the 'refugee crisis' this year.

Between 1999 and 2005, an adoption of several legislative measures harmonising common minimum standards for asylum has been carried out (European Refugee Fund, in 2001, the Temporary Protection Directive and the Family Reunification Directive applying also to refugees). This was known as the first phase, upon which a public consultation was carried out based on a 2007 Green Paper on the future Common European Asylum System (European Commission, 2007). In June 2008 a European Commission's Policy Plan on Asylum as an integrated approach to protection across the EU was presented (European Commission, 2008). The plan was composed of three pillars: 1) bringing more harmonisation to standards of protection by further aligning the EU States' asylum legislation; 2) effective and well-supported practical cooperation; 3) increased solidarity and sense of responsibility among EU States, and between the EU and non-EU countries. Consequently, the corpus of rules deriving from these three pillars has been set; it comprises a number of directives and regulations. For more clear and structured presentation in this paper (see Figure 2), these legal instruments have been divided according to the issues they cover and regulate. Several specific issues arise: 1) identification and examination of applicants; 2) applicants' reception conditions; 3)

general common procedures for granting international protection; 4) definition of refugee status (qualification); and 5) granting temporary protection.

**Figure 2**. *Structure of the European Common Asylum System*




### Compliance assessment with the EU migration and asylum acquis

The foundation on which the countries of the western Balkans and the European Union cooperate on policies related to migration and asylum is the Stabilization and Association Process (SAP).In the case of Macedonia, the contractual relationship with the ECwas initiated in 2001 with the signing of the Agreement. The emphasis in the Agreement, in regards to migration, was placed on prevention and control of irregular migration as well as readmission of nationals of other countries and stateless persons. In addition, the consultation and cooperation efforts were concentrated on assistance in drafting the necessary legislation, best practices of controlling and protecting the borders, as well as enhancing the efficiency of the institutions charged with fighting and preventing crime and combating trafficking in human beings. In the area of asylum, the cooperation between Macedonia and the EC was propelled towards development and implementation of national legislation in order to meet the standards of the 1951 Geneva Convention relating to the status

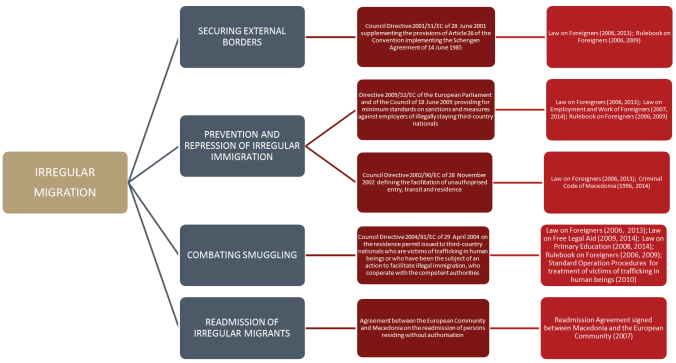
of refugees and ensuring respect of the principle of *non-refoulement* (Council of the EU, 2001).

Within the SAP framework, the Visa liberalisation dialogue between the EC and Macedonia contributed immensely on further alignment with the EU acquis in this area. The country-specific process structured in four blocks contained set of measures covering wide range of issues from document security, public order and security and external relations. One specific block of measures related to increased compliance and implementation of legislation in the area of irregular migration, including readmission and asylum.[11]

### Irregular migration

On a policy level, in 2009, the Assembly adopted a 5-year strategic policy document indicating the state of affairs, problems and measures regarding migration management, including irregular migration. The Resolution on Migration Policy 2009–2014 consequently determines the principles, elements, criteria and presumptions of the migration policy, as well as the migration processes and return policy in Macedonia (Resolution on Migration Policy of Macedonia 2009-2014). Currently, the Macedonian Government is in the process of preparing a new Resolution corresponding to the period 2015-2020 in which it projects the challenges the country is facing, and possible solutions in light of the European migrant crisis. In addition, Macedonia is implementing the National Strategy for combating trafficking in human beings and illegal migration 2013-2016 in order to comply with the EU directive 2011/36/EU which sets out minimum standards in preventing and combating trafficking in human beings and protecting victims.

**Figure 3.** *EU vs Macedonian legal framework in the field of irregular migration*



Regarding alignment with the EU *acquis* on legislative level, Macedonia has shown its commitment in applying comprehensive legal framework in the area of irregular migration legislation, and taking concrete step in fully transposing the directives in national legislation. Besides the country's evidenced progress towards overall compliance, still, Macedonia is partially compatible with the EU acquis in the area of irregular migration. Figure 3 below shows a comprehensive overview of Macedonia's legal framework in comparison with the EU policies and regulations in the field of irregular migration.

Subject of our analysis are the following directives:

- Council Directive 2002/90/EC of 28 November 2002 defining the facilitation of unauthorised entry, transit and residence;
- Council Directive 2004/81/EC of 29 April 2004 on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities;
- Directive 2009/52/EC of the European Parliament and of the Council of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals; and
- Council Directive 2001/51/EC of 28 June 2001 supplementing the provisions of Article 26 of the Convention implementing the Schengen Agreement.

The Directives that tackle the issue of irregular migration in the EU, in the context of Macedonia, are being transposed primarily to the Law on Aliens and the associated implementing legislation.

In accordance to the Directive 2002/90/EC, the Law explicates the circumstances under which one's entry and residence will be considered unauthorized by the Macedonian authorities as well as punishments and fines for entities' that assist a foreigner to illegally enter, reside and/or transit the country. In order to more efficiently combat illegal migration and trafficking in human beings, aspects of the Directive are transposed in the Criminal Code of Macedonia (specifically, article 418-a, 418-b and 418-c). Having in mind the purpose of the Directive, to provide a definition of the facilitation of illegal immigration and to render more effective the implementation of framework Decision 2002/946/JHA (see Figure 1), substantial legislative alignment has been carried out to ensure that the national legislation is in line with the Decision. The Law on Aliens and the Criminal Code were amended in several occasion due to further alignment with the Decision and contains provisions which lay down the criminal penalties including confiscation of any real estate and the transport vehicles used to commit the offence, procedure and prohibition of deportation, as well as liability and sanction of legal entities.

Provisions from article 418-d regarding trafficking in minors' places special emphasis on their protection and minimum penalties for the perpetrators. Furthermore, extraordinary rules and protections have been introduced for unaccompanied minors who seek entry in Macedonia. These provisions are in line with the Council Directive 2004/81/EC. Further alignment with this Directive is accomplished with provisions regulating deprivation (non-renewal and withdrawal) of the right to temporary residence.

In regards to further prevention and repression of irregular migration, the Directive 2009/52/ECto a great extent, has been transposed in the Law on Employment of Foreigners and the Law on aliens. The Law on aliens specifies penalties for assisting an alien to illegally reside in Macedonia.

Compliance with the Council Directive 2001/51/EC supplementing the provisions of Article 26 of the Convention implementing the Schengen Agreement is achieved with the Law on aliens and more specifically, provisions from article 22 which regulates the carriers' liabilities.

With the objective to strengthen the cooperation to combat illegal immigration more effectively, Macedonia and the EC, in September 2007, signed the Agreement on the readmission of persons residing without authorisation.[12] The Agreement regulates the readmission obligations on both contracting parties. Concerning the obligation on the Macedonian side, the Agreement states that the country shall readmit, upon application by a MS and without further formalities all persons who do not, or who no longer, fulfill the legal conditions in force for entry to, presence in, or residence on, the territory of the requesting MS provided that it is proved, or may be validly assumed on the basis of *prima facie* evidence furnished, that they are nationals of Macedonia. Furthermore, Macedonia has the obligation to readmit third country nationals and stateless persons in cases when: (a) the person concerned holds or at the time of entry held, a valid visa or residence permit issued by Macedonia, or (b) illegally and directly entered the territory of the MS after having stayed on or transited through the territory of Macedonia. Exemptions from these obligations are provided in the Agreement. Other sections of the Agreement contain provision governing the readmission procedure, transit operations, costs, data protection and non-affection clause.

**Asylum**

The cornerstone of the Common European Asylum System is the Dublin System, constituted by the Dublin and Eurodac Regulation, and their implementing provisions. This system regulates the criteria and mechanisms for determining MS responsibility for examining an asylum application and establishes a EU asylum

fingerprint database. The implementation of the Dublin system requires full membership in the EU, therefore, is only applicable once Macedonia becomes a MS. In this sense, the accession process serves as a preparatory period for full harmonization with these Regulations, subject to frequent changes especially in recent times due to the European migrant crisis. However, preparation work resembling recruitment and training of staff to operate the national infrastructure of the Eurodac system; as well as to advance compliance related to the common principles and standards of the Dublin regulation. The amendments to the Law on aliens in 2010 provided the necessary legal framework for the establishment of a national database for foreigners, covering data on asylum, migration and visas.[13] A separate chapter in the Law on Asylum is devoted to the regulating the process of processing, usage, exchange and protection of the data from the integrated database for aliens, including data on asylum, migration and visas.

The Law on Asylum and Temporary Protection and accompanying subordinate legislation is the main source of compliance with the EU asylum *acquis*. Taking in consideration the frequent changes and revision of the asylum *acquis* on EU level; financial burden on accession countries to establish and implementing asylum related reforms, and finally, the phase of accession, the Macedonian legislation is to a great extent complied with EU standards and regulation primarily in the policy areas of common procedures for granting international protection, determining refugee status, temporary protection and reception conditions.

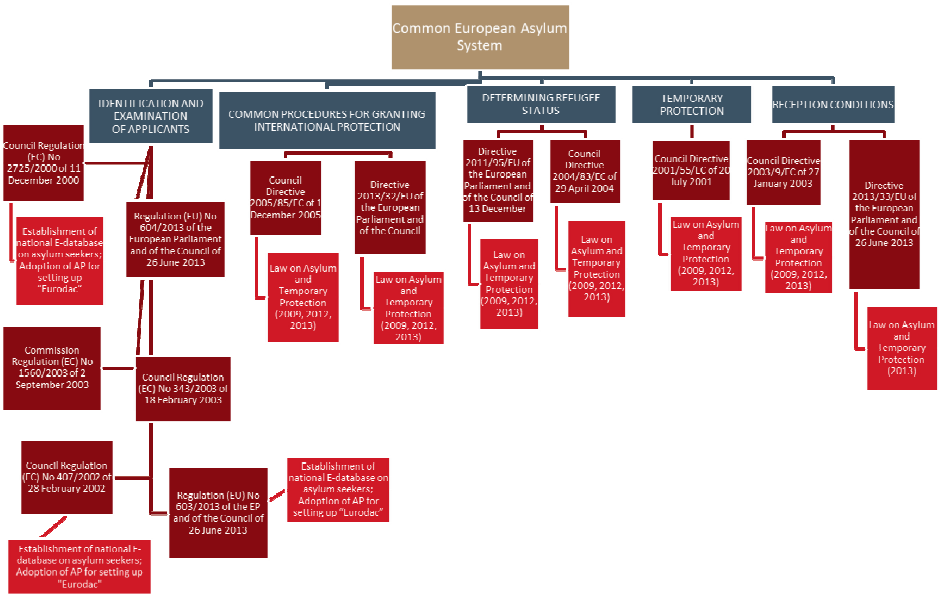
The following directives have been taken in consideration in determining the extent of compliance in Macedonia:

- Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in MSs for granting and withdrawing refugee status;
- Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection;
- Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted;
- Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted;
- Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons

and on measures promoting a balance of efforts between MSs in receiving such persons and bearing the consequences thereof;

- Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers; and
- Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection.

**Figure 4.** *EU versus Macedonian legal framework in the field of asylum*




Macedonia is sufficiently aligned in regards to the directives concerning the procedures for granting and withdrawing international protection. The alignment efforts were focus primarily on the Asylum Procedure Directive rather than on its recast directive. In this sense, it is important to stress that the recast directive on common procedures for granting and withdrawing international protection 2013/32/EU was adopted on 26 June 2013; with a deadline of transposition for MSs set on 20 July 2015.

The Law on Asylum and Temporary Protection defines the asylum seeker as an alien who seeks protection in Macedonia, and has submitted an application for recognition of the right to asylum, in respect of which a final decision has not yet

been taken in the procedure for recognition of the right to asylum. The definition and the procedure for requesting asylum are in line with the definition provided in article 2 of the Asylum Procedure Directive. Alignment is also achieved regarding the basic principles and guarantees, including access to the procedure, the right to remain in the country pending the examination, as well as the requirements for the examination of applications. Namely the Law provides two options for submitting a request: 1) to the police at the border crossing point or 2) to the nearest police station. It prescribes, that upon declaring a request for asylum, the police officer escorts the asylum seeker to the Section for Asylum or to the Reception Centre for Asylum seekers. In addition, there are provisions which guarantees high level of alignment with the Directive regarding requirements for a decision, obligations and guarantees for applicants for asylum, the manner in which the personal interview is conducted, provisions on legal assistance and representation as well as special guarantees for unaccompanied minors. In case of unaccompanied minors, persons with special needs and persons with no procedural capacity,the Law prescribes the appointment of a guardian. According to the legislator, the best interests of the child are the primary consideration when examining applications for recognition of the right to asylum of unaccompanied minors. The Law also regulates the role of United Nations High Commissioner for Refugees in the Asylum Procedure, modes of cooperation with national institutions as well as its involvement in the procedure for recognition of the right of asylum. Regarding procedures at first instance, including on the examination procedure, the Law recognizes implementation of two procedures: regular[14] and accelerated[15]. The Law also acknowledges the concept of first country of asylum and the safe third country concept (Art. 9-a and Art. 10). In regards to the provisions for subsequent application, the Law prescribes that in case of submitting a new asylum application, the asylum seeker must provide evidence that his circumstances have altered substantially since the moment of issuance of the former decision by which his application has been rejected. Failing to do so results in rejecting the application.

