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FOREWORD

Dear readers,

This second issue of ANNUAL of ISPJR for 2017 has a special meaning for us and we hope for all scientific public which participate in publishing. We want to announce that ANNUAL of ISPJR got indexation by IndexCopernicus. Indexation on the ICI Journals Master List is a confirmation of the publishing and scientific quality of our scientific journal. From now you can find this information at ICI Journals Master List 2016.

It means that our journal became a significant opportunity for scientific public in Macedonia and in the region to publish their papers. On the other hand, we are sure that past issues attracted a lot of readers because of the fields that have been covered and the way of presenting used in the papers.

In the second issue, as well as in the first issue for 2017, Editorial Board choose papers from various social research and scientific fields.

The ethic side of innovations in practice of organizations, court practice in Macedonia and its changings towards models in Europe, special research of function the Supreme Court of Macedonia, challenges of high education, migrants problem in post-communist countries, propaganda and political persuasion in the political communication and the development of the food industry are the areas that authors give affords to explain their attitudes and research findings.

As usual all papers have been selected by double-blind peer review from two experts of the proper field. It gives special treatment to the papers and their meanings in sciences that covered.

We hope that your interest as readers will be fulfilled by this issue of our ANNUAL.

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CODE OF ETHICS AS A TOOL FOR INNOVATIONS IN ETHICAL PRACTICE IN THE ORGANIZATION

Abstract

Today, most experts from the international businesses agree that the essential bit for the business in 21st century or actually for the global economical survival in this area is looking for more the innovative ways of building an international business ethical code.That is to say-not just the ethical codes which will origin from every individual culture, which on the other hand is supported by their own norms and practices.

For the ethical code to have a meaning, the basic principles and expectations must be clearly stated; it has to deal with the potential ethical dilemmas which employees are faced with; and must be applied. It must be accepted and adopt by the staff because that is the condition for its use. That means that the managers must take into account not only the content of the code but the process of determination of its content. But, for a code to be applicable wider internationally, managers should incorporate more innovative ways for communication during the process of creation of the code and to facilitate specific ethical challenes.

Keywords: Code of ethic, organization, innovation, integration, implementation, internationalization

1. Introduction

Ethics, values, rules of conducting! It is heard and talk about this every day. What do they mean and how the organizations can be sure that they have developed and implemented them right? It comes to the point where the question is: Is the term „organizational ethics", by itself maybe contradictory?

In a time like today's, the challenge to provide ethical behavior in the organizations, maybe seems to hard. But, it is a challenge that shouldn't be ignored by the organizations, even if they have a feeling that the ethical code is not worth the paper on which is written, or even if the one who is on power wants totally to ignore the need of adoption. To provide a ethical code that could be applicable wider, among the organizations that are communicating internationally, is even more difficult.

Many managers think that the ethical enigmas are not coming in the same packet with the work, so they find it difficult to speak about and sometimes even recognize ethical issues. That difficulty the management theorists James Waters and Frederick Bird called the moral muteness of managers (Waddock 2007). The logic says that most of the managers would say that they collide with ethical dilemmas which come from their every daily duties that have been given to them, the regulations that need to harmonize their operations, and the many scandals in the organizations that we so often hear over the media. But, the managers "do not see" the ethical problems, that do not disappear. This only makes the whole situation worrisome. If a manager says that he never faced an ethical issue in his working, than he doesn't live in the real world.

It is a good start for start building or rebuild the ethical culture in the organizations is the formal adopting of an ethical code. For most managers, this means writing and implementing ethical recommendations, also a presenting of the existing values in the organization, or organizations that are doing their businesses internationally.

The literature of the business ethics is separated on few points of view, which talk about the motivation, and also for the reasons, why the business would have an ethical dimension. According to Harrison (Harrison 2001) , there are two major schools of opinions. In the first one, belong the ones which assume that the companies, actually the organizations are institutions which drive profit and that is why the business ethics for them is just another way to win customers. The second one is supported by the corporate conscience and initiate motivation for acceptance of the business ethics. According to Paul (Paul 2001), the business ethics is considered for subjective by its nature and depends of the time and the culture.

It was established the claim that by passing of time, the business ethics included different cultural values and norms which lead it outside the frameworks of

different national and regional boundaries. One of the major surveys performed in 1983 from Hofstede (Hofstede, 1983), where were taken into account the national values, it showed that there are big differences in the ethical values among different nations, and also in the business ethics. The globalization, combined with the standardization made the businesses financially successful, but in the same time an efforts were made to create standardized guidelines for business ethics, outside of the national boundaries.

But, as far as business is considered, the ethical code is generally considered as an act which teaches from ethical aspect, what is good or bad in the workplace, and helps the decision made to aim the goal. The ethical codes are rules which helps to operate the ethical values when deciding. They are a sign of ethical philosophy of the company. The ethical codes are systematic set of relatively precise formulated moral norms of one certain moral, determinate by a written act, prepared by a people who are representatives of some group. Actually, that are statements for the norms and certificates of the organization and they express how the people on high levels in the company want others to think.

It is not a censorship. In the code are clearly marked the norms and the values of the groups. This kind of form provides the moral which creates, to enter fast in the peoples consciousness. The codes are important mechanism that can be used by the organizations as a tool that will signal the ethical direction in the organization. The intent of the organizations in adopting ethical codes is to encourage a certain manner of thinking and a model that will lead to the desired behavior.

2. Ethical code as a tool for innovations

In the researches performed by Ethics Resource Center in Washington, USA, the codes are seen as best mechanism which provides the ethical behavior. So, in 1987, the Centre performed a research in 2000 organizations in the USA, and a subject of research were their ethical programs and problems. The results from the research showed that most frequently used form for strengthening of the ethical behavior are the company's codes (79% of respondents), lectures (63%), seminars (53%), the case studies (46%),the film forwarded by a discussions (41%) (Ethics Resource Centre Washington 1979). So, according to Frank Navran from the same Ethics Resource Center, Washington, USA, in the article (Navran 2002) published in 2002, states that the interest of the organization for creating a code in the most cases is because of the need to strength the mechanisms for „soft control", whereby often wants to conclude the following:

- Organization security;
- Public opinion;

- Respecting of the law;
- Regulation of the behaviour.

For the ethical code to have a meaning, it must be clearly stated the basic principles and expectations; have to deal with the potential ethical dilemmas that the employees are faced with; and must be applied. It must be accepted and adopt by the staff because that is the condition for its use. That means that, the managers must take into account not only the content of the code but the process of determination of its content.

To be efficient, the ethical code should develop and expande in open, participative surrounding, including as much as possible employees. The building and the implementation of an ethical code is important for all of the organizations no matter their size. Besides that with the ethical code is projected the idea for honesty and openness in relation to business that the organization is concerned, the code can be used as a tool to encourage the employees to properly solve the problems found in the working place. But, for a code to be applicable wider internationally, managers should incorporate more innovative ways for communication during the process of creation of the cod, for to facilitate specific ethical challenges.