Similar to the alignment actions with the directive regulating the procedures for granting and withdrawing international protection, the focus regarding the Reception Conditions Directives is placed on the earlier one, Council Directive 2003/9/EC, since the recast Reception Conditions Directive 2013/33/EU was adopted on 26 June of 2013. And the deadline of transposition is set on the 20 July 2015.

Regarding information provided to asylum seekers for at least any established benefits and/or obligations with which they need to comply relating to reception condition within reasonable time of applying for asylum, the Law on asylum and temporary protection obliges the Section for Asylum of the Ministry of the

Interior to inform them in writing and orally, in a language understandable to the aliens and within the timeframe of 15 days about the manner of implementation of the procedure for recognition of the right to asylum, their rights as well as other relevant information. The asylum seeker is issued a document, within three days upon submitting an asylum application, certifying his/her status as an asylum seeker justifying his stay on Macedonian territory during the period of procedure. Till the final decision is taken, the asylum seeker must complete medical examinations, treatment and omitted immunization in case this is requested. During this period, asylum seekers have the right to education as well as employment within the reception center or any other place assigned by the Ministry of Labour and Social Policy and conditional access to the labour market after 12 months of waiting for a decision at first instance. The asylum seekers benefit from the Macedonian social system. Special provisions are provided for vulnerable categories of asylum seekers. The funds for accommodation, social protection and health care are provided from national budget.

The Law also stipulates the conditions when reception conditions may be reduced or withdrawn. Thus, the asylum seeker is obliged to reside in the Reception Centre or other place of accommodation assigned by the Ministry of Labour and Social Policy and not to leave the place of residence without informing the competent authorities, and without having permission to leave. Asylum seekers have the right to submit a request to the Ministry of Labour and Social Policy to reside outside the Reception Centre, however, on its own expenses, and following the procedure of his/her photographing and fingerprinting. The Law further provides special safeguards for persons with special needs, such as unaccompanied minors, vulnerable persons with special needs, minors and persons with mental disabilities and persons with no procedural capacity.

Significant alignment with the asylum acquis can be detected also with the Council Directive 2004/83/EC and the recast of this (Qualification) Directive. The regulation of the assessment of applications for international protection is made by the Law on Asylum and Temporary Protection prescribingprovisions specifying the responsibilities for the duration of assessing the facts and circumstances for recognition of the right of asylum (article 18-a, 20). The Law also defines what constitutes actors of persecution and protection (article 4-d, 4-e). Furthermore, specific chapters of the Law regulate the qualifications for being a refugee (article 4, 4-c). Article 38 sets out the conditions under which, an alien could be excluded from acquiring refugee status, and when refugee status may cease. Moreover, further provisions exist for the situation when an alien cannot enjoy the right of asylum.

In regards to the qualification for subsidiary protection, the Law defines a person under subsidiary protection as an alien who does not qualify as a recognized refugee

but to whom the Macedonia shall recognize the right of asylum and shall allow to remain within its territory (article 4-a). Additionally, this provides detail clarification of what constitutes serious harm. The Law also contains provisions establishing the causes for terminating the subsidiary protection status including description of circumstances under which an application has been considered as unfounded.

Concerning the content of international protection, article 7 of the Law sets out the contours for protection from *refoulement* of individuals, thus ensuring compliance with the Directive in this segment. The asylum seeker, recognised refugee or person under subsidiary protection cannot be expelled, or be forced to return to the frontiers of the state in situation when ones' life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion. This principle also applies to cases when an alien would be subjected to torture, inhuman or degrading treatment or punishment.

Further alignment has been achieved in terms of rights for recognised refugee and person under subsidiary protection such as residence, travel documents, identity card, freedom of movement, access to employment and education, social protection, healthcare, access to accommodation (article 48, 58-60). Vulnerable persons with special needs, as well as unaccompanied Minors, persons with mental disabilities and persons with no procedural capacity enjoy special protection when exercising these rights (article 23-a).

There is evidence of alignment to some extent with the Council Directive 2001/55/EC appearing in the Law on asylum and Temporary protection. Chapter VI is entirely devoted to temporary protection of persons in the event of mass influx. According to article 62, in such cases, the Government of Macedonia may grant temporary protection to persons coming directly from a state where their life, safety or freedom have been threatened by war, civil war, occupation, internal conflict linked with violence or mass violation of human rights. Concerning the access to the asylum procedure in the context of temporary protection, article 66 outlines that the person under temporary protection has the right to submit an application for recognition of the right of asylum at any time. Moreover, even if the person under temporary protection application has been rejected, s/he could enjoy the temporary protection until the expiration of the time for which it has been granted.

## CONCLUSIONS

The significant increase of migrants transiting Macedoniain addition to the migrant crisis in which numbers and politics have constantly been altered, has been

the main cause of many concerns among EU MSs and western Balkan countries in the past several months. The findings of the paper confirm the necessity for channelling the complexity and perplexity of the EU's irregular migration and asylum *acquis*, which reflects the whole rigidity, and failure of the European bureaucratic labyrinths. This legislative state of play poses a threat for effective implementation and operationalization of these policies especially in events of mass influx of migrants as Europe is facing at the moment. However, this threat is also shifted to the accession countries such as Macedonia, which need to transpose the *acquis communautaire* in the area of irregular migration and asylum as part of chapter 24 of the accession negotiations. Ineffectiveness in the implementation of the relevant *acquis* was evident in recent times when the Macedonian authorities had to seek extracurricular solutions for dealing with the increased migrant flow outside the existing community legislation. This is the case; despite the results of the paper, which reveal that, Macedonia is sufficiently aligned in the area of irregular migration and asylum *acquis especially taking in consideration the status in the accession process.* However, if one looks at the number of recast directives which enter in force on EU level in mid 2015, Macedonia needs to put additional efforts in aligning with the new legislation.Therefore, conforming to the EU acquis in these areas needs to be furthered. Progress in the alignment process needs to continue since the emphasis in the negotiation process is placed on rule-of law issues due to the introduction in the new approach.

## *Notes (Endnotes)*

[1] Frontex operational data, at http://frontex.europa.eu/trends-and-routes/migratory-routes-map/ (accessed 10 October 2015).

[2] Ministry of Interior, Press release, 1.11.2015, at http://moi.gov.mk/vest/702 (accessed 8 November 2015).

[3] Regulation (EC) No 562/2006 amended twice since 2006 (Regulation (EU) No 610/2013 and Regulation (EU) No 1051/2013).

[4] In a form of External Borders Fund in 2007–2013 and for the 2014–2020 period Internal Security Fund: Borders and Visa

[5] Schengen Information System (SIS), the Visa Information System (VIS) and Eurodac, the European fingerprint database for identifying asylum seekers and illegal immigrants.

[6] Council Directive 2002/90/EC.

[7] Directive 2002/90/EC and Framework Decision 2002/946/JHA.

[8] Council decisions 2006/616/EC and 2006/617/EC.

[9] COM(2013)869 final

[10] Directive 2008/115/EC.

[11] The Visa liberalisation roadmap available at: http://www.esiweb.org/pdf/White%20List%20Project%20Paper%20-%20Roadmap%20Macedonia.pdf (accessed 2 October 2015).

[12] The date of entry into force of this Agreement was January 1, 2008.

[13] New chapter X-a has been added regulating the establishment and functioning of the Integrated base for immigrants, including information on asylum, migration and visas.

[14] The Section for Asylum is obliged to take the decision within six months from the day of submission of the application

[15] The purpose of having and implementing the accelerated procedure is due to manifestly unfounded asylum applications, unless in situations when an unaccompanied minor, or a mentally disabled person has submitted the application.

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UDC 323(497)(4-672.EU)
Sceintific paper / Научен труд

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# NEO-LIBERAL RESTRUCTURING AND THE EU INTEGRATION OF THE WESTERN BALKANS

Abstract

The main rhetoric of the European Union for the Western Balkans developed around the idea that if the Western Balkans implement the reforms recommended by the EU, they will develop economically, build a healthy democracy based on a functional rule of law system. In case of the failure of the reforms to achieve these objectives, which indeed is often the case, the answer is founded in the (liberal) modernization theory which argues that the reasons for the failure must be found on the domestic problems and the wrong implementation of the reforms whose beneficiary properties are taken for granted. This paper argues that despite the fact that the Western Balkans faces many domestic socio-economic problems, structural causes and mechanisms/processes, which emerge from the operation of global economic system rest at the center of this failure. Based on the insights of the neo-Gramscian perspective, it analyzes the EU integration strategies towards the Western Balkans as part of the neo-liberal restructuring project. The complex and dynamic relations based on consent and coercion during this process and the role of the European Commission as the main instrument of this strategy will constitute the focus of this paper.

**Key words**: Neo-liberal restructuring; Western Balkans; Albania; European Union integration policies.

## INTRODUCTION

The focus of academic studies on the Western Balkans has been on the violent ethnic conflicts, economic and political instability, the lack of the rule of law, troubled transition to democracy, and authoritarian statehood. The Western Balkans are defined as a "troubled region" which despite the international community's and particularly the EU support for its development couldn't yet complete its transition process. The researchers often compare it with the Central and Eastern European Countries because of their common communist past and in the context of the European integration policies, and achieve to common conclusion by defining the region's domestic factors as "guilty" for the situation of the region.

To begin with, it is important to highlight that the concept of transition which has become a buzzword to denote the socio-economic and political transformation of post-socialist countries, cannot be defined as just a shift from a planned economy to a free market democracy, rather it is a complex process of redefinition and restructuring of state society relationship (Shields, 2012: 17-18), which led to the emergence of a new configuration of social power relations. The Western Balkan countries joined globalization after the collapse of Communism as other CEE countries. The countries in the region entered into an economic and political transition process at different speeds and with different degrees of enthusiasm. It were the transnational actors which "contributed" through consent and coercion policies on the transforming/neo-liberal restructuring of the region. Beside the international financial institutions such as the IMF and the World Bank, another major "contributor" on the neo-liberal restructuring of the Western Balkans is the EU as a structure and the Commission as an actor. As Hermann puts it, despite the fact that "neoliberalism is an international agenda, the implementation of neoliberal policies is, nevertheless, dependent on local struggles and compromises" (2007: 6). Therefore, a complete analysis of the transition and integration (restructuring/ transformation) of the Western Balkans, must include both domestic and external actors and factors. Yet it is impossible to touch upon all these factors in this paper. Thus, the examination will be focused on the EU strategy towards the Western Balkans in the context of neo-liberal restructuring. Thus, based on the insights of the neo-Gramscian perspective, the aim of this paper is to bring the issue in a wider context, analyzing the impacts of global structural changes and the European Union (EU) integration policies as part of neo-liberal restructuring agenda in the Western Balkans.

In the first part of this paper it is analyzed the revival of European integration process in the second half of the 1980 in the context of global structural changes showing that the EU cannot be considered apart from neoliberal restructuring/

globalization. In the second part, are elaborated the European integration strategies towards the Western Balkans as part of the neoliberal agenda. Here it is underlined the fact that despite the EU discourse on the implementation of reforms on democracy, human rights and the rule of law as pre conditions for full membership, in practice the Commission initiatives are strongly focused and restricted to the neoliberal restructuring of the Western Balkans while leaving no concrete space for full membership. In the conclusion section are briefly summarized the impacts of top-down neoliberal restructuring via the EU strategies in the Western Balkans.

## THE EUROPEAN INTEGRATION AS PART OF NEO-LIBERAL RESTRUCTURING PROJECT

Many Europeans as well as the bulk of them who aspire to be part of the EU, considerate it as an exceptional organization of the global system. Often the assumed exceptional character of the EU is based on the social rights and equality policies that European states offer to their citizens compared with their American and Asian counterparts (Hermann, 2007:1).However, the EU cannot be considered apart and immune from the globalization process. As everywhere else, structural changes in the global economic system reshaped also the socio-economic relations of the EU, which led to the emergence of new social power configurations (Bieler and Morton, 2001: 5).Therefore, Stephen Gill argues that taking into consideration the social structural and political arrangements during the 1960s, 1970s, and 1980s is crucial for understanding the European integration policies/process(1992: 159), since the neo-liberal restructuring became the underlying driving force of its revival.

According to the neo-Gramsian perspective, globalization is the "transnationalisation of production and finance at the material level and the shift from Keynesianism to neo-liberalism at the ideological level"(Cox, 1993: 259-60; Bielerand Morton, 2001: 5).While on the global level, the main driving force was assumed to be the free market, unrestricted capital and financial mobility (Hermann, 2007:2), on the national level, the shift from Keynesianism to neoliberalism was based on low inflation and stability prices, and on the abandonment of the full employment (Cox, 1993: 259-60, 266-7). Indeed these new arrangements caused many serious problems for many countries, particularly for the undeveloped ones. The international financial institutions, such as the IMF and the WB furthered this process through their carrot and stick policies, thus making the granting of credits conditional on meeting the neo-liberal restructuring packets such as budgetary restrictions and privatization of public companies, enterprises and services, and application of low taxes for private sector etc (Hermann, 2007:4).