3. Internationalization of the business ethical code

Most experts from the international business, agree that what is essential for the business in 21st century actually for the goal economical survival in business, is the need from building an international business ethical code, and not ethical codes which will origin from every individual culture, which on other hand is supported by it selves' other norms and practices.

In the past decade many companies as Borg-Warner Corporation, Whirlpool, Johnson&Johnson have developed ethical codes published in their brochures, annual reports and programs for introducing the code. The study of the Ethics Resource Center, Washington, USA from 1979, indicates that more than 70% from the major corporations have ethical codes (Ethics Resource Centre Washington 1979). The companies that want to have an influence of the ethical standards, as a first step in the process, introducing ethical codes. The Center estimates that more than 90% of the companies that are taking further steps to institutionalize the ethics announced their own ethical codes. The codes are often transmitted over written materials, using the advise of superiors, discussions for employments or at workshops and seminars.

The analysis, that was performed by the author of this paper was made on 22 ethical codes , among them were independent broadcasting authorities in Europe in the area of broadcasting, large global companies, local organizations, also codes

of public administration and companies that are dealing with different business in Republic of Macedonia, provided to distinguish the following mutual general characteristics of the ethical codes, that makes them applicable wider internationally.

Ethical codes:

- They clarify the opinions of the managers for what it constitutes unethical behavior;
- Helps the employees to think for the ethical issues before they face with a real situation;
- Allow to the employees to refuse performing of unethical actions;
- Define the boundaries of acceptable or non acceptable behavior;
- Provide a mechanisms for conveying the philosophy of the managers in the area of the ethical behavior;
- Help to introduce the employees with the ethical behavior and the proper training.

All of these ethical codes had a list of principles of international ethics that were followed, including:

Integration – Business ethics must take into account all the aspects of the organizational culture and to reflect the key systems for managing. The organizations start with integration of the ethics by setting goals and establishing of practices. When they promote the workers on higher levels within the company, the ethical principles should be stimulated over ethical programs.

Implementation – The ethical behavior it is not just an idea. It refers to implementation of a plan for changing of certain parts from the working of the organization. Some examples show that those are efforts for modifying the personal valuable process, to make a promotion of the proven practices from the environment, and calls for help from the experts , when that is necessary.

Internationalization – Increased internationalization, is a need which characterized all successful businesses of the 21st century. Internationalization is achieved by forming intentional partnerships, commercial blocks, implementation of GATT and other agreements for free trade. So, it is needed a clarification and confirmation of the organizational definition for the integrity, which transcends the national boundaries.

Also, all of the codes that were analysed were composed from those four parts:

- Creed or a statement for the organizational philosophy or values;
- Guidelines for making decisions;
- Specific rules that prohibit certain actions or require certain behavior; and
- Definitions and illustrations;

For a code to be applicable wider internationally, it should be appropriate distributed among all the parties that will be affected by it, so they to know

the standards and to understand the meaning of the code for their work. The conversations for the ethical codes should encourage an open atmosphere where all the employees from all the organizations that are expected to be affected by the code and are planning to accept it, to be encouraged to ask and to give suggestions about the code. There are organizations that support the idea working units to develop their own specific codes which refer to a specific dilemmas that are faced in their working. These organizations consider that the participative methods are increasing the opportunity the codes to play the central role in conducting of the ethical behavior in the framework of their organizations. On the other hand, there are such an organizations that do not attach such significance of their own ethical codes. One of the ways for raising the awareness and acceptance of the ethical code from the employees is the organization of an ethical training. However, no cooperative effort of the organization to influence of the ethical behavior will not succeed if it is not supported by the top management and by the culture of the organization. One of the manners for implementation of the support is forming of a structural mechanisms for the implementation of the ethic. There are many mechanisms that can be applied by the organization, created in aim the management can be informed about the ethic. Among the other things, those mechanisms are: monitoring of the ethical behavior of employees, transfer notices regarding the ethical policies,ombudsmen for ethical issues, reporting about ethical violations, etc.

4. Conclusion

Certainly, there is not an ideal or universal approach to the organizational ethics. Some organizations start with a creation of a creed that later is transformed to a code, and other are adopting a decision for creation of a code. The creation of a moral climate originates from the top management. The raising of the ethical awareness in the organization is not a simple process. It is necessary to communicate, many meetings, many hours spent, and a certain amount of money to create a good code which will communicate with all the employees and organizations to which it will refer to.

Although the existence of a business ethical code will not solve all the ethical problems, it is very useful for the organizations and for the society as a whole. Clear ethical code and clear ethical standards, are providing to the organization strict directions that provide handling with different situations in the interior relationships in the organizations by themselves, but also in the relationships out of them. Often, the interior ethical dilemmas are not black or white types of situations. They are complex problems, that require well defined politics which provide fair and moral management.

For the employees, the clear statement for the ethical politics that leads the organization, is very helpful for them to align their personal values with the values of the organization, and in that manner to create a strong relationship on the working place, with the colleagues and the superiors. The ethical code provides a tool to the employee as an individual from the possible abuses by the managers without scruples, ie the managers who don't care. Also, a well-defined code, it helps the worker as an individual, in the operation and management, in the conducting of a surveillance over those that are aligned,built teamwork associated with pride in performing everyday tasks that ultimately contributes to increased satisfaction from the work and productivity. Hence, the managers of the future, will benefit from the moral and ethical standards that are introduced today. In the external relations with suppliers, customers, shareholders, the solid ethical code, is the best way to contribute in ensuring of the avoidance of making decisions, which in extreme cases could lead to government intervention and prosecution.

The ethical behavior in the organizations is a complex problem expressed by individual and situational dimensions. The efficient implementation of the ethical behavior requires from the organization to adopt ethics. Also, for a code to be applicable wider internationally, managers should incorporate more innovative ways for communication during the process of creation of the code, for to facilitate specific ethical challenges. However, organizations should be interested in those who produce behavior that it is required by the organization in the current period, because maybe next year will be necessary to include other, values different from the already established.

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COURT OF PRACTICE OF THE REPUBLIC OF MACEDONIA AND COURT PRACTICE OF THE EUROPEAN COURT OF HUMAN RIGHTS: A NEED FOR SYMBIOSIS?[1]

Abstract

The recent Report on Macedonia: Assessment and recommendations of the Senior Experts' Group on systemic Rule of Law issues 2017, led by Reinhard Priebe and issued on 14 September 2017, notes that there is a need for achieving greater uniformity of court practice. The latter was also noted by the European Union within its latest progress reports on the Republic of Macedonia. Within the process of achieving greater uniformity of court practice, the court practice of the European Court of Human Rights must not be neglected. This was emphasized in the latest European Union reports on the progress of Republic of Macedonia as well. However, the use of the court practice of the European Court of Human Rights by the courts in the Republic of Macedonia is not satisfactory. This paper aims to show that there is a need for symbiosis to be reached between the court practice of the Republic of Macedonia and the court practice of the European Court of Human Rights. This will be done mainly through analysis of the relevant national legal frame. In addition, it will also be shown that uniform court practice that is in compliance with the court practice of the European Court of Human Rights is important not only for the legal security, but also for the Euro-integrative processes of the Republic of Macedonia.