Shortly, neo-liberalism become an agenda for restructuring the capitalist economy and the social system (ibid:2). Neo-liberalism imposes a new top down socio-economic order, through consent and coercion mechanisms. That makes governments more responsible for private enterprises or market forces and less responsible or responsive to welfare issues. The security of private sectors remains one of the main objectives of governments (Gill, 2001:47). In this context the rule of law and democracy are required (for developing countries) as long as they serve to neo-liberal restructuring policies. Accordingly, while some developed countries embraced neo-liberal policies for competing with the global market, the rest accepted it in order to get aids/grants from the international financial organizations since their survival depended directly to this foreign financial assistance.

The revival of European integration process in the 1980s developed also within the context of global structural changes triggered by the neoliberal response to the structural crisis of over accumulation that emerged in 1970s. The policies delivered by the EU and the re-launch of European integration – through the Internal Market (1985) and the signing of the Single European Act (1986)–by no means departs from the neoliberal mainstream. This re-launching coincided with the foundation of the European Round Table of Industrialists (ERT), an organization that represents the Europe's biggest transnational industrial corporations (Apeldon, 2001: 48, 54). The increase of globally oriented capital in the EU, supported by the neo-liberal transnational historical bloc also forced the restructuring of the capital consistent with global capital (Gill, 2001: 75). The ERT lobbied strongly for the integration of the common market (Hermann, 2007: 8).

Gill defines the Internal Market project as a turning point in the European integration process towards neoliberalism (2003: 63).Even though, the Internal Market primarily was introduced as the creation of a big home market in front of global market, it served to the globalization of the EU itself (Apeldon, 2001: 79). Indeed it is an important project for the neo-liberal restructuring of the EU, focused on free market by the deregulation and liberalization of national economies (ibid). Thus, European integration shifted from a "socio-economic and industrial space to…an advanced free trade zone within a free trading world" (ibid).

The Maastricht Agreements and Economic and Monetary Union (EMU) also constitute important developments to be discussed in the terms of neo-liberal restructuring discourse (Gill, 2001: 50). As Apeldon puts it "the socio-economic content of Maastricht can in fact be interpreted as reflecting the transnational configuration of social and political forces within the European political economy at the beginning of the 1990s" (2001: 81). The formation of a transnational capitalist class played an important role in this new configuration of the social power relations. It succeed in incorporating and manifesting its interest as the interests of all and therefore in

establishing its hegemony. Contrarily, trade unions remained fragmented and as a result failed to protect their previous gains and efforts. The restructuring of the state-civil society relations such as the privatization of public services like pensions, health and education and the implementation of monetary and fiscal policies in order to increase the credibility for private enterprises shifted the EU towards the neo-liberal economic system (Gill, 2001: 49). In a nutshell, social democracies were subordinated to the interest of globalizing capital. Consequently, most of social reforms included in the Maastricht treaty failed to be materialized because of big capital's efforts.

In regard to this, the EMU cannot be considered only as an economic project but as an attempt to institutionalize the neo-liberal norms in the region and reconcile regional integration with globalizing forces (Gill, 2001: 52). This was a requirement for the Internal Market (Apeldon, 2001: 80). EMU furthered the neo-liberal economic process by establishing an independent European Central Bank (ECB) with a monetary policy based on low inflation and price stability. Its role was to force states to apply fiscal policies in convergence with neoliberal criteria. Even though the fulfillment of the Single European Market and establishment of the ECB looks as just an economic integration in appearance, it is in fact a process of configuration of the new powers in Europe (Holman, 2010).

As it is shown in this paper, the main issues of the reforms in the EU are focused on enhancing the implementation of neoliberal policies such as free trade, monetary and fiscal austerity policies, and the erosion of employment security. In some aspects, some states in the union have gone further by applying more radical neoliberal policies compared to the runners of neo-liberalism, the US and the UK. All these reforms eroded the social model of European welfare-states. (Hermann, 2007: 23).

In this respect, the EU strategy towards the Western Balkans must be analyzed primarily within this socio-economic structural context, considering the dynamics and complexity of the process of neo-liberal globalization. Otherwise the analysis risks remaining incomplete. Thus, the ideational/cultural factors which are so often utilized to explain the problems facing many developing countries as is the case of Albania, must be placed into this larger structure or process of neo-liberal transformation of the Western Balkans. To this purpose, having argued that the EU is an integral part of neo-liberal process, it will be scrutinized the EU integration policy and its impact towards the Western Balkans.

## THE EU STRATEGY TOWARDS THE WESTERN BALKANS

During the early 1990s the EU strategy towards the Western Balkans was based on financial assistance programmes such as PHARE, the main objective of which

was the establishment of stability through democratic institutions, the rule of law, the return of refugees and protection of human rights etc. (Bartlett, 2008: 197). It was only after the Bosnian war that the EU adopted the "Regional Approach", for all the Western Balkan countries that did not have any association agreements with it. The Regional Approach included a comprehensive framework for unilateral trade preferences, financial assistance and regional cooperation based on principle of conditionality (General Affairs, 1997).The European Commission defines the level of financial assistance that the EU will provide to the respective country, according to the progress that it has done on meeting the required conditions. On the other hand, the starting of bilateral negotiations or association agreements were committed to many other strict and detailed conditions on providing economic reforms. Thus, in addition to the general conditions mentioned above, were required also macroeconomic policies for stabilization of economic environment, liberalization of price and trade, reforms in the rule of law, privatization of public or states enterprises, and reforms in the banking sector. The countries which meet these conditions would be able to benefit from trade preferences, financial assistance and progressing on contractual bilateral relations with the EU (Bartlett, 2008: 198).

Indeed the conditionality was not an exception for the Western Balkans countries, since the EU strategy towards the CEE countries was based on conditionality as well (Türkes and Gökgöz, 2006: 675).The problem here is the so-called "negative conditionality" (AnastasakisandBechev, 2003: 7), which is meant to offer no promise for a future membership to the EU, and in the case of Serbia even outright sanction. Therefore, Turkeş and Gökgöz define the Regional Approach as:

> "The manner in which conditionality applied in the case of the Western Balkans clarified the contours of a distinctly different mode of relations that the EU would maintain with the region: there was no prospect for rapid membership but the countries meeting the conditions were to be rewarded with trade concessions, financial assistance and economic cooperation on the part of the EU. It emphasized the borders of fragmentation in the region, pushing the Western Balkans down to a lower rank in the accession partnership process." (2006: 676)

The Kosovo war may be considered as a turning point of the EU policies towards the Western Balkans. It demonstrated that the Commission as an actor and the EU as a structural factor have been insufficient for the stabilization of the region. Therefore, the EU envisaged a new strategy for the Western Balkans, so-called the Stabilization and Association Process (SAP).SAP would serve as an important contribution of the EU to the multilateral Stability Pact for Southeastern Europe (Hombach, 1999) by taking a leading role in the stabilization of the region, and

also presenting a new strategy of the Commission in the Western Balkans (Kramer, 2000). Thereby, SAP would became the cornerstone of the EU strategies in the Western Balkans, as the major policy framework for domestic and foreign policies. According to the Commission's suggestions SAP is focused on six key target areas such as:

> "Development of existing economic and trade relations with and within the region; development and partial redirection of existing economic and financial assistance; increased assistance for democratization, civil society, education and institution-building; co-operation in the area of justice and home affairs; development of political dialogue, including at regional level; development of Stabilization and Association Agreements [SAA]" (European Commission, 1999).

In a similar vein with previous strategies, the SAP instruments were based also on conditionality. Therefore, according to the Commission's progress reports, the countries which have made progress regarding the meeting of the SAP conditions, can pass to another level by signing a SAA with the EU. The SAA's main framework focuses on:

> "Offering the prospect of full integration with EU structures; Establishing a functioning framework for a continuous political dialogue; Supporting the consolidation of a democratic regime and a state of law; Furthering economic reforms and the development of market structures; Establishing the administrative and economic pre-requisites for the later conclusion of a bilateral free trade agreement; Laying the foundations for extensive co-operation in justice and home affairs; Establishing broad co-operation on all issues that would contribute to reaching these goals" (European Commission, 1999).

In this context, the main financial instrument introduced to the region was the so-called Community Assistance for Association, Development and Stabilization (CARDS). Later, it would be replaced by the new Instrument for Pre-accession Assistance (IPA), which aimed bringing institutional reforms into line with the EU standards.

A bigger picture suggests that the SAP and the SAA itself does not offer a really new and inventive EU policy for the region. They do not differ much in kind from other well-known European Agreements concluded between the EU and the CEE countries since early 1990s.Indeed, the novelty remains on the fact that for the first time, the SAA is "offering the prospect of full integration with EU structures" to the Western Balkans. In other words, it opened a process of gradual integration into

the EU structures based on the Amsterdam Treaty and the Copenhagen Criteria, for the countries that meet the required conditions. Since then, the EU has also advanced trade relations with all the Western Balkan countries via autonomous trade measures and the early implementation of the SAA trade provisions. All the countries have signed the respective SAAs. In addition, while Bosnia-Herzegovina and Kosovo are potential candidates, Macedonia, Serbia, Montenegro and Albania are officially candidates for accession to the EU.

As it is noticed above, the Balkan countries are involved at different stages in the process of integration (Türkeş and Gökgöz, 2006: 659). But, the fact that Commission has not produced yet any concrete plan or strategy for the full membership of the region or any particular country in the EU, indicates that its recommendations and strategies serve primarily tothe purpose of stability in the region in order to avoid that problems of the region expand into the union and second tothe neoliberal restructuring of the region rather than the process of full membership. As Mustafa Türkeş and Göksü state, the EU strategy towards the Western Balkans does not include neither exclusion nor a full integration in the short period (ibid). Indeed the EU integration process is seen as a tool for neoliberal restructuring of the Western Balkans. The hegemonic/neoliberal project of the EU in the region, is a complex and dynamic process between the Commission and respective governments which includes both consent and coercion (Shield, 2014: 17-18). The asymmetrical power that the EU holds in this process, have led to a top-down process on the restructuring of the socio-economic relations with the Western Balkans. The consideration of the EU as a financial source for economic prosperity by the Western Balkans states' elites strengthened the Commission's hand on neo-liberal restructuring of the region.

## CONCLUSION

The Western Balkans cannot be considered apart from the neo-liberal globalization. Neo-liberal policies, as the main force of globalization, have been at the heart of the region's transition as well as. Therefore, all the transition programs assisted by the international financial institution enhanced the establishment of a marked-based economy, based on neo-liberal restructuring such as stabilization, deregulation, liberalization and privatization. After 1997 onwards the EU via Regional Approach, SAP and SAA strategies would play an even more important role in the neo-liberal restructuring of the Western Balkans. Here is underlined the fact that despite the EU discourse on the implantation of reforms on democracy, human rights and the rule of law as pre conditions for full membership, in practice

the Commission initiatives are strongly focused and restricted to the neo-liberal restructuring of the Western Balkans while leaving no concrete space for full membership. As a result the main elements of the Commission strategies such as the neo-liberal restructuring, rule of law and democracy have not developed proportionally, leading to the reproduction of a kind of authoritarian state. And the social consequences of the top-down neo-liberal restructuring of the Western Balkan countries are high unemployment, an ever increasing gap between the rich and the poor, reduction of public social services, a high support for big private enterprises even when it has grave consequences for society in general, and high public loans etc. By the same token, the high level of emigration, the organized crime, and the rise of radical religious organization's influence in the region is also encouraged by the increasing poverty and the failure of state instances to develop a solution.

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UDC 341.645.2:342.739
Sceintific paper / Научен труд

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# MODELS OF APPROACH OF THE EUROPEAN COURT OF HUMAN RIGHTS TO THE INTELLECTUAL PROPERTY PROTECTION DISPUTES

Abstract

Human rights play an increasingly important role in the protection of intellectual property rights in Europe, thus influencing various policies of innovation and creativity. Namely, the European Court of Human Rights has provided protection of intellectual property rights by adopting decisions that interpret the right to property, in relation to intellectual property protection claims. This paper has placed its focus on analysis of the jurisprudence of the European Court of Human Rights as regards the treatment of intellectual property rights. It concludes that there are three main models of approach of the European Court of Human Rights to the adjudication of intellectual property protection disputes and answers the question of what should be the role and approach of the Court in the protection of intellectual property rights.

**Key words**: human rights, intellectual property, right to property, European Court of Human Rights, European Convention on Human Rights

## INTRODUCTION

The intellectual property protection system in Europe is developing intensively over the last couple of decades and the human rights play an increasingly important role in its development. Yet, this intellectual property protection system has developed relatively isolated form the influence of the European Court of Human Rights (hereinafter "ECtHR"), as an international human rights court set up to protect individuals against human rights abuses by Member States of the European Convention on Human Rights (hereinafter "ECHR") (Douglas-Scott, 2006: Helfer, 2008: 1).

At first glance, it is not very clear what is the connection between an international human rights court and the human rights treaty it interprets and intellectual property. However, the answer as regards the connection between the ECHR and intellectual property can be found in the right to property, which is protected by Article 1 of Protocol 1 to the ECHR (Helfer: 2008: 2; Welkowitz, 2013: 681)

The protection of "the peaceful enjoyment of . . . possessions", foreseen in Article 1 of Protocol 1, has been considered among the weakest rights in the Convention system for a long time, affording governments broad discretion to regulate private property in the public interest. This treatment of the right to property is one of the reasons due to which the ECtHR and the European Commission of Human Rights (hereinafter "European Commission") did not provide protection as regards intellectual property issues for decades (Coban, 2004: 124-125; Helfer, 2008: 2-3).

Namely, until the early 1990s, there were no complaints filed alleging violations of intellectual property rights. And when there were complaints filed alleging such violations, the Court and the European Commission summarily dismissed these complaints. The restrictive interpretation of Article 1 applied in these cases resulted in an absence of searching scrutiny of national courts and administrative agencies. At the same time, it allowed Europe's intellectual property system to develop largely isolated from human (Heifer, 2008: 2-3)

Today, this is not the case anymore. Namely, the European Court of Human Rights has already issued a couple of significant decisions as regards the protection of intellectual property rights before the Court, within which it concludes that patents, trademarks, copyrights, and other economic interests in intangible knowledge goods are protected by the European Convention's right of property. Moreover, the general principles established as regards reviewing alleged violations of Article 1 of Protocol No. 1 are also applied in case of reviewing alleged violations of intellectual property rights, whose protection arise from the protection of the right to property, provided by Article 1 of Protocol 1 of the Convention (Helfer, 2008: 3, 11).

Besides the right to property, there are two other provisions of the ECHR that could be connected with intellectual property rights. Those provisions are the right to respect for private and family life, guaranteed by Article 8 of the Convention and freedom of expression, guaranteed by Article 10 of the Convention. Although these two provisions are less directly related to property rights, their interpretation "may have a significant impact on intellectual property rights and on the application of Article 1 of Protocol 1 to intellectual property cases" (Welkowitz, 2013: 682).

At first glance, it might not be very clear how these two provisions could have direct impact on intellectual property. However, Article 10, as will be seen further, clearly has a potential to limit intellectual property rights. As regards Article 8, particularly its subsection 2, according to which "there shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law…", it appears that it affords protection from unwarranted governmental intrusion. However, as will explained further, Article 8 is a broader and more affirmative right than it might seem at first glance, which could provide basis for expanding intellectual property rights (Welkowitz, 2013: 683).

The analysis of the intellectual property jurisprudence of the ECtHR shows that two scenarios could be distinguished as regards the intellectual property protection disputes that the Court is dealing with: the Court is applying the right to property under Article 1 of Protocol 1 in order to protect intellectual property assets against national measures which constrain or limit intellectual property rights; or the Court examines allegations that national intellectual property protection or enforcement measures, supported by the right to property, are violating other human rights (Grosse Ruse-Khan, 2013: 11).

Having in mind the development of the intellectual property protection system in Europe that is increasingly influenced by human rights, as well as the expansion of human rights claims relating to intellectual property, many questions are emerging as regards the relationship between the two legal regimes. On the one hand, the question is whether human rights should serve as a corrective when intellectual property rights are used excessively and contrary to their functions, especially bearing in mind that the expansion of intellectual property protection standards raises numerous conflicts and concerns as regards certain human rights, such as the right to life, health, food, privacy, freedom of expression, and enjoying the benefits of scientific progress. On the other hand, human rights have been increasingly invoked as a justification for protecting intellectual property rights (Helfer, 2008: 4-5)

In this sense, it is important to answer the question about the role and the approach of the ECtHR to the adjudication of intellectual property protection disputes. Thus, this paper has placed its focus on analysis of the jurisprudence

of the European Court of Human Rights as regards the treatment of intellectual property rights, aiming to determine the models of approach of the ECtHR to the adjudication of intellectual property protection disputes as well as its role in the protection of intellectual property rights.

## PROTECTION OF INTELLECTUAL PROPERTY RIGHTS AGAINST NATIONAL MEASURES WHICH CONSTRAIN OR LIMIT INTELLECTUAL PROPERTY RIGHTS: APPLICATION OF ARTICLE 1 PROTOCOL 1

In the 1990s, the European Commission has held that patents and copyrights fall within the scope of Article 1 of Protocol 1 (Lenzing AG v. United Kingdom, Aral v. Turkey and Smith Kline & French Lab. Ltd. v. Netherlands). However, the Court did not directly addressed the issue until 2005, when three significant judgements were issued in connection with the intellectual property protection before the European Court of Human Rights, whereby the Court applied Article 1 of Protocol 1 to intellectual property disputes: Dima v. Romania, Melnychuk v. Ukraine и Anheuser-Busch Inc. v. Portugal (Helfer, 2008: 12).

The case Anheuser-Busch Inc. v. Portugal is the most well-known of these three cases. In that judgment, a Chamber of the ECtHR consisted of seven judges has concluded that "intellectual property as such incontestably enjoys the protection of Article 1 of Protocol 1." In 2006, the case was reargued before the Grand Chamber of the Court, consisted of seventeen judges. The Grand Chamber has unanimously confirmed the conclusion of the Chamber in its judgment issued in 2007, finding that Article 1 "is applicable to intellectual property as such." In other words, it confirmed that the right to property protects the financial interests of the intellectual property owners as regards their inventions and creations (Helfer, 2008: 12; Santos, 2013: 11-12).

The judgment of the Grand Chamber of the Court, issued in 2007 in the case of Anheuser-Busch Inc. v. Portugal, is particularly striking also because the Court concluded that both registered trademarks and applications to register trademarks fall within the scope of the property rights clause of the ECHR. The analysis of this case suggests that the Court actually recognizes wider human rights implications on the regional innovation and creativity politics, as well as that its future decisions could have a significant impact on the intellectual property protection standards in Europe (Helfer, 2008: 3; Santos, 2013: 11).

The only justification of the Court to reach the conclusion that intellectual property enjoys the protection of Article 1 of Protocol 1 is found in a brief quotation of the admissibility decision, adopted in 1990 by the European Commission, in the

case of Smith Kline & French Lab. Ltd. v. Netherlands. It was the first intellectual property decision issued by the European Commission, within which it is stated that "under Dutch law, the holder of a patent is referred to as the proprietor of a patent and that parents are deemed, subject to the provisions of the Patent Act, to be personal property which is transferable and assignable. The Commission finds that a patent accordingly falls within the scope of the term "possessions" in Article 1 of Protocol 1" (Grosse Ruse – Khan, 2013: 11-12; Helfer, 2008: 12-13).

In cases where Article 1 of Protocol 1 intersects with intellectual property subject matter and ownership rules, for example, where ownership is contested or where it is unclear whether an inventor or creator has satisfied the requirements for protection under domestic law. Literary and artistic works are protected from the moment of their creation or fixation. If the ownership and eligibility of these works is undisputed, the Court will simply rely to the national copyright or neighboring rights laws and conclude that Article 1 is applicable. However, this manner may not always give answers, especially when domestic law provides limited directions concerning a creator's proprietary interests (Helfer, 2008: 13-14).

These complexities can be noticed in the admissibility decision from 2005 as regards the case of Dima v. Romania. This case is concerned with a design submitted to government-sponsored competition, which was ultimately chosen as an official state emblem. The focus of the dispute in the national courts was on the question of who ought to be recognized as the 'author' of the design: Dima, the original creator, or the Romanian Parliament, which had commissioned the design. The national court decided that the Parliament was to be deemed the 'author' of the design in such circumstances and therefore no fee was payable. Dima brought a complaint under the ECHR, claiming that this decision violated his rights under Article 1 of Protocol 1. However, his claim was held to be inadmissible. The Court concluded that the national court has simply resolved a dispute about the interpretation of the scope of a property right in national law in a manner that was not arbitrary and, therefore, it was inappropriate for the Strasbourg Court to intervene. Moreover, the Court concluded that in cases where the existence or extent of copyright is uncertain, it is the task of the domestic courts to resolve any ambiguities. Only once those ambiguities have been resolved, the Court can determine the extent of the applicant's property right and whether the state had violated that right (Griffiths and McDonatgh, 2013: 87-88).

The eligibility of industrial property for protection is determined by a registration procedure. A different set of ambiguities arises with respect to the Court's treatment of industrial property (Helfer, 2008: 13, 18).

The case of Anheuser-Busch Inc. v Portugal considered a dispute between the American company, Anheuser-Busch Inc., and the Czech brewer, Budejovicky

Budvar. Anheuser-Busch claimed that the Portuguese court had violated Article 1 of Protocol 1, in upholding the national authority's refusal to register its application for registration of the trade mark, 'Budweiser'. The decision to refuse the application had been based on the fact that Budejovicky Budvar owned a registered 'protected geographical indication' for 'Budweiser Bier', a registration which the national decision maker held to take precedence over Anheuser-Busch's trade mark application by virtue of a complex effect of an international treaty on domestic law. The Court, in its Grand Chamber judgment from 2007, held that the mere application for trade mark application could qualify as a 'possession' for the purposes of Article 1 Protocol 1, and, therefore, that Anheuser-Busch's claim fell within the scope of the protected right. The application constituted a possession because an applicant had a legitimate expectation that it would be handled fairly by national authorities and because there was evidence that such applications were tradeable. However, the Court concluded that the national court had simply interpreted an uncertain aspect in national intellectual property law and it was not the Court's role to review such a determination of the competing claims to entitlement to a mark, stating that: "…The Court reiterates that its jurisdiction to verify that domestic law has been correctly interpreted and applied is limited and that it is not its function to take the place of the national courts, its role being rather to ensure that the decisions of those courts are not flawed by arbitrariness or otherwise manifestly unreasonable" (Griffiths and McDonatgh, 2013: 87).

Similarly, in Melnychuck, the Court held that providing intellectual property owners with a judicial forum to adjudicate domestic infringement claims did not automatically engage the state'sresponsibility" under Article 1. Only "in exceptional circumstances" could the state "be held responsible for losses caused by arbitrary determinations" (Helfer, 2008: 37).

However, some cases also contain a broader vision for the Court's adjudication of intellectual property disputes. In the Grand Chamber's Anheuser-Busch ruling, the Court's interpretation of Article 1 of Protocol 1 is that states are required to provide statutory, administrative, and judicial mechanisms that allow intellectual property owners to prevent third parties from infringing their protected works. Namely, the Court concluded that public authorities have positive obligations to take affirmative steps in order to ensure that rights holders can effectively exercise their rights (Helfer 2008: 40).

## PROTECTION OF OTHER HUMAN RIGHTS AGAINST NATIONAL MEASURES WHICH PROTECT INTELLECTUAL PROPERTY RIGHTS: APPLICATION OF ARTICLE 8 AND ARTICLE 10

The cases *Von Hannover v. Germany, Ashby Donald and Others v. France* and *Fredrik Neij and Peter Sunde Kolmisoppi (The Pirate Bay) v. Sweden* are the most famous cases within the jurisprudence of the ECtHR, relating to protection of other human rights, such as the right to respect for private and family life and freedom of expression, whose violation is allegedly deriving from the national protection of intellectual property.

The decision adopted by the ECtHR in 2004 in the case *Von Hannover v. Germany* "brought privacy issues to the forefront of intellectual property rights" (Welkowitz, 2013: 683).

In this case, Princess Caroline of Monaco complained that her privacy was violated, because photographs were taken of her and her family in various unofficial public and private occasions and those photographs were later published by three German magazines. She sued the German magazines in the German courts, claiming violations of her right to privacy, her rights to control her image under the German Copyright Act and her personality rights under the German Basic Law. However, the lower German courts did not find violation due to her status of a public figure. In the further proceeding, the court partly granted her appeal, holding that the photographs taken of her in a restaurant, as a "secluded place", constituted a violation of her right to privacy, but the other photographs did not. This decision was appealed to the Federal Constitutional Court of Germany (Welkowitz, 2013: 683-684).

The Federal Constitutional Court ruled that some of the photographs did violate her right to privacy, while some others did not, due to her status of public person. The decision of the Federal Constitutional Court is very significant, because the Court balanced the right to privacy against the right to free expression, holding that the concept of free expression also encompasses entertainment and that the press has a right to certain discretion when deciding what would be in a public interest to print (Welkowitz, 2013: 684).

Princess Caroline was dissatisfied with the rulings of the German courts and took her case to the ECtHR, which ruled in her favour. The EChHR also believed that, in this case, it is necessary to conduct balancing between the right to privacy, foreseen in Article 8 of the Convention, and the freedom of expression, foreseen in Article 10 of the Convention. However, unlike the German courts, the ECtHR attributed very little importance to the public figure status of Princess Caroline. Namely, the ECtHR noted that although she has certain public duties as a princess, the photographs do

not reflect any of those duties, but simply satisfy the curiosity of the public about the lifestyle of a princess. According to the Court, this was not sufficient reason to disregard her right to privacy. This treatment of the freedom of expression by the ECtHR clearly demonstrates that it may not be afforded particularly strong protection, if there is a commercial context at stake (Welkowitz, 2013: 685; 688).

The *Von Hannover* case is also important because the supremacy of the right to privacy, in certain contexts, over free expression could lead directly to an intellectual property right, namely the right to publicity, which would be protected as a property right under Article 1 of Protocol 1 as well as a right under Article 8. Also, this decision is important because it creates a positive obligation in the context of Article 8. Namely, by ruling in favour of Princes Caroline, the Court did not only protect her against governmental intrusions, as a negative obligation, but also required from the government to protect her privacy against intrusions of private parties, which is a positive obligation. This positive obligation included providing an appropriate civil action in the courts (Welkowitz, 2013: 686).