Keywords: Court practice, European Convention on Human Rights, European Court of Human Rights, Republic of Macedonia

[1] This paper is based on an analysis that was conducted by the author of the paper, within the Project "Supporting the Establishment of Unified Court Practice in the Macedonian Legal System", implemented by the Center for Legal Research and Analysis and funded by the British Embassy – Skopje, 2016

INTRODUCTION

The European Convention on Human Rights ("ECHR" or "Convention") was ratified by the Parliament of the Republic of Macedonia ("RM") (Law on Ratification of the European Convention on Human Rights) and became part of the legal system of RM. It is directly applicable and has direct effect. The European Court of Human Rights ("ECtHR") formed its court practice through the process of application and interpretation of the Convention. It is almost impossible for a member state to fulfill the obligations that arise from the Convention without applying the court practice of the ECtHR.

However, the use of the ECtHR court practice by the courts in the RM is not satisfactory (Lazarova Trajkovska, 2013; Center for Legal Research and Analysis, 2015). The higher national courts, such as the Supreme Court, have begun to refer to the ECtHR court practice to a certain extent (Decision Vkzh1 No.9/2015 from 10.03.2015; Judgment Kvp. KOK1 Kvp.br.5/2014 from 21.05.2015; Decision Kr. No.61/2015 from 24.11.2015; Decision Vkzh2 No.2/2016 from 16.03.2016). Yet, the national courts, in general, are still quite restrained as regards the use of the ECtHR court practice in its judgments (Lazarova Trajkovska, 2013; Center for Legal Research and Analysis, 2015). Moreover, it seems that there is no single perception and interpretation by the national courts regarding the status, treatment and manner of using of the ECtHR court practice (Center for Legal Research and Analysis, 2015).

In the recent Report on Macedonia: Assessment and recommendations of the Senior Experts' Group on systemic Rule of Law issues 2017, led by Reinhard Priebe and issued by the European Commission on 14 September 2017 ("Priebe Report 2017"), it was noted that there is a need for achieving greater uniformity of court practice in RM. In that regard, the role of the Supreme Court of RM was emphasized as well, having in mind its constitutional competence to ensure uniform application of laws by the courts (Constitution of the Republic of Macedonia, Article 101) and thus ensure uniformity of court practice. The need for greater uniformity of court practice in RM was noted by the European Union ("EU") as well, within its latest reports on the progress of RM as a candidate country for EU membership (European Commission, 2014; European Commission, 2015; European Commission, 2016). The necessity for improved reasoning and transparency of court judgements was also noted in the EU reports (European Commission, 2016).

Within the process of achieving greater uniformity of court practice, the role and the importance of the ECtHR court practice must not be neglected. In fact, the latter was emphasized in the latest EU reports on the progress of RM as well, i.e. that "greater and more consistent use of court practice of superior courts and the European Court of Human Rights" needs to be achieved (European Commission,

2014). Also, in similar sense, the Priebe Report 2017 notes the following: "The process of drawing up a judicial strategy to be implemented … has been initiated … The proposals identified by GRECO and the Venice Commission and in the 2015 report of this group need to be implemented … as do the measures necessary to comply with judgments of the European Court of Human Rights".

This paper aims to show that there is a need for symbiosis to be reached between the Macedonian court practice and the ECtHR court practice. Namely, the ECtHR court practice needs to be properly integrated in the legal system generally. Otherwise, everything will be reduced only to plain form, whereby there will be lack of substantial elaboration and application of the numerous standards and tests that are developed and applied by the ECtHR. This will be mainly accomplished through analysis of the national legal frame relevant to the status, role and manner of usage of the Convention and the ECtHR court practice. It will also be shown that uniform court practice that is in compliance with the ECtHR court practice is important not only for the legal security of citizens, but also for the Euro-integrative processes of RM.

1. Status of the Convention and the ECtHR Court Practice in Macedonia

The ECHR, as an international treaty that was ratified by the Parliament of RM (Law on Ratification of the European Convention on Human Rights) and became part of the legal system of RM according to the monistic doctrine, is directly applicable and has direct effect. The direct enforceability of the international agreements before the national courts and the advantage of the international agreements in case of a conflict with provisions of the law is provided for in Article 118 of the Constitution of RM ("Constitution"), according to which "international agreements ratified in accordance with the Constitution are part of the internal order and cannot be changed by law" (Koljackova, 2008).

However, international human rights treaties enjoy a higher degree of legal effect compared to other international agreements. This status is due to the fact that, under Article 8 of the Constitution, fundamental rights and freedoms of the man and the citizen, recognized in international law and set down in the Constitution, are considered as one of the fundamental values of the constitutional order of RM (Koljackova, 2008: 21).

Having regard to Article 8, Article 98 and Article 118 of the Constitution, it could be noted that the place of the ECHR, within the hierarchical structure of the legal system of RM, can be located somewhere between the Constitution and the laws. Namely, the hierarchical position of the ECHR is placed under the Constitution, but above the laws. The rights and freedoms protected by the Convention are applied parallel with the basic rights and freedoms of the man and the citizen that are protected by the Constitution (Koljackova, 2008: 21).

The court practice of the ECtHR, formed as a result of the interpretation and application of the Convention by the Court, represents a necessary knowledge in the context of fulfilling the obligations of a member state to the Convention and application of the Convention as part of the internal legal order. Namely, the ECHR cannot be reduced only to its text, but the text must be considered together with its interpretation by the ECtHR. In this sense, it would be wrong to use the Convention only in its textual context, as the domestic laws are commonly used, without reference to the ECtHR court practice (Spirovski, 2007: 7).

Namely, even if the obligation to execute a certain judgment of the ECtHR is limited to the parties in the particular case (Grabenwarter, 2014: 107), it can still be claimed that Article 1 of the Convention, under which the parties should provide to everybody within their jurisdiction the rights and freedoms guaranteed by the Convention, implies that in securing the rights protected by the Convention, the states should consider the interpretation of the Convention by the Court, by giving an erga omnes effect to the judgments of the Court (Forst, 2013: 4). In this regard, the judgments of the Court have an "indicative effect" for the other member states (Grabenwarter, 2014: 107).

In this context, it is worthwhile to note that the Constitutional Court of RM, in its Decision U.No.31/2006 of 1.11.2006 and the Resolution U.No.31/2006 of 20.09.2006, accepted ECHR as a criterion in the interpretation of the constitutional rights, by which it may be said that it has acknowledged a certain constitutional rank to the Convention. Namely, ECHR has been accepted as a "criterion for interpretation of constitutional rights even in the sense of their certain limitation that is not expressly permitted by the Constitution, but it is allowed in the Convention, provided that it concerns a right whose execution may, under certain circumstances, threaten other rights or values" (Spirovski, 2007: 8-9). All this in fact further emphasizes the importance of having knowledge of and respecting the court practice of the ECtHR.

1.1. The Convention and the ECtHR Court Practice in National Legislation

The importance of respecting and using the court practice of the ECtHR and its integration into the legal system of RM, as part of the process of reaching greater uniformity of court practice in RM and its compliance with ECHR and ECtHR court practice, is recognized and acknowledged by the legislator. Namely, an increasing number of laws contain provisions that emphasize the importance of the Convention and the judgments of the ECtHR in the context of the legal system of RM and the application of law, while some even explicitly provide for respecting ECHR and ECtHR court practice in the interpretation and application of law.

1.1.1. Law on Courts

Within the jurisdiction of the Supreme Court of RM ("Supreme Court'), foreseen by the Law on Courts, it is stipulated that the Supreme Court is competent "to decide upon the request of the parties and other participants in the proceedings upon the infringement of the right to trial within a reasonable time" (Law on Courts, Article 35), whereas that should be done "in accordance with the rules and principles determined in the European Convention on Human Rights and starting from the court practice of the European Court of Human Rights" (Law on Changing and Amending the Law on Courts, Article 3). Namely, the Supreme Court "shall decide whether the lower court violated the right to trial within a reasonable time, taking into consideration the rules and principles determined in the European Convention on Human Rights, and in particular the complexity of the case, the conduct of the parties and the conduct of the court which acted" (Law on Changing and Amending the Law on Courts, Article 4).

It appears from these provisions that the Supreme Court decides upon violation of the right to trial within a reasonable time, primarily, under the provisions of the ECHR and the practice created in its interpretation, particularly in relation to Article 6 of the ECHR, which guarantees the right to trial within a reasonable time. In this manner a kind of symbiosis is created between the court practice of the Supreme Court and the court practice of the ECtHR.

In the context of locating the legal provisions that provide for the respect of the ECHR and the court practice of the ECtHR in interpretation and application of the law, another provision of the Law on Courts should be mentioned, which provides for the possibility of direct application of final and enforceable decisions of the ECtHR.

Namely, in case "when the court considers that the application of the law in the particular case is contrary to the provisions of an international agreement ratified in accordance with the Constitution, it shall apply the provisions of the international agreement, provided they can be applied directly" (Law on Courts, Article 18). Thereby, "the court in the specific cases enforces the final and enforceable decisions of the European Court of Human Rights, the International Criminal Court or another court, whose competence is recognized by the Republic of Macedonia, provided that the decision is appropriate for execution" (Law on Courts, Article 18). Apart from the direct application of the ECtHR decisions, these provisions of the Law on Courts implicitly provide direct enforcement of the provisions of the ECHR as well, as an international agreement, in case the law is applied contrary to the Convention.

1.1.2. Law on Civil Liability for Insult and Defamation

In the Law on Civil Liability for Insult and Defamation, by which a decriminalization of insult and defamation has been performed and which regulates the civil liability for damages to the honor and reputation of any physical or legal entity by insult or defamation (Law on Civil Liability for Insult and Defamation, Article 1), whereby the freedom of expression and information is guaranteed, the significance of the ECHR and the court practice of the ECtHR is confirmed and highlighted, as well as the necessity for the laws to comply with the Convention and the court practice created in the interpretation of the Convention.

Namely, the law provides that "restrictions on freedom of expression and information are legally regulated by setting strict conditions for civil liability for insult and defamation in accordance with the European Convention on Human Rights (Article 10) and the practice of the European Court of Human Rights" (Law on Civil Liability for Insult and Defamation, Article 2). In this context, it is further provided that "if the court, by applying the provisions of the law, cannot resolve a certain issue related to the determination of liability for insult or defamation, or if it considers that there is a legal gap or conflict of law provisions with the European Convention on Human Rights, based on the principle of its precedence over the domestic law, it shall apply the provisions of the European Convention on Human Rights and the views of the European Court of Human Rights contained in its judgments" (Law on Civil Liability for Insult and Defamation, Article 3).

1.1.3. Law on Protection of Privacy

In the Law on Protection of Privacy, which stipulates protection of privacy of the citizens of RM, guaranteed by the Constitution and the ECHR, regarding the documents arising from the unlawful interception of communications carried out in the period between 2008 and 2015, and establishes a ban on possession, processing and publication of the previously mentioned materials (Law on Protection of Privacy, Article 1), a ground for the application of the provisions of the ECHR and the court practice of the ECtHR in the interpretation and application of the law is explicitly provided. Namely, in this case, it is explicitly stated that in the application of the law, the competent court is obliged to respect the ECHR and the judgments of the ECtHR (Law on Protection of Privacy, Article 5).

1.1.4. Decisions of the ECtHR as a Basis for a Retrial

Within the procedural laws there are provisions which foresee that the decisions of the ECtHR are basis for a retrial. Namely, such provisions are contained in the Law on Criminal Procedure, Law on Administrative Disputes and Law on Civil Procedure. The Law on Criminal Procedure stipulates that "the criminal proceedings

completed by a final judgment may be reopened in favor of the defendant if ... by a final judgment of the ECtHR, a violation of human rights and fundamental freedoms during the proceedings was found" (Law on Criminal Procedure, Article 449), while the Law on Administrative Disputes shortly provides that "the proceedings ended with a judgment or a decision shall be repeated upon the request of the party... upon a decision of the European Court of Human Rights" (Law on Administrative Disputes, Article 43).

Unlike the Law on Criminal Procedure and the Law on Administrative Disputes, the Law on Civil Procedure determines in details the conditions for retrial based on a decision of the ECtHR, which provides that "a party may, within 30 days from the finality of the judgment of the European Court of Human Rights, submit a request to the court in the Republic of Macedonia, which adjudicated in the first instance in the proceedings in which the decision that has violated the human rights and fundamental freedoms was adopted, for changing the decision by which this right or fundamental freedom has been violated" (Law on Civil Procedure, Article 400).

Moreover, unlike the Law on Criminal Procedure and the Law on Administrative Disputes, the Law on Civil Procedure explicitly provides that "in the retrial the courts are obliged to respect the legal standings expressed in the final judgment of the European Court of Human Rights, by which an infringement of the basic human rights and freedoms has been determined" (Law on Civil Procedure, Article 400).

2. The Importance of Uniform Court Practice and Compliance with ECtHR Court Practice for the Euro-integrative Processes

Currently, RM has a status of a candidate country for membership in the EU. In order to be admitted as a full member in the EU family, RM should completely meet certain criteria - economic, political and legal.

The political criteria or the so called "Copenhagen criteria" provide that in order to access to the EU membership the candidate countries are required to ensure stability of the institutions, guaranteeing the democracy, the rule of law, the human rights and respect and protection of the minorities. Moreover, these criteria are used by the European Commission as basis for preparing a detailed assessment of the situation in each candidate country in the formation of "opinion", as well in the preparation of the annual progress reports. Although all criteria are important, the political criteria represent conditio sine qua non in the direction of opening accession negotiations (Kassimeris & Tsoumpanou, 2008: 332).