The affirmative obligation of states under Article 8 has been confirmed by the ECtHR in a second *Von Hannover* case, which also involved publishing of photographs of Princess Caroline and her family. However, in this case the Court did not rule in her favour. Namely, it upheld a decision brought by the German courts to allow publication of photographs of the Princess and her husband taken in St. Moritz, followed by an article where her decision to go on a vacation while her father is in poor health is contrasted with the decision of her sister, who decided to stay with her father. In this case, the ECtHR noted that the article has an informative value and that the German courts had succeed to prevent the publication of photographs whose value was less informative (Welkowitz, 2013: 687; 689).

In the cases *Ashby Donald and Others v. France* and *Fredrik Neij and Peter Sunde Kolmisoppi (The Pirate Bay) v. Sweden,* the ECtHR provided how it balances two conflicting rights: copyright and freedom of expression.

In *Ashby Donald and Others v. France*, for the first time in a judgment on the merits, the Court has held that a conviction for illegally reproducing or publicly communicating copyright protected material can be considered as a violation of Article 10 of the ECHR. Namely, the Court found that the online publication of fashion photographs falls under the ambit of Article 10, as a commercial speech, and that the imposed fines and damages awarded by the courts can be regarded as an interference with the freedom of expression. However, such interference can be justified if it meets the three requirements enshrined in the second paragraph of Article 10. This significant decision means that Article 10 of the ECHR is applicable in copyright cases interfering with the freedom of expression and information of others (Grosse Ruse-Khan, 2013: 19-20).

After a couple of weeks after the judgment in the *Ashby Donald and Others* case, the ECtHR has decided a similar case of balancing copyright and freedom of expression. Namely, it brought a similar judgment in the case *Fredrik Neij and Peter Sunde Kolmisoppi (The Pirate Bay) v. Sweden*, concerning the complaint filed by two co-founders of the company "The Pirate Bay" that their conviction under the Copyright Act constitutes a violation of their freedom of expression and information. Pirate Bay was a web site, which allowed to users to share digital material, including various copyright protected material, such as movies, music and computer games. In this regard, the applicants were convicted for their involvement in Pirate Bay (Grosse Ruse-Khan, 2013: 20-21).

In this case, the Court ruled that sharing, or allowing others to share this type of files on the internet, even if they are copyright-protected files and for the purpose of making profit, falls within the right to "receive and impart information", guaranteed by Article 10. However, the Court considered that the Swedish courts had rightly balanced the rights of the applicants to receive and impart information and the need to protect copyright and therefore found no violation of Article 10 (Grosse Ruse-Khan, 2013: 20-21).

## APPROACH OF THE EUROPEAN COURT OF HUMAN RIGHTS TO THE INTELLECTUAL PROPERTY PROTECTION DISPUTES

The analysis of the development and treatment of intellectual property, within the jurisprudence of the ECtHR, indicates that the cases involving intellectual property rights protection can be divided into several groups, based on the approach of the Court to the adjudication of intellectual property protection disputes.

In most cases, the ECtHR treats intellectual property no differently than any other type of property under Article 1 of Protocol 1. The Court, in general, does not take into consideration the public-good qualities of intellectual property rights, nor it considers the social and cultural policies which justify the protection of those rights by the state. In these cases, the Court finds violation with "arbitrary government conduct, such as *ultra vires* actions, failure to follow previously established rules and procedures, or laws that contravene the rule of law principles", namely, which are not "sufficiently accessible, precise and foreseeable in their application". This approach of the ECtHR allows governments to have wide discretion as regards shaping their domestic innovation and creativity policies, given that the rule of law principles are met (Helfer, 2008: 36-37).

Potential negative consequence of this approach would be that if a state manages to provide laws which are precise, accessible and foreseeable and if it does not itself

violate protected works, then the state could easily expand or reduce the domestic standards for intellectual property protection, without fear of violating Article 1 of Protocol 1 (Helfer, 2008: 39).

Another group of cases contain a wider vision about the ECtHR's adjudication of intellectual property protection disputes, in the sense that the states should provide statutory, administrative and judicial mechanisms, which will protect the intellectual property right holders against actions of private parties and allow them to effectively exercise their rights. Namely, this approach of the Court focuses on implementation of various positive obligations by the national authorities (Helfer, 2008: 40).

It is very likely that the consequence of this approach would be a new wave of complaints as regards the adequacy of the domestic enforcement procedures, which will require from the Court to determine more precisely the mechanisms that need to be provided by the state, in order to enable the intellectual property rights holders to prevent and punish violations by third parties (Helfer, 2008: 40).

At the same time, a growing number of other cases also contain a wider vision for the Court's adjudication of intellectual property rights disputes, in the sense that the Court makes an effort to strike a balance between intellectual property and other human rights. In these cases, the approach of the Court lies on the principle of establishing a fair and proportional balance between intellectual property rights and other competing rights protected by the ECHR (Grosse Ruse-Khan, 2013: 19; Helfer, 2008: 40; Welkowitz, 2013: 724).

This approach of the Court also has potential negative consequences, especially in the sense that it could contribute to undervaluing the rights of the perpetrator of an alleged violation, such as the right to free expression and information, especially if they are not in their traditional form. The result would be a reduced value of the right opposing the intellectual property right, even out of the context of intellectual property (Welkowitz, 2013: 724).

## CONCLUSION

The analysis of the jurisprudence of the ECtHR, concerning the intellectual property protection, shows that the cases involving intellectual property rights protection, according to the approach of the Court to the adjudication of intellectual property protection disputes, can be divided into three main groups. Moreover, based on the analysis of these three groups of cases, it could be concluded that the Court has developed three basic models of approach to the adjudication of intellectual property disputes: protection of rule of law; implementation of positive obligations and striking a fair and proportional balance.

The first model of approach is derived from the first group of cases. The main characteristic of the first group of cases is that the ECtHR, when deciding about an alleged violation of intellectual property rights, treats intellectual property as any other type of property protected under Article 1 of Protocol 1. In addition, it finds violation of the intellectual property rights only in case of arbitrary conduct of the national authorities. Through this approach, the Court protects the rule of law principle.

The second group of cases provides support for the second model of approach. Namely, the second group of cases implies that the ECtHR has expanded its approach to the adjudication of intellectual property disputes. Namely, in these cases, the Court requires certain positive obligations to be undertaken by the states, in order to enable the intellectual property right holders to exercise their rights effectively. The approach of the Court in these cases concentrates on the implementation of various positive obligations by the national governments.

The third model of approach is connected with the third group, which includes cases where the Court made an effort to strike a balance between intellectual property and other human rights guaranteed by the ECHR, in the context of deciding on alleged violation of certain right. Namely, the Court's approach in these cases is based on striking a fair and proportional balance between the intellectual property right and other competing rights.

Each of these ECtHR's models of approach has its positive and negative features. Bearing in mind these features, it seems that the first model of approach, which targets the arbitrary government conduct in order to protect the rule of law principle, would be the most appropriate model of approach to the adjudication of intellectual property disputes by the ECtHR.

Namely, this approach is in accordance with "the core European convention values of promoting predictability, certainty, and adherence to the rule of law", while it does not limit excessively the discretion of the national authorities to design domestic intellectual property rules and policies (Helfer, 2008: 51).

However, it should be noted that some of the ECtHR's case law shows tendencies toward significant protection for intellectual property rights emanating from the ECHR as well as expanding or even creating intellectual property, which could have serious effect on human rights enforcement. Bearing in mind that "the possibility that the Convention could be used to expand intellectual property rights raises several concerns, not the least of which is the appropriateness of the ECtHR as arbiter of intellectual property rights among the forty-seven members of the Council of Europe", it seems sensible to conduct thorough analysis of its real effect on human rights enforcement before allowing it to take a swing (Welkowitz, 2013: 726).

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UDC 316.346:329(497)
Sceintific paper / Научен труд

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# GENDER EQUALITY – POLITICALLY INTEGRATIVE CHALLENGE FOR THE PRESENT-DAY BALKANS (THROUGH THE PRISM OF THE FORMER YUGOSLAV REPUBLICS)

Abstract

Politics represents a segment of the society where male domination was largely accentuated until the 1970s, at which stage the number of females joining in political parties started growing gradually. After the Second World War, this phenomenon had taken a full swing and the number of women in the national parliaments was rising continually until the post-transitional period which witnessed a drastic rise in the women's active political participation. Simultaneously, the comfort of the former protagonists in the political world began eroding, who as key decision-makers, had their supremacy in the political society threatened. Women's desire and ability to get involved in political life depends upon several factors, such as the educational, professional, social status and the development of democratic institutions. The equal participation of women in political processes, enjoying equal rights for fulfilling their personal potentials and the equal status with males can affect women's political, social and cultural development in the modern democratic society.
The Balkans have witnessed a region where the ever increasing number of women present in politics signals the abandonment of a patriarchal society by focusing on the interests for approaching the European Union. The countries from the Yugoslav Federation going through a phase of post-communist transition perfectly epitomize the analysis of the

society's political transformation, especially from the aspect of gender equality.
While in the 1990s the Balkans was still under the domination of military leaders, males-nationalists, the following century has envisaged a legislative category for gender equality. Therefore by enacting the positive law, the Balkan countries have incorporated mandatory quotas for female presence in politics.

**Key words:** gender quota, women in parliament, women in the Executive

## INTRODUCTION

*Female biological predisposition is only a work of human evolution, but not a concept as well that would determine the gender component of political structure. This natural determination overcomes any attempt for female social and political exclusion in every segment of life.*

The position of women in political institutions in the state authority is mainly analyzed from through the politically-social aspect. The breaking down of tradition in light of female positive discrimination is the stepping stone in strengthening the democratic values of modern societies. The Balkans as a region closely interwoven with traditional values and norms has faced the challenge of needing to overcome them and strengthen democratic capacity. The period of post-transitional development of the former Yugoslav republics meant an overturn in the transformation of traditional and social norms, especially from the aspect of fight for gender equality. Since transitional anomalies pushed „the young democrats" in a fight for independent survival, a substantial amount of crucial preconditions for their political development was neglected. One such precondition was the issue of "gender mainstreaming". Dealing with infringement of female rights and their subordinate position in the social-political stratification has imposed itself as a challenge for the post-transition. In order to analyze the question of gender equality in the political sphere, it is essential to commence with the issue of tradition, moral values and history of social politics. Societies which practice gender discrimination have inevitably been paying the price of wellbeing for their people, slower economical development, poorer leading and generally lower quality of life (World Bank, 2000).

However, gender equality is much more than sheer aim by itself. It is a precondition meeting the challenge of reducing poverty, promoting sustainable development and establishing suitable authority (Veneman, 2006).

The role and position of women in the present-day political institutions can mainly be explained through the analysis of the influence that socio-cultural (education, economic status, career promotion) and institutional factors have (those not referring to political institutions in the very sense of the word, such as electoral model, but the non-formal progress of women in politics, such as party's internal elections, that is party system), as well as the level of political culture in the society. The model of political culture incorporates values, norms, stereotypes, and prejudice for politics and in politics (Bacanovic, 2014).

The history of the 21 century is even more balanced with the progress made in the battle for increased participation of women in the public life which undoubtedly

has its foundations in the battle for human rights. The modern organizations and nations have started to accept that the increased inclusion of women in all working spheres (entrepreneurship, different industrial activities, management and politics) contributes to the necessary multiplicity in the approach, working styles and management which, in turn, leads to complete and quality solutions to the problems (Vokic and Bulat, 2013). Margaret Thatcher paved the way for female participation in politics by explaining the female style of management like one of operation. "If you want something said, ask a man; if you want something done, ask a woman." was the motto with which the "iron lady" emphasized the female pragmatism in politics.

A large number of the Balkan countries have developed successful strategies for increasing female participation in politics. One such strategy that they have already applied is defining the guaranteed quota for women on several levels. These gender quotas are intended to guarantee a certain percentage of female representation in the Parliament (Dahlerup and Freidenvall, 2005), the Executive or political parties. According to Norris and Krook (2011), there are three types of gender quotas: reserved seats, legal candidate quotas and voluntary quotas. The reserved seats stand for the number of MP seats in parliament; the legal candidate quotas are obligatory provisions applying to all parties, while the voluntary quotas are not envisaged by the national legal regulations, but they are introduces by the very same political parties (Azizi, 2015). Most common is the application the "reserved seat quota" and "legal candidate quota" which are incorporated in the country's electoral laws or the political party law (Ballington and Karam, 2005). The issue of political participation of women is not only a question simply to fill the "female quota", it is a battle for crucial participation, for power and decision. This represents the revolution for understanding the female political power. The woman in decision-making positions in politics is a structural prototype for gender equilibrium in the political society. The concept of dividing power should not be understood as increased female participation in politics, but their becoming equals with men. The fact that women are not crucial to politics for their number, but their ability is a conclusion drawn by Louisa Vinton (2013), a UN coordinator and resident representative of UNDP.

Ranging from global organizations whose target policy is concentrated on gender equality, to international organization oriented towards keeping world peace and countries' politics and non-governmental organization, gender equality is substantially present in their portfolios. The Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW), adopted on 18 December, 1979 by the UN General Assembly (brought after more than thirty years of active

work by the Commission for the Status of Women) in part II article 7, affirms the world attempts for equal participation of men and women in the political and public life through the recommendations for implementing appropriate measures to eliminate the discrimination against women and guarantee equal enjoyment of their rights (UN: CEDAW). The women in authority and political decision-making process have been identified as one of the twelfth areas comprised by the Beijing Declaration and Platform for Action set up in 1995. The two strategic goals on which this segment from the platform is founded are: 1. increasing the number of women in the decision-making and ruling processes, and 2. taking necessary measures to secure equal approach and full participation in all spheres of authority and decision-making processes (Beijing Declaration and Platform for Action, 1995).