As it was mentioned, in the recent EU reports on the progress of RM (European Commission, 2014; European Commission 2015; European Commission 2016), the need for achieving a greater degree of consistency of the court practice was pointed out. Namely, greater uniformity of court practice would contribute to the

improvement of the predictability and legal certainty, as an essential part of the rule of law principle, and thus contribute to the fulfillment on the part of the political criteria for EU accession.

The EU reports on the progress of RM also emphasized the use of ECtHR court practice in the context of achieving greater consistency of court practice in RM. In this regard, it should be kept in mind that the ECtHR court practice has been recognized as a source of human rights within the EU and in this respect it is used by the Court of Justice of the EU ("CJEU") (Škarić, 2009: 89), as the body in charge of implementing the EU law. Moreover, some of the general principles of the EU law, which are developed by the CJEU as part of its court practice and represent a source of EU law, are extracted directly from the ECHR. Thus, the compliance with the provisions of the ECHR and the ECtHR court practice means a compliance with the EU law as well.

In addition, all member states of the EU are at the same time parties to the ECHR and therefore have accepted the jurisdiction and the practice of the ECtHR. Moreover, the EU itself will soon become a party to the ECHR on the basis of the Protocol 14 to the Convention and the Treaty of Lisbon.

CONCLUSION

The ECHR and the court practice developed by the ECtHR are part of the legal system of RM. Thus, they are directly applicable and have direct effect. In this sense, the ECHR and the ECtHR court practice need to be integrated within the national legislation and practice of the national courts. In other words, it is necessary to create a kind of symbiosis between the Macedonian court practice and the ECtHR court practice.

It could be noted that the national legislation, in general, highlights and confirms the importance of the ECHR and the ECtHR court practice. However, it should also be noted that the national laws provide for a certain degree of uncertainty, confusion and inconsistency regarding the status and treatment of the ECHR and the ECtHR court practice in the legal system of RM.

Namely, in some legal provisions the Convention and the ECtHR court practice are referred to declaratively, in terms of highlighting their importance; somewhere they are foreseen as a means for filling legal gaps and resolving a conflict or incompatibility of certain legal provisions with the provisions of the ECHR; somewhere they are used as a means of interpretation and application of laws; and somewhere their direct application is provided.

Furthermore, these different provisions have potential to open a dilemma whether the absence of a legal provision indicating that in the interpretation and application of certain legal provisions, the ECHR and the ECtHR court practice should be taken into account, implies that for certain issues they should not be considered. All these issues require further refinement, interpretation and, above all, harmonization.

Moreover, the practical effect of trying to integrate the ECHR and the ECtHR court practice in the national legislation in this manner is questionable to some extent. Namely, this kind of integration is rather formal and does not refer to the substance. Due to the latter, it is very likely that everything will be reduced only to plain form, without substantial elaboration and application of the various standards and tests developed and applied by the ECtHR. Apart of all this, an ambiguity could arise whether this means that the ECHR and the ECtHR court practice could be applied only in case if it is explicitly foreseen within the national laws.

The national procedural laws contain provisions which foresee that the judgments of the ECtHR are basis for a retrial. However, there are some differences among the procedural laws in this respect, which could cause ambiguities and misunderstandings. Namely, only the Law on Civil Procedure explicitly refers to the obligatoriness of legal standings expressed in the ECtHR judgements as regards the retrial before national courts. One could argue that there is a lack of clarity as to whether the difference between the procedural laws relating to the obligation for respecting the legal standings stated in the judgment of the ECtHR, which is a basis for a retrial, means that the courts should respect the judgments of the ECtHR in retrial only when they decide in civil proceedings. In any case, it is obvious that in respect to these provisions it is necessary to conduct further harmonization and refinement.

Finally, it could also be concluded that not only having uniform court practice, but also compliance of the Macedonian court practice with the ECtHR court practice is very important for the Euro-integrative processes of Macedonia. Namely, having in mind that the ECtHR court practice has been recognized as a source of human rights within the EU, as well as that some of the general principles of the EU law, which are recognized as a source of EU law, are extracted directly form the ECHR, it is clear that the compliance with the provisions of the ECHR and the ECtHR court practice means a compliance with the EU law as well.

One of the ways to accomplish the latter could be using regularly the ECtHR court practice by national courts as an additional means of argumentation when interpreting the law, in a manner that the court, in the rationale of its decision, would use as a reference ECtHR court practice, i.e. would refer to an ECtHR court decision.

Taking into account the aspirations of RM to join the EU family, the insistence of the EU for paying attention to the use of ECtHR court practice, in the context of achieving greater consistency of court practice in RM, is more than clear. Of course, the ultimate goal of all this is to provide greater legal certainty for all the citizens of RM.

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UNIVERSITIES IN REPUBLIC OF MACEDONIA AND THE CHALLENGES OF THE MODERN WORLD (INTELLECTUAL PROPERTY AND TRANSFER OF TECHNOLOGY)

Abstract

Today the world's focus is on the transfer of technology from universities to the economic sector, and thereby globally emphasizing the strategic importance of intellectual properties and rights. All of this in terms of development and job creation. Research method: A questionnaire will be distributed to teaching and research staff of the State University in Republic of Macedonia. This paper will emphasize the importance of applying good practices in the area of intellectual property rights (IPR) to the work of universities in the Republic of Macedonia, which will contribute to an efficient and effective way to meet the challenges of the modern world - University of the 21st century, that is, development-oriented university.

Keywords: Intellectual property, IP policies, technology transfer, university, EU, USA, Republic of Macedonia

INTRODUCTION

In reality in which we are living today, globalization and liberalization of the world economy, the management of intellectual property rights within the universities is increasingly important and necessary. This challenge requires development in human resources, education and upgrading in order to do research in an atmosphere where one will create knowledge and skills to enable drawing benefits from the intellectual property systems. Universities must respond to this open question. Along with this, their mission should address issues of economic development and protection of domestic knowledge, which is closely related to intellectual property rights. To achieve this, the university should create an institutional framework. This includes the university to establish an internal policy regarding intellectual property and rights. The question of the contribution of the universities to promotion of the economic development in the country is important. Somehow these higher education institutions should participate with scientific advices, as well as with production of intellectual property which includes new inventions and innovations. For beginning, there should be a strategy to put pressure on national innovation policies and funding in order to meet them. This is necessary for sustainable economic growth, which relies on a continuous flow of new ideas and products. This is because the systematic application of knowledge in solving problems creates new advanced technologies. For the purpose of progress, knowledge must not only exist, but also to be delivered to others. Both knowledge and technology are products of higher education institutions. Most often, the results come in the form of intellectual property. In addition, part of the management need to create links between the unverisites and national bodies for development, such as the government, industry and businessmen. Nationally and internationally there is compliance on the importance of the innovation, technology transfer and entrepreneurship regarding the sustainable economic development. The collapse of the global economy made the universities have a central role in economic recovery, through the transfer of technology of their discoveries, innovations and inventions. In response to this challenge structural and organizational change in the universities themselves is more than necessary. There is a trend of changing the demand for universities to expand their research beyond being just as a category of fundamental research, that is, such research is required to contribute directly to specific economic development. Societal expectations of the universities now go beyond just pure research, teaching, and role of public service. The mission of the University is expanded to its role in increasing the economic development, in which the university's research have a big part. The size and significance of the university is not only in the scope of its research grants and cooperation agreements, but in

the way of actual impacts of the university on changing and improving the world and society in general. In order to release the research potential of the university, scientific activity must convert the basic research into market-viable processes and technologies. The inclusion in new markets, integration into European Union (EU), cooperation with United States of America and other developed countries, mean that we must be prepared for competition in the free market even in the field of education and scientific research and inventions.