## THE WOMAN IN POLITICS ON THE BALKANS THROUGH THE PRISM OF POST-COMMUNIST TRANSITION – FROM TRADITION TO MODERN IMPERATIVE

The secession of the countries from the Yugoslav Federation created frail democracies based on pluralism which were an important factor for keeping peace and safety on the Balkans. The fall of communism brought about two social changes: 1. the rise of nationalism, separatism, secessionism and ethno-nationalism among the minorities (Walby, 1990), and 2. discrimination of civil and social rights, especially those of women, established back in the communist regime. These countries are still facing the challenge of achieving gender equality, even though the key difference lies in the activation of mechanisms promoting equality and upgrading the legislation which envisages equal opportunities imposed by the EU, as well as the support for women coming from Europe and feministic networks which work intensively on implementing basic standards for gender equality (Nacevska, 2013: 93-98). Reducing female participation in the public life was caused by the deterioration of female position on the labour market, increased unemployment, reduced access to financing resources, reducing the country's social role, increased poverty and discrimination (Omanovic, 2015). The transition in the post-communist countries is very commonly related to the pressure factor and control of "old political elite" when it comes to the realization of the democracy in these societies and, especially, being involved into war as a factor of absence or threatening the process of liberalization and democracy in the societies (Fink-Hafner and Hafner- Fink, 2009). The first decade from the post-communist politics in the Western Balkans characterizes with fragile democracies, the tendency to

increase the disproportionality into politics, creating semi-presidential systems and intensive electoral model (Nacevska, 2013: 93).

As a postwar region, the countries were faced with abundance of political problems on the one hand, and the tendency for European integration by overcoming nationalist ruling spirit on the other (Nacevska, 2013: 98). In this direction, they signed the Convention on elimination of all forms of discrimination against women whose rules encouraged the attempts for political publicity and feministic organizations for the appropriation of legislations according to the recommendation from the UN Women. These countries' intention is harmonization of their national legislations with EU demands. Therefore, some of them as member states of the EU, while some with the status of a candidate country for EU, that is potential EU members (europa.eu) are incorporating the regulation on promoting the political rights of women in their legislation.

## THE LEGISLATION AND THE QUOTAS FOR WOMEN

Implementing the quotas for women in politics through legislative mechanisms meant a step forward in the battle for equal political representation of women. That enabled a great presence of women on the electoral lists, but not an increased possibility for placing women in key positions in the Judiciary and Executive.

Macedonia, Serbia and Montenegro have incorporated the quotas for women in the Members of Parliament Act. In article 37 section 3 of the Members of Parliament Act in the Republic of Macedonia, it is stated that in the electoral list for MPs in the Parliament each gender has to be present with at least 30% (Law on the election of members of the Parliament of Macedonia) while the electoral code makes an explicit provision that every third place on the list must belong to the less-present gender (Electoral Code, Official Gazette of R. Macedonia, 2014). In Serbia and Montenegro, there is also a provision for the position of women on the electoral list. To be more precise, in article 40 of the Member of Parliament Act in Serbia, the division of position on the electoral list has been taken into consideration, which means that every fourth candidate has to be a member of the less-present gender (Law on the election of members of the Parliament of Serbia, 35/2000). The Member of Parliament Act in Montenegro stipulates at least 30% of women in the electoral list, and at the same time, it determines their position in the list more precisely. Article 39 of the Member of Parliament Act in the legislative assembly in Montenegro predicts at least one member from the less-present gender at every four candidate on the list (Law on Amendments to the Law on Election of Councillors and MPs, Montenegro, 2014,). Serbia and Montenegro also predict measures in the

same Act if the ascribed quota has not been met. The Act in both countries stipulates returning the electoral list for audit in case the minimal stipulated presence from the less-present gender has not been fulfilled, that is not accepting the electoral list by the electoral committee unless it has been properly revised (Law on Amendments to the Law on Election of Councillors and MPs, Montenegro, Article 39-a, 2014).

Unlike these three countries, Slovenia and Bosnia and Herzegovina stipulate the female representativeness in the electoral lists for members of the legislative assembly as part of the national electoral code. According to article 4.19 of the Electoral Code of BiH, the candidates from the less-present gender have to be allocated on the list in such a way that at least one candidate from the less-present gender to be found between the first two candidates, two candidates from the less-present gender among the first five candidates and three candidates from the less-present gender among the first eight on the list. The number of candidates from the less-present gender must be equal with the overall number of candidates on the list when divided by three, rounded to the first smallest full number (Electoral Code of BiH, 2011). The electoral code in Slovenia predicts minimal presence of each gender of 35% in the electoral list from the overall number of men and women candidates. This rule is exclusive in case the candidate lists have three candidates from the both genders or the list has a total number of three candidates. In that case, there must be at least one representative from the opposite gender (National Assembly Elections Act, 2006).

The Gender Equality Act in Croatia stipulates the quota for women for their presence in the Parliament. According to article 12 of this law, gender disbalance exists if one gender is present with less than 40% among the political decision-making bodies, that is the political parties and other authorized nominators are obliged to respect the principle for gender equality and take into consideration the balance for male and female presence in the electoral lists for representatives in the Croatian Assembly, pursuant to article 12 (Gender Equality Act, Zagreb, Article 12, 2008). The failure to meet this provision is punishable with a fine (Gender Equality Act, Zagreb, Article 35, 2008). In February 2015, the quota for women in Croatia was also incorporated in the Member of Parliament Act, but in September that year the same was abolished (Brakus and Tesija, 2015).

## THE POSITION OF WOMEN FROM THE FORMER YUGOSLAVIAN COUNTRIES IN THE JUDICIARY

The comparative overview of the countries from the former Yugoslav Federation through the analysis of the factual situation of the woman, actually her presence

and positioning in the legislative bodies and highest structure of the Executive (country's president and Prime Minister), will illustrate the political perspective of the woman vis-à-vis the meeting of strategic aims for the position of the woman in the government, ruling and decision-making process.

## WOMEN IN THE LEGISLATIVE ASSEMBLY

The political presence of women in the legislative assemblies can be analyzed through two positions. The first one is the presence of women in the legislative assembly, that is the proportion of men and women in the legislative body, and the second refers to appointing women as president of the legislative assembly.

The beginnings of independent political architecture in the former Yugoslav republics gave relatively poor results when it comes to female representation in the legislative assemblies. The influence of politically social circumstances in the aftermath of the Federation dissolution, and entering a transitional period lead to woman abstinence in the field of politics, which is obvious from the elections' facts.

## WOMEN AS MEMBERS OF PARLIAMENT IN THE LEGISLATIVE ASSEMBLIES IN MACEDONIA, SERBIA, MONTENEGRO, SLOVENIA, CROATIA AND BOSNIA AND HERZEGOVINA

### Situation in 1995

The Federal Republic of Yugoslavia founded in 1992 by Serbia and Montenegro is the lowest ranking country among the countries from the former Yugoslav Federation in respect of female representation in the legislative assembly. Out of total 138 representatives in the Republican Assembly (the House of Peoples), only 4 belonged to women, that is 2.9% which was exceptionally low level of female political participation in the legislative bodies on the whole of Balkans[1].

Then, the second lowest ranking country is Macedonia. Out of total 120 representatives in the legislative assembly, only 4 were women, standing for 3.33% of direct participation in the parliament's work (National Assembly of Macedonia, 1994-1998). Insignificantly better was the situation of the legislative assembly in BiH where 7 women were elected as MPs, making 4.5% of the total 156 MPs. Similar was the situation with Croatia. Out of 138 seats, only 8 are female representatives, that is 5.8%. However, the best ranking country in this view

[1] A lower level of participation of women in parliament in 1995 can only be found in Turkey with 1.78% representativeness (out of 450 MPs, 8 are women).

was Slovenia, which displayed significantly higher rate of female presence in the parliament compared to the others. Out of total 90 MPs, 13 belonged to women, comprising 14.4% representativeness (Interpaliamentary Union, 2006).

**Situation in 2000**

BiH has 12 women in the legislative assembly, out of 42 representatives. In this period, BiH has the highest female representation with 28.6%. Croatia marks 20.5% with 31 women out of total 151 MPs. Unlike them, in Slovenia there are only 9 women in parliament out of total 90 MPs, that is 10%. At the same time, Macedonia has relatively low presence of women in politics, especially in the legislative assembly. Out of total 120 MPs, 8 are women or 6.7%. In Yugoslavia (Serbia and Montenegro), out of 138 seat, only 7 belonged to women (5.1%) (Interparliamentary Union, 2000).

**Situation in 2005**

In 2005, Croatia is the highest ranking country compared to the rest of the former YU countries. In the parliamentary structure, out of 152 MPs, 33 are women or 21.7%. Coming next is Macedonia with 23 women out of total 120 MPs, standing for 19.2% female representativeness. BiH marks 16.7% of direct participation of women in the legislative assembly, that is out of 42 representatives in the House of Representatives, 7 are women. In the House of Peoples, there is not a single woman among the 15 representatives. In Slovenia, out of 90 representatives in the National Assembly, 11 are women (12.2%). While in Serbia and Montenegro, out of the total 126 representatives in the legislative assembly, only 10 are women, comprising 7.9% female representation in the National Assembly (Interparliamentary Union, 2005).

**Situation in 2010**

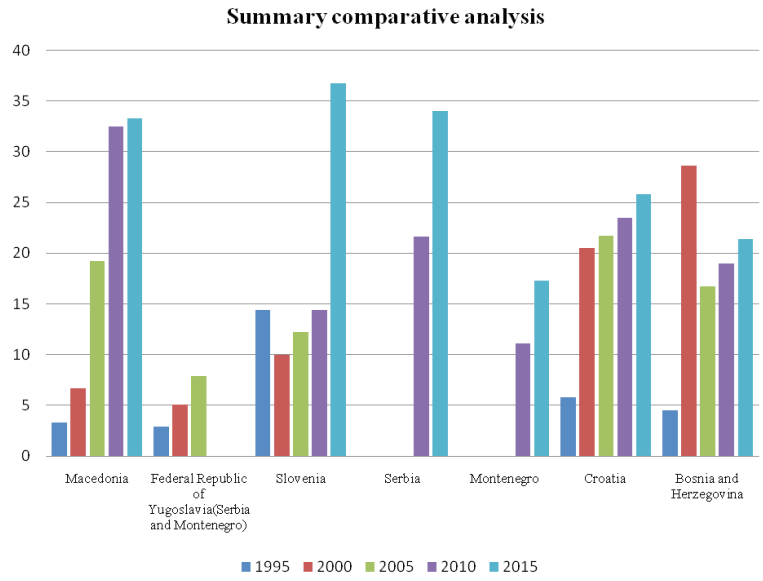
In 2010, according to the UN Women statistics and Inter-Parliamentary Union, Macedonia is the top ranking country according to female representativeness in the legislative assembly compared to the other former YU countries. Out of 120 MPs, 39 are women, which stands for 32.5%. In this period, Croatia has 36 women out of total 153 representatives, making 23.5%. In the Serbian Assembly, there are 54 women, constituting 21.6% from the total of 250 MPs. BiH marks 19% of women in the House of Representatives; from the total of 42 members, 8 are women. While, in the House of Peoples there are two women among the

15 representatives (13.3%). Slovenia also shows a significant rise in the female representativeness in the legislative assembly compared to the previous years. Out of 90 representatives in the National Assembly, 13 are women, or 14.4%. In the National Council, among the 40 members, there is only one woman (2.5%). In this period, Montenegro displays the lowest percentage of female representatives. Out of 81 MPs, only 9 are women, making 11.1% of women present in the legislative assembly (Interparliamentary Union, Women in politics: 2010).

### Situation in 2015

Slovenia accounts for the highest per cent of women holding an MP office. Out of 90 seats in the National Assembly, 33 are women or 36.7% of the total parliamentary seats. While in the National Council among the 40 representatives, only 3 are women or 7.5%. Serbia shows a relatively increased number of women in parliamentary office in the legislative assembly. Out of 250 MPs, 85 are women, that is 34%. Only one position lower comes Macedonia with 33.3% female representativeness in the Parliament of Republic of Macedonia, or to be more precise, out of 123 parliamentary seats, 41 belong to women.

**Chart 1.** *Women representativeness in the legislative assemblies in the former YU countries from 1995 to date*




*Source: Inter - Parliamentary Union, Women in politics: 1995, Women in politics:2000, Women in politics:2005, Women in politics:2010, Women in politics:2015*

The Croatian National Assembly also marks a significant increase in the number of women present. Out of 151 MPs, 39 are women, or 25.8% of female direct participation in the legislative assembly. In BiH in the House of Representatives, out of 42 seats, 9 belong to women (21.4%). In the House of Peoples, the situation is similar to the one back in 2010. In Montenegro, on the other hand, there is the same trend of low female representativeness in the legislative assembly. Out of 81 seats, 14 belong to women or 17.3% from the total number of MPs (Interparliamentary Union, 2015).

## WOMEN IN POWER

### Parliamentary speaker

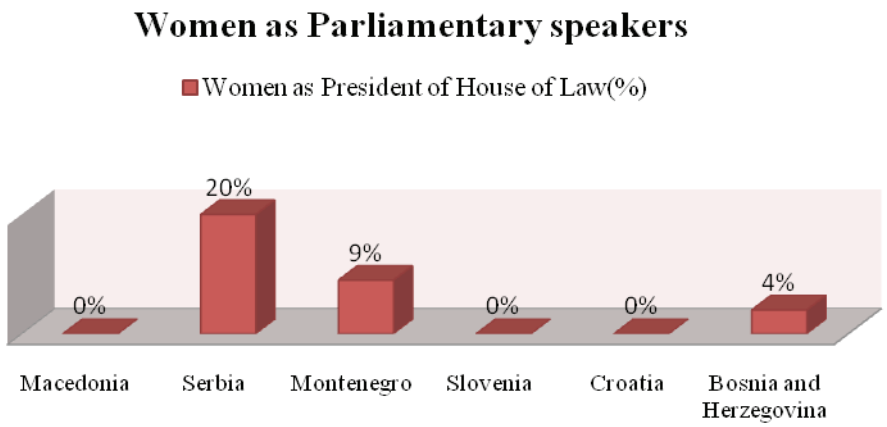
Out of total 7 structures in the Croatian National Assembly, since 1990 onward, there has not been a woman appointed as a president (speaker) of the legislative assembly (Croatian Parliament, n.d.).The situation is same in Slovenia and Macedonia. Since abandoning the Yugoslav Federation, Slovenia has not appointed a female speaker in all seven structures of the National Assembly (National Assembly Slovenia, 2014). There has not been a woman appointed as parliamentary speaker in the history of the Macedonian Parliament. Out of 11 speakers, not once a woman was elected for that position.

Out of total 10 structures in the Serbian National Assembly, there have been three occasions when a woman was appointed for the position of a parliamentary speaker. The first woman was Natasha Micic; she was in the fifth structure (22 January 2001 – 27 January 2004). Then, the second woman elected parliamentary speaker was in 2008, holding position until 2012. While, the current structure in the Serbian National Assembly sees the third female speaker in office (National Assembly of the Republic of Serbia, n.d.).

Since the Dayton agreement and the adoption of the Constitution of BiH in December 1995, out of total 7 mandates in the legislative assembly, the first woman to be ever elected parliamentary speaker was Borjana Krishto. She has been the first female parliamentary speaker since 1996 (House of Representatives of Bosnia and Hercegovina, n.d.).

Since 1990, out of total five parliamentary speakers in the legislative assembly of Montenegro, there was only one woman appointed in that position, Vesna Perovik (2001-2002) (Parliament of Montenegro, n.d.).

**Chart 2.** *The percentage of women as Parliamentary speakers*




*Source: National Assembly of the Republic of Serbia, The Parliament of Montenegro; Assembly of the Republic of Macedonia, Parliamentary Assembly of Bosnia and Herzegovina, Croatian Parliament, National Assembly of Slovenia*

WOMEN IN THE EXECUTIVE

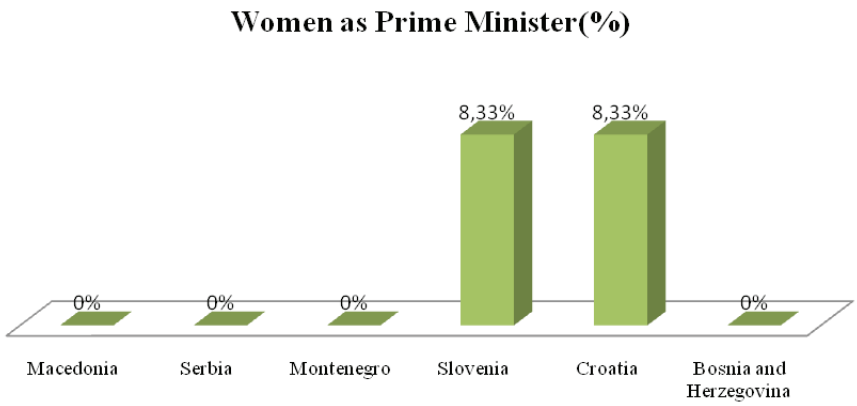
**Prime Minister (PM)**

Out of total 10 Prime Ministers in Croatia, the only female PM so far has been Jadranka Kosor (in the 11th structure). She was in office from 01.07.2009 – 23.12.2011 (Government of Croatia, n.d.). Also, out of total 8 PMs in ten mandates, Slovenia has once had a female PM. In the period of 20.03.2013 – 19.09.2014, Alenka Bratushek was the first female PM (Government of Slovenia, n.d.).

In the parliamentary history of independence and democracy, Serbia has not had a female PM. The situation is same in Bosnia and Herzegovina, Montenegro and Macedonia. Since the postwar period, the factual situation of women as PMs in BiH has been the one of absence of a leader in this branch. Out of total 9 PMs, there has not been a single female representative (L.R, Radiosarajevo.ba, 2015). Out of total governmental mandates in Montenegro, not once the role of PM was performed by a woman. Similar was the situation in the Socialist Federal Republic (Serbia and Montenegro) between 1992 and 2006; there was not a female PM (Government of

Montenegro, n.d.). Since its independence, out of total 8 PMs in Macedonia, there has not been a single woman appointed as PM. Radmila Shekerinska was briefly a deputy PM after Hari Kostov stepped down as PM after being in office from 17 November 2004 – 17 December 2004.

**Chart 3.** *Percentage of women as Prime Minister*




*Source: Government of the Republic of Croatia (web site), L.R, Radiosarajevo.ba,2015, The Archives of Yugoslavia ; Portal Mondo, Government of the Republic of Serbia*

**President**

In the political history of Croatia as an independent and democratic country, there has been a change of 4 heads of state, among which one is a woman. On the last presidential elections held in January 2015, the first female Croatian president was elected, Kolinda Grabar – Kitarović from the HDS. The first Croatian president after its independence and adoption of the democratic Constitution in 1990 was Franjo Tuđjman. He was elected the head of state in the presidential elections in August 1992 and re-elected again in August 1997. His mandate ends after his death in 1997. His position was filled in by Stjepan Mesić –Croatian National Party (HNS) who also held two mandates. In the period of 2010 – 2015, the country's president was Ivo Josipović – Social Democratic Party (SDP) (Croatia: land and people, Political organization, n.d.).

Serbia, Slovenia, Bosnia and Herzegovina, Macedonia and Montenegro have not had female head of state.

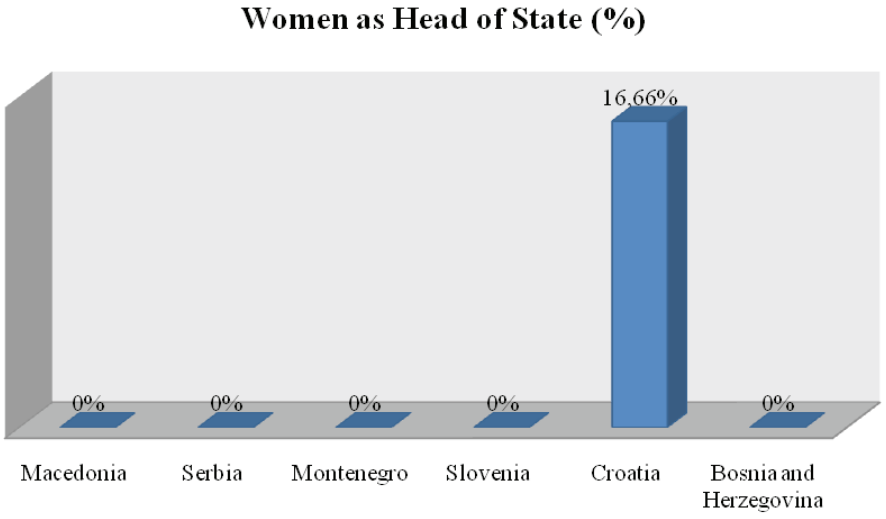
After the presidency of Yugoslavia since 1990, Serbia has not had a female head of state. Since 2002 following a few unsuccessful presidential elections, the office in that period was held by Natasha Micić, the parliamentary speaker. After the intervention of the Presidential Election Law in 2004 and reducing the output census, Boris Tadić (Social Democratic Party) was elected as president and afterwards Tomislav Nikolić. (Presidents of Serbia from 1990,naslovi.net, n.d.). Neither Slovenia has had a female head of state. After its abandoning the Yugoslavian union, there have been 5 presidents in the following mandatory periods: 1992-1997, 1997-2002, 2002-2007, 2007-2012, 2012- to date.

In the parliamentary history of independent Macedonia, five presidents have changed, among which there is no female representative.

Since 1996, BiH have had in total 27 presidents, including the presidents from the range of Croatian and Serbian people. However, there has not been a woman in office (Chronology of the Presidency of BiH, Presidency of Bosnia and Hercegovina).

In the political history of Montenegro, both as an independent country and in union with Serbia, there has not been a single woman elected as president (Results from President Elections in Montenegro, (Socialist People's Party of Montenegro, n.d.)

**Chart 4.** *Percentage of women as Head of States*




*Source: Presidency of Bosnia and Herzegovina, Former presidents of the Republic of Slovenia The Miroslav Krleža Institute of Lexicography pecialized search engine news sites in Serbia, State Election Commission of Macedonia Socialist People's Party of Montenegro*

## CONCLUSION

By looking at the above-presented statistical analysis for female representativeness in key positions in the highest level of the Executive and Judiciary, it is evident that there is an increased presence of women in the legislative assemblies, but only in the position of MPs. This is the case with all six countries subject to this analysis. Unlike this, what is more pronounced is the factual situation of minimal presence of women as head of state, prime minister and parliamentary speaker. In this view, Macedonia stands out as a country where there has not been a single female representative in all these three key positions, which is not the case with any of the other countries.

A significant piece of information for the increasing number of women as MPs is the implementation of the gender quota as a crucial determinant for bigger inclusion of the female gender. The question imposed by the obtained results is whether the absence of precise legal frame can be used as an alibi for the low presence of women as heads in the Executive and Judiciary. Bearing in mind that these are not collective functions and also that parties nominate one representative as a candidate (non-existence of a candidacy electoral list), it is clear that there are no conditions for imposing a norm. Therefore, the core of the problem lies inside the political parties. The internal party solution for gender equality with the view of nominating women for some of the key state positions can be ascribed exclusively to the democratic capacity of the political party, political maturity and the level of political culture, especially that of party management. This is the first filter to overcome male superiority in the highest position of the Executive and Judiciary. The second one is concentrated on democratic capacity, democratic maturity and political culture of civil society. The political parties as the first filter can influence a change in the traditional civil society by imposing the trend for supporting women as candidates for parliamentary speakers, prime ministers or heads of state by taking into consideration the mere fact that people tend to attach themselves to a party and not a single human being.

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UDC 328:342.5(497.7)
Sceintific paper / Научен труд

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# SOCIOLOGICAL AND LEGAL ASPECTS OF THE MEMBER OF PARLIAMENT MANDATE IN THE REPUBLIC OF MACEDONIA-BASIC THESES FOR INTERDISCIPLINARY RESEARCH - *PRO FUTURO*

Abstract

The text titled “Sociological and Legal Aspects of the MP’s Mandate in the Republic of Macedonia” mainly observes the scientific research way of treating the MP’s mandate, especially from the aspect of sociological and legal research which is insufficient in the Macedonian modern society and science. Practice points out that there is a huge

disagreement between the formal and the real and that the electors and the citizens, and especially the ethnic groups, are in unequal position.

There is supremacy of particular parliamentary functions compared to some others, such as for example the function of the President of the Assembly and some other cited in this text.

The normative function of the Assembly of the Republic of Macedonia is not consistently executed, because the adopted regulations, especially the legal regulations are pending and, after they are previously selected, they are not published in the Official Gazette of the Republic of Macedonia in due time.

There are many open issues related to the execution of the MP's mandate and the overall functioning of the Assembly of the Republic of Macedonia, as a holder of the legislative function of the parliamentary system of the Republic of Macedonia.

## INSTEAD OF THE FOREWORD

The insight in the modern Macedonian sociological and legal scientific database allow us to see that the nature of MP's mandate is scarcely discussed, meaning that it has been insufficiently researched.

According to the 1991 Constitution of the Republic of Macedonia, numerous normative and institutional changes were introduced in the Republic of Macedonia as a newly established, independent, unitary and internationally recognized state. First of all, changes related to the ownership title bearers, that is, changes in the economic system as well as changes in the political and social system.

In the last mandate of functioning of the delegated Assembly of the Republic of Macedonia as a federal unit of the Socialist Federal Republic of Yugoslavia, mostly in 1990, before its dissociation, numerous changes were made as prerequisites for the future changes within the transition, being a period of transition from one socioeconomic and political formation to another one.

By 1991, the Assembly of the Socialist Republic of Macedonia (which was one of the six federal units and the two autonomous provinces within the Socialist Republic of Serbia) was tricameral parliament, and the parliamentarian system (that is, delegate system) was grounded on the principle of unity of the authority.

Regarding the new concept of MP's mandate, in the newly established Macedonian state especially relevant are the following fundamental values of the Constitution of the Republic of Macedonia which are determined in Article 8 Paragraph 1, such as "rule of law" (Line 3), then, "division of the state power to legislative, executive and judicial power" (Line 4), as well as "the political pluralism and free direct and democratic elections" (Line 5). The very fact that during the last 25 years there is a lack of comprehensive discussions on the category of mandate, on its sociological or even legal nature, is an important segment for activation of the scientific public for preparation of relevant projects, all of these in order to research the acting of the elected representatives in the public life and certainly, their communication with the citizens and electorate.