The process of managing property rights in universities and research organizations will succeed if institutions create permanent sustainable culture of innovation, inventions, and respect for intellectual property. There must be partnership between all the different groups, which would provide an atmosphere of creativity (The Triple Helix- The concept of the Triple Helix of university-industry-government relationships initiated in the 1990s by Etzkowitz (1993) and Etzkowitz and Leydesdorff (1995), encompassing elements of precursor works by Lowe (1982) and Sábato and Mackenzi (1982), interprets the shift from a dominating industry-government dyad in the Industrial Society to a growing triadic relationship between university-industry-government in the Knowledge Society." Triple Helix Research Group, Stanford University, USA). More than evident is the need to facilitate and accelerate technology transfer between the scientific units and companies; promoting cooperation between research units and technology and industry at the state and beyond the regional level; growth of university companies, including startups, by increasing the technological leadership; and accordingly, support of the priorities at regional and national level will be fulfilled, in terms of economic development. Universities have always been involved in the field of research and transfer, but now this new role is given to them as a center for economic development and job creation through their transfer of technologies. Universities get the role of encouraging and promoting national economic development and the leader of innovation processes in the society.

WORD PRACTICE

The European Union introduced a strategy and program Innovative Union ("Innovation Union is the European Union strategy to create an innovation-friendly environment that makes it easier for great ideas to be turned into products and services that will bring our economy growth and jobs. The Innovation Union is one of the seven flagship initiatives of the Europe 2020 strategy for smart, sustainable and inclusive growth" European Commission), as a continuation of the Lisbon Strategy ("The Lisbon Strategy, also known as the Lisbon Agenda or Lisbon Process, was an action and development plan devised in 2000, for the economy of the European

Union between 2000 and 2010." European Commission) in the direction of approving funds, resources, through universities and their transfer technology to achieve: economic growth, job creation and stopping the brain drain. The European Union through Innovative Union has a plan to encourage countries to invest 3% of their GDP (1% public funding, 2% private sector) in research and development, within the determined objective of achieving by 2020. This strategic plan is intended to open up 3.7 million jobs and to increase the annual GDP by almost 800 billion euros. The importance of intellectual property for the development of the economy is shown by the results of a joint study ("Intellectual property rights intensive industries: contribution to economic performance and employment in the European Union" Industry-Level Analysis Report, September 2013, A joint project between the European Patent Office and the Office for Harmonization in the Internal Market.) conducted by the Munich-based European Patent Office and the Office for the Harmonization of the Internal Market based in Alicante, Spain. The results show that 39% of all European economic activity, amounting to €4.7 trillion a year derived from intellectual property. The study titled "IPR intensive industries: contribution to economic performance and employment in Europe", shows that even more than a third of European jobs (35%) are based on intellectual property rights, patents, trademarks, industrial designs. This study was based on a similar study done in the US in 2012 by the US Patent and Trademark Office in cooperation with the Economics and Statistics Administration, which revealed important information about the importance of intellectual property in terms of industry and the US economy. The study that was conducted by the US Commerce Department entitled "Intellectual Property and the US Economy: Industries in Focus (Economics and Statistics Administration and the United States Patent and Trademark Office Intellectual Property and the U.S. Economy: Industries in Focus Prepared by the Economics and Statistics Administration and the United States Patent and Trademark Office U.S. Department of Commerce March 2012.) led to indications that (IP) intensive industries are supporting at least 40 million jobs and have advantage of more from $5 trillion or 34.8 % of GDP of the US in 2010. Some IP-intensive industries indicated in the study include: computer engineering, production of video and audio equipment, publishers of books and newspapers, pharmacy and medicine, electronic components, medical equipment. In the process that leads to innovation, it is not just one man / professor, but rather many persons who are part of the academic community, students, assistants, doctoral students and so on. Intellectual property is important in the work of universities, and often encourages tough questions that are to be resolved in connection with its use. If one makes a comparison, the practices are different. Namely, the United States have the Bayh-Dole Act - regulations governing intellectual property in government-funded research, Canadian universities on the other hand are free to make individual arrangements for IP. In the European Union is more complex because at stake are different national practices and legislation, but

the European Commission is trying to bring them closer and reduce the diversity through the harmonization of the legal practice. The Bayh-Dole Act allows 50% of the IP to be assigned to the researcher and the remaining 50% to the university. The Bayh-Dole act starts from the assumption that universities will play an important role in protecting and commercialization of IP. MIT and other institutions vary part of its share of the researcher. WIPO[1] published the latest data on the number of patents in 2014 by countries. According to these data, South Korea has the most patents - 3.254 per million, followed by Japan and Germany with 2,092 and 913, respectively. The top ten countries look like this: 1. South Korea 2. Japan 3. Germany 4. United States 5. China 6. France 7. United Kingdom 8. Italy 9. Russia 10. Canada.

THE CASE OF REPUBLIC OF MACEDONIA

The Republic of Macedonia as a candidate country for the European Union is obliged to synchronize its legislation, which includes and the laws regulating the intellectual properties with the European standards and to demonstrate a consistent application of these laws in practice. The Secretariat for European Affairs is responsible for implementation and coordination of these before mentioned laws. Republic of Macedonia became part of the World Intellectual Property Organization in 1993 , and a member of the Permanent Committee of Industrial Property Protection Information of WIPO in 1994. In addition to the new conventions and regulations, Republic of Macedonia as a member is bound to abide the conventions and treaties which were signed in the time of Yugoslavia, that is, as heir to the liabilities of Yugoslavia. When it comes to Republic of Macedonia (Innovation Union Competitiveness Report 2013 - European Commission, Directorate-General for Research and Innovation, 2014) there are available data from 1993[2] when patents were reported for the first time, 128 patents precisely. The biggest number of patents in Republic of Macedonia was recorded in 1994 - 236. The number is significantly smaller in recent years, notably since 2008 onwards, where the number of patents exceeded 50 only once. Although intellectual properties, at a worldwide and European level became the top topic and one of the main tasks in Republic of Macedonia, especially universities, they can not boast about it.

[1]Link: http://www.wipo.int/edocs/pubdocs/en/wipo_pub_941_2015.pdf , last visited august,2016.
[2]Link: http://www.wipo.int/members/en/details.jsp?country_id=114 , last visited august, 2016.

On June 12, 2009, upon the proposal of the Ministry of Economy, in coordination with the State Office of Industrial Property, a 2009-2012 Strategy for intellectual property was adopted in the Republic of Macedonia, which opens the door for adoption and regulates the legal basis for support technology transfer, protection of intellectual property, spin-off etc., as part of scientific research activities in the universities. In 2013 a Law on Innovation Activities was adopted (Official Gazette No: 79/2013) which along with the recent amendments of the Act in 2015 largely regulates and provides an opportunity for scientific profession to develop and implement global trends in the area of technology transfer, spin-off and the like. A scientific-technological park has been established within the South East Europe University, which is already operational, as well as a Center for Technology Transfer and Intellectual Property at the University of Information Sciences and Technologies in Ohrid (funded through FP7 EU, which has no data on real technology transfer in the economy or product, except issuing scientific publications). A start-up Business Center was established at UKIM, Faculty of Mechanical Engineering (UKIM-BSC), supported by the Austrian Development Agency (ADA) in 2013. All companies which are established within this business center are managed by students or new graduates, and all are characterized by innovation, profitability, and based on knowledge. There are also few others forms of centers/offices at state universities, but without any real output and positive impact in the field of IP, patents, transfer of technology etc. (no practical and real implementation of its form). Macedonia through budget financing provides basic resources for work at the universities, according to the size of the university, the number of students and the like. At the same time universities also provide their own funds from operations, and are encouraged to provide funds for research and development from other national and international institutions and the economic sector. The legal framework is already set which means a step toward to the development university. Unfortunately, the universities in the country are far from the world practices, and even from the regional practice of using intellectual property and technology transfer, through which universities make substantial inflow of funds. We could not come up with such significant statistics in the country.

RESEARCH

A questionnaire was distributed to teaching and research staff of the State University in Republic of Macedonia (40 top scientific staff). The number of respondents is carefully selected, in order to avoid large sample, and to avoid the sample to be unknown. That is, selected samples are used among the teaching and

scientific personnel having the following characteristics: commitment to science and research, extensive portfolio of publications and surveys, proportional representation of different groups by age, proportional representation of different groups of species. In this way it is believed that the answers received will give accurate and relevant research. As to the ethical component in the present study, it is took care of the privacy of the respondents - professors / scientists.

Question no.1: How much new knowledge (patents, innovations, inventions, etc.) from your field of research is transferred into practice?

Option	Number of answers
zero	2
not enough	26
average	5
enough	7
a lot	0
Total	40

Question no.2: Interest in transferring the technology to the business sector

Option	Number of answers
not interested	0
little interested	2
average interest	5
Interested	14
very interested	19
Total	40

Question no. 3: How often are you in contact with the economy for the purpose of transferring technology?

Option	Number of answers
not at all	3
rarely	8
average	15
enough	6
a lot	6
Total	38

Question 4: According to your experience and assessment, is it useful and applicable (the transfer of) technology into practice?

Option	Number of answers
not useful	0
a little useful	0
average useful	1
reasonably useful	22
very useful	15
Total	38

Question no. 5: In your opinion, what are the key factors for transfer of technology from scientific institutions in the economy?

Option	Number of answers
scientific-research institutions should be more open for cooperation	2
cooperation should be based on a long-term contract	8
technology should be in line with the needs of the industry / economy	11
scientific institutions must produce more applicable knowledge	15
communication should be market-oriented	4
Total	40

Question no. 6: The main problems with the transfer of technology in the Republic of Macedonia. What do you agree with?

Option	Number of answers
companies must be development-oriented	3
scientific institutions do not provide sufficient research support	0
new technologies are too expensive for the economy	1
the state must approve more funds for applicable research and education	22
the attitude of business managers to the researchers and their research is negative	5
collaborations are usually friendly based	4
there is no co-operation on the part of the management of scientific institutions	1
researchers lack knowledge of the needs of the economy	1
insufficient formal and informal cooperation between the economy and scientific institutions	12
rigidity of scientific institutions	1
Total	50

Question no. 7. Do you think that the existence of a Technology Transfer Center within the University will advance the transfer of technologies from scientific institutions to the economy?

Option	Number of answers
not at all	1
very little	2
Average	7
Enough	22
a lot	8
Total	40

Question no. 8: How often have you encountered formal and administrative problems during the legal completion of your inventions / new technology?

Option	Number of answers
not at all	5
very little	7
Average	3
Enough	10
a lot	15
Total	40

Question no. 9: What is your knowledge of intellectual property (patents, etc.)?

Option	Number of answers
not at all	0
very little	6
Average	10
Enough	18
a lot	6
Total	40

Question 10: Who performs the formal work related to the protection of your invention?

Option	Number of answers
Myself	21
the institution where I am employed	10
Friend	3
private company	4
Total	38

Question 11: Do you think the Technology Transfer Center will improve and will facilitate your efforts to establish cooperation with the economy and vice versa, with the researchers, as well as in the field of protection of your intellectual property (patents, etc.)?

Option	Number of answers
not at all	2
very little	8
Average	6
Enough	12
a lot	11
Total	39

CONCLUDING REMARKS AND RECOMMENDATIONS

Investing in research and development does not consist solely of approval financial resources to the higher education institutions; it refers to the investment of taxpayers' money, better and more beneficial use and benefit of the invested money, involvement of the private sector in these innovations and technology transfers, by creating a smart and proactive oriented policy in this sphere in the institutions. The aim must be to give value to the money invested, not only to double the research without concrete applicable outputs, as well as to pay major attention to the expertise and technology, patents and cooperation with economic sectors, funds and similar research and innovations which are part of the universities. It is necessary to establish a good model of use of the intellectual property at the University with the ultimate goal of reaching a development-oriented university, following the example of European and American universities. At the time of the beginning of the 4th Industrial Revolution, the old organization, structure and functioning of the universities proves to be disastrous, not only nationwide but also regional and more internationally. We must use the essence of the integration of the university to establish a new structure for the implementation of intellectual property, and therefore applicable knowledge on the transfer to the economic sector in order to follow the European strategic objectives in the areas of development, education, innovation and finally, benchmark university achievements.

Some proposals can be stated for better cooperation with the economic sector and technology transfer from the research institutions to the economic sector and the State:

Greater initiative for cooperation of the three parties (university, state and economic sector- The Triple Helix) in the form of round tables, seminars, fairs, workshops etc., is necessary; Full and continuous cooperation between the economic sector and academia- it's the only way science can adequately react rapidly to the demands of the economy; The mobility of the scientific staff as a problem. Absence of a growing number of young staff; Trust between the economy and science is also important: it is present, but it is difficult to maintain. Permanent contacts are very important; Companies need to invest in R & D, which will establish close cooperation with scientific institutions; It is necessary to devote more attention to the practical application of the matters that are taught in school. The theory is the basis of knowledge, but if inapplicable, it remains only on paper, without real significance; The Republic of Macedonia lacks scientific-research institutes that would deliver knowledge and experience to economic entities that would be able to solve problems that affect the economy; The cooperation depends on both sides, and state support is also significant. Scientific institutions should be more concerned about the needs of the economic sector, the economic sector should see a partner in scientific institutions, and the state should create policies that will positively affect

the cooperation and implement measures for financial and non-financial support to research, development and technology transfer; Annual regular conferences with target theme to unite the interests of scientific institutions with the economic sector and setting common goals and deals with specific statements and actions, with moderated support from the state; Organization of more conferences and workshops where new developments would be promoted; There should also be more formal and informal cooperation between businesses and scientific institutions; The state should allow more funds for research and education; To produce more application knowledge (reform of the curriculum so that it will include more practical skills); Managers in the economic sector should recognize the added value of research; Scientific institutions should be open for more practical cooperation with economic entities.