This paper is intended to sketch the major directions or theses for the future project, for the project *pro futuro*, especially from the aspect of the sociological sciences (general sociology and the special sociological disciplines, such as the sociology of law), the constitutional law and the political system. In addition, because of the complexity of the very concept, we support an interdisciplinary approach which we consider to be necessary for recognition of the institution of mandate, and especially, the MP's mandate. We hold that for the study of this matter, besides the use of the secondary base of information and data, it is necessary to provide a relevant experience evidence through direct empirical research, database from the

social media, that is, to develop a methodological framework for e-research, which would provide data from "the virtual community which is increasingly becoming important in the Macedonian socio-political life".

There are various aspects, but in this occasion we will focus on the sociology and its principles, the constitutional – legal and political system (as a system of norms and ways of its realization).

The sociological aspect is of high importance because it treats and analyzes all phenomena and related processes which occur within the modern democracy which principles become also generally valid for the post-socialistic countries, especially those from the European Union, as well as the countries from the so-called Western Balkan.

In fact, it is about the institutional changes which refer to the civil democracy and civil society, which have different institutional forms, hence, distinctive from those which are dominant as a theory and practice of the modern capitalist countries.

Generally viewed, according to almost all sociologists, the democracy is grounded mainly on the principles such as: sovereignty of the people, the principle of equality of all people, as well as the personal freedom of the citizens. There are different forms of democracy which depends on the type of the society. Several types of democracy predominate: direct, referendum and indirect or representative democracy, which is the subject matter of this paper.

Based on the insight into the empirical archive, there is deficiency of projects and scientific publications related to the parliamentary mandate and the activity of the MPs (formerly delegates). Therefore, we can indicate the newest publication of Institute for Sociological, Political and Juridical Research within the Sts. Cyril and Methodius University in Skopje, according to which records of its 50 years' activity, there is a small number of scientific-research projects and published studies from this area.

As an example of the deficiency of projects and scientific publications related to the MP's mandate and the activity of the MPs (previously delegates), we can point out the latest publication of the Institute for Sociological, Political and Juridical Research within the Ss. Cyril and Methodius University in Skopje, according to which records of the activities in the last 50 years, there is a small number of scientific-research projects and published studies from this field. Most often, in the last 20 years the scientific-research activities in the field of law and politics are mostly directed toward the study of the electoral system, the local self-government, firstly as a constitutional category, and later as a legal institution, and, certainly, of the public opinion.

Because we make efforts to research the topic in an interdisciplinary way, it would be useful if a relevant pilot research would be conducted as a kind of introduction,

which would be intended to get knowledge of particular phenomena, processes and relationships as they function in reality and which would be a significant input for developing a scientific research set of instruments.

First, we should set the following theses of the *PRO FUTURO* research:

1. To define the sociological nature of the parliamentary mandate, especially in terms of the development of the parliamentary system in the modern state of the Republic of Macedonia.
2. Then, to define the legal nature of the parliamentary mandate within the modern parliamentary democracy and the civil society in terms of multi-ethnicity.
3. Finally, to define the political leadership in Weber's sense of word which refers to the charismatic government, by which the risk of total bureaucracy is avoided.

## THE SOCIOLOGICAL NATURE OF THE MP'S MANDATE

Today the mandate, especially the MP's mandate which is performed in the Assembly of the Republic of Macedonia, is scarcely discussed, especially from sociological and social aspects. The representatives of those local self-governments which are elected and in this mandate by, and originate from the opposition parties are often a target of verbal attacks.

For the empirical research of the mandate the sources and type of information and data are of key importance. It includes utilization of the classic media, as well as the electronic sources which are generally related to the operation of the Assembly of the Republic of Macedonia and the parliamentarian groups within it. In addition, we should take into account the socio-demographic structure of the MPs, the database regarding the activity of the MPs, their contacts and communications with their political party and the bodies of the Assembly, the voters, local communities and alike. According to the Constitution, MPs have the same rights, but according to their position in the Assembly they are not in position to act equally (compared to the President of the Assembly and his deputies and the coordinators of the parliamentary groups). It seems that the position of the MPs is not equal, which should be empirically confirmed.

We should mention that regarding the activity of the MPs there is a difference, and we could use a wide range of sociological methods and techniques in this analysis. In our opinion, we could use mixed research methods which would include both the quantitative and qualitative methods, because it would make possible to get insight in the major trends or directions of functioning of the mandate, as well as to

comprehend why they are developing in such a way. In addition, of key importance is the analysis of the content of the written material, as well as the legal framework which covers the key concept of mandate.

Depending on the methodological framework of the very research, it can consider the following research questions:

- To which extent the MPs are independent and personally neutral in relation to the parties that have nominated them?
- What is the position of the independent candidates in relation to the electorate and the citizens?
- What is the position of the MPs who come from the minority ethnic groups?
- What is the position and how the young and female –MPs act? How regularly they attend the sessions and how active are they?

"The so-called disagreement between the normative and the real" is a real motive for the sociological research in all domains, starting from the very beginning of the pre-election, election process and determination of the electoral units and other assumptions about the parliamentarian body, especially of the Assembly of the Republic of Macedonia. "Conflict of interests" is also a relevant occurrence which in the conditions of the so-called young democracy, but also within the so-called small state according to its geographic area and number of population, is not possible to systematically eliminate, but yet, there should be a tendency of its decrease.

The very fact that there is no awareness that the MP's function is not an employment relationship, creates a situation for more frequent application of a long-lasting mandate, held especially by one and same person. It is also a case with numerous other functions in the bodies, committees etc. within the Assembly.

Certainly, it is not only about the above cited segments and issues, but maybe this social phenomenon should be more widely and extensively studied. However, in general, all segments mean relevant scientific theoretic definition, problem setting, and, certainly, empirical explanation and elaboration.

## THE LEGAL NATURE OF THE MP'S MANDATE

The legal nature of the MP's mandate, according to the applied law in the Republic of Macedonia comes from the norms of the Constitution and the Rules and Procedures of the Assembly of the Republic of Macedonia which regulate the way of execution of the function, as well as the relation toward the citizens and electors, and also toward other subjects.

According to Article 62, Paragraph 3 and 4 of the current Constitution of the Republic of Macedonia the MP represents the citizens and in the Assembly he/she makes a decision upon his/her own conviction. The MP cannot be recalled but he/she can resign. The MPs are elected for a period of four years. According to the Constitution, the mandate of a person who has been previously a MP cannot be limited. According to this norm, some of the MPs have held such a position even 16 sequential years (4 mandates). Such presence and acting of some MPs in the Assembly of the Republic of Macedonia should be analyzed from the aspect of their efficiency.

Let's emphasize. According to Jean-Jacques Rousseau, "The better the constitution of a State is the more do public affairs encroach on private in the minds of the citizens. Private affairs are even of much less importance, because the aggregate of the common happiness furnishes a greater proportion of that of each individual." (p. 117). However, the author advocates recall of the representatives by the citizens. According to him, the executive power is not subject to the Social agreement, but to a law. In addition, the executive power is a servant to the people.

However, the eminent professor of Constitutional Law, Jovan Đorgević PhD underlined that "nobody was born to rule and has neither personal nor inherited right to conquer or occupy a governing position. It is the basic proposition of the entire democratic and political thought about the state, politics and governing" (p. 719).

In the "Constitutional Law and Political System" the content related to the mandate is placed in the chapter devoted to the Assembly of the Republic of Macedonia (page 375). This part does not contain appropriate definition of the mandate, but it indicates the opinion that "the MPs in the Assembly of the Republic of Macedonia represent the citizens in the Assembly, and they make decisions upon their own conviction". It is furthermore said that such mandate is free and representative. The authors also emphasize the following:

- MPs represent the citizens in entirety, not only their electoral unit,
- MPs enjoy independence in regard of their electorate and make decisions upon their own conviction,
- MP's mandate is irrevocable.

In our opinion, prior to determination of the nature of the MP's mandate, it is necessary to accept an appropriate and generally valid definition of the mandate.

The very expression "mandate" was originally defined and used in the economy. Later the word mandate acquired new meaning in the legal theory and political practice, where a question is posed about the legal nature of the mandate granted by the electorate to the elected person.

Furthermore, there is constantly important question: what is the relationship between the electorate and the elected representative? Does this relationship ends after the election, or it lasts for the entire mandate of that representative?

Depending on the nature of that relationship, we can distinguish two kinds of mandates: representative (free) mandate, and imperative mandate.

According to the concept of the representative mandate, the elected representatives represent the entire population, and the electorate has the right only to elect them. Today, the MP's mandate is almost present in all electoral systems. It is also in effect in the constitutional system of the Republic of Macedonia. However, it is a prevailing constitutional institution in most of the countries, compared to the imperative mandate.

According to the concept of the imperative mandate, the elected representatives keep a close contact with their electorate and they are obliged to give them an account for their work during their mandate. The electorate has the right to control the efficiency of their representatives as well as the right to recall them, in case they are not satisfied with their work.

Taking into account the empirical data, we hold that today when the MP's mandate is prevailing, the citizens have no possibility to completely execute their right of representative democracy, because the interests of the parties and a number of interest groups are dominant.

In fact, this kind of parliamentary and MP's mandate reduces the possibility for the citizens to influence the execution of the MP's function.

In general, this kind of MP's mandate (representative mandate) is more acceptable for many countries.

We, the authors of this paper, hold that the imperative mandate is more suitable for execution of the democratic rights of the citizens, because the representatives are closely connected to their electorate and the citizens. This kind of mandate allows the electorate to have a right to control the work of their representatives. In case they are not satisfied with the work of their representatives, they can recall them before their mandate is expired. Based on the above, this system is more suitable ground for application of various elements and practices of the immediate democracy.

According to the Constitution of the Republic of Macedonia, the Assembly of the Republic of Macedonia acts as a representative body of the citizens and it is a holder of the legislative power of the Republic. Accordingly, the representative represents the citizens and in the Assembly he/she makes a decision upon his/her own conviction. The representative cannot be recalled. The mandate, according to the constitutional provisions is representative one and it lasts for four years, during which time the representative cannot be recalled. However, he/she can resign.

According to the Constitution of the Republic of Macedonia, the representative democracy, especially regarding the institution of mandate, is very rigidly expressed, because there is no limitation of the mandate, except in few particular functions, which can lead to autocratic governance and can cause prevalence of the majority party (-es) in the Assembly, that is, the legislative power, followed by the other two powers: executive and judicial powers.

In the recent years there are atypical occurrences in the Republic of Macedonia which were not noticed so far as parliamentarian routine. For example, in the previous several years the Assembly was usually elected after two consecutive years, wherein the mandate was prolonged by a decision of the ruling parties. Then, in the last two years, the representatives (MPs) of the opposition parties did not participate in the operation of the Assembly.

Many years back there is a small number of independent MPs in the structure of the Assembly. It would be interesting to see the socio-professional structure of the MPs. It would be also interesting to analyse the socio-demographic features of the MPs regarding their age, origin, education etc.

The MPs in Macedonia are trying to find their place within the larger coalitions according to their dominant ethnic origin (Macedonian and Albanian).

According to the principles of the electoral legislation, many years back the importance of the smaller ethnic communities quoted in the Preamble of the current Constitution of the Republic of Macedonia is marginalized.

We should mention that the institution of mandate is not related only to the Assembly of the Republic of Macedonia, but also to other representatives of institutions, such as the executive power (officers), judicial power and the local self-government.

The mandate, besides all those powers, is also a present category in the institutions, that is, non-economic public services, in the non-governmental sector.

In the recent years, the mandate of particular positions, such as director, dean etc, that is, in the public services, is arbitrarily prolonged. The reasons for that are probably financially motivated, then, there is a desire for self-importance, but also, certainly, under the influence of the dominant party structures, and even of the executive power.

It seems that the rule and the governance in conditions of representative democracy is very attractive activity for many persons.

According to the historical experience, the long-term mandates and unlimited mandates present a solid ground for creation an oligarchic and non-democratic governing.

Generally, all of the above presented can be taken into account as a segment for a theoretical definition of the concept, and also for setting a relevant hypothetical

framework or research questions which should be part of the empirical research. In the context of the study of the institution of mandate, we should also have in mind all other mandates from the sphere of the public power and governance.

## ABOUT THE POLITICAL LEADERSHIP

In general, we do not set thesis about the leadership which limits the government bureaucracy, especially in Weber's sense of word. It is necessary for them to be articulated within the empirical research. The political leadership can be analyzed through the dynamics of the conflict and the power. That is, to empirically measure the influence of the political leadership through the real social changes, through the satisfaction and the fulfillment of the promises i.e. the projected expectations of the collectivity itself. (Burns, 1978; Koenen-Iter, 2005; Hariman, 1995).

## FINAL CONSIDERATIONS

Based on all above cited, as well as the empirical records, we hold that it is necessary to take into account the following activities during the preparation of a concept and a project for scientific study of the institution of mandate:

- It is necessary to initiate a continual scientific research of the operation of the Assembly of the Republic of Macedonia as a legislative power.
- To initiate a scientific study of the organs of the executive power.
- To initiate a research on the functioning of the judicial power.
- To initiate a continual research on the functioning of the local government, first of all of the representative democracy and immediate democracy.
- To initiate a continual research on the functioning of the public services and non-governmental sector, at central and local levels.
- To initiate a study of the leadership in general. Also to conduct a comparative research on the different types of leadership, especially at central and local level.

The research of these phenomena will contribute to get immediate insight of the manner in which the institution of mandate functions in practice, as well as to get insight in the advantages and disadvantages of this institution, all in order to properly change some of its segments because of its better and more successful functioning.

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ISSN 1857-7350