The conclusions drawn from the analysis of the interviews with the teaching and researching staff, are the following: Center for technology transfer as a formal body would not make any change, regardless it is established at university or national level, if it does not produce any results through professional and dedicated work; It is important to offer appropriate instruments implemented by competent people, where the commitment by top management of the universities is very significant; Proactive and proven personnel should be assigned; A total lack of cooperation within individual higher educational institutions; The economic sector should also have interest in innovation, not only the scientific institutions. There is an impression that their willingness to cooperate is small; There must be greater coordination between relevant ministries, industry and scientific institutions; Scientific institutions should be agile (fast adjustable) to the needs of the industry. The University should be agile and able to react quickly to the changing market conditions; It is very difficult to achieve in a highly bureaucratized academic institutions with predefined processes that are full of bottlenecks in the process of decision making;

Today, the expectations from the universities are much bigger and more complicated than they used to be until now. Universities themselves struggle between balancing the fiscal financial needs and human resources, despite the high expectations and demands that society is setting on them. The extreme changes in social actions and societies as a whole, geopolitics, technology, new scientific knowledge request from universities an answer to these challenges and supposedly to adapt. On the move are the universities that still maintain their conservative structure and functioning, and are not optimally included in this road of change. Technology transfer from the University to society is of great national importance. Technology transfer helps to develop the tools of intellectual property and intellectual policy, leading to the development of new scientific awareness, products, platforms and services and general welfare of the state. Developed and applicable Intellectual Property at the University = source of finance and development.

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PROPAGANDA AND POLITICAL PERSUASION - CORNERSTONES OF MODERN POLITICAL COMMUNICATION

Abstract

In the aftermath of World War I, the science of sociology started investigating propaganda, focusing its research on persuasion and the effects it has on the public in altering their views. Sometime later, as a consequence of Goebbels's propaganda machinery, it became a "dirty" word to describe how reality was manufactured by that machinery over the course of World War II. After the war, the term *military -propaganda* was replaced with the words *-communication*, *-persuasion*, and *-information*, which were intended to encompass the development of new communication technologies while softening the negative impression that the "dirty" word propaganda was giving out. Propaganda is a form of communication aiming to elicit a reaction to suit the objectives of the propaganda maker, whereas persuasion is most often presented as an interactive process in which both sides (the persuader and the persuadee) win. This is the key difference that theoreticians emphasize when defining the two models and when analyzing the causes for the auditorium altering its opinion.
Propaganda in journalism is being explored as a process to manage news, as well as distort and spin information, by highlighting only positive aspects to the public. In political science, propaganda is considered a constituent part of the ideologies that political actors espouse, while also being analyzed in the context of the influence it can have on public opinion and mass culture. Latest trends deal with the ideological grounds of propaganda and how these ideological signifiers form part of the hypotheses that media agendas put forward (Burnett, 1989: 127–137).

Keywords: Propaganda, persuasion, political communication, spin, manipulation, public relations

Propaganda can be seen as a communication technique used to manipulate the public to alter its opinions or behaviours. Propaganda makers always have a clear plan and desired objective, hence, in availing themselves of these manipulation techniques, they are completely aware of whom they are addressing and what beliefs and values does the audience they are targeting espouse. Its single objective is to defend a certain concept and help the political elite remain in power. On some occasions, a form of an open public discourse is created on a debate, aiming to mislead the public into thinking that it has more than one option to both debate on and choose from. In this process, propaganda makers always keep their objective previously set at the forefront of their attention and control the artificially created political and media reality (Bussemer, T., 2005).

History of propaganda distinguishes a minimum of three types of propaganda - military, otherwise known as public diplomacy; sociological propaganda within totalitarian regimes; and political propaganda, typical of developed democracies. Synonyms used to describe propaganda include falsehood, distortion, manipulation, brainwashing, psychological warfare and, as of late, spin or warping (Jackall, R., 1995). By singling out spin as a special technique, professional communicators attempt to separate propaganda from public relations, asserting that spin is a term alluding to manipulation, particularly when used in the political or corporate contexts, while exclusively relating it to the way in which a certain piece of news is presented to the public. Researchers focus on the symbolic and cognitive manipulation, as well as the ways in which the models of mass persuasion are scientifically backed. In the definition they have devised, Garth Jowett and Victoria O'Donnell focus on propaganda as a process of communication. They claim that "propaganda is the deliberate, systematic attempt to shape perceptions, manipulate cognitions, and direct behavior to achieve a response that furthers the desired intent of the propagandist" (Jowett and O'Donnell 1999:6). This definition describes propaganda as "conscious, deliberate and premeditated" (1999:6).

Taking into account the historical import of propaganda, researchers in the 1980s started examining the role it plays in modern states, without being condemned or criticized for doing so by the wider public. To them, the Vietnam War and the campaigns against Iraq "provided" enough material to "competently" investigate whether public opinion can be manipulated and, if true, to what extent. The advent of the internet and social media has made it easier to establish which propaganda activities affect the public discourse. On the other hand, the assortment of influences and aspects pervading makes it difficult to distinguish and separate the profession of public relations from propaganda, especially when it comes to international conflicts, media conglomerates, or, indeed, when there are more parties involved.

Many research professionals have attempted to define propaganda and deconstruct its influence. Jacques Ellul (1965, p. xv) focused on the techniques of propaganda and psychological manipulation, deeming it to be a societal phenomenon, rather than something that has been purposefully invented by humans. Ellul claimed that all biased messages existing and circulating within a society are, in fact, propaganda, regardless of the issue of whether those who put forward the messages are doing it deliberately or not. Moreover, in his writings on propaganda, he underscored its power and universality, pointing out that propaganda nullifies critical thought and reflection in a society. In doing so, he asserted that people actually need propaganda as it forms an inescapable part of modern societies, having in mind that, through propaganda, people can become partakers in elections, developments, official remembrances, festivities, etc (Jowwet, 2005). Ellul maintained that truth does not segregate propaganda from all other "moral forms," due to the fact that, as he argued, propaganda utilizes "truths, half-truths and constrained truths." In effect, all these definitions have gone a long way to only defining propaganda, but also identifying and distinguishing it.

Contending that propaganda is "organized persuasion" (DeVito, 1986: 239) has been widely spread, although persuasion is or should be different from propaganda. Many researchers have attempted to distinguish these terms and explain the specifics of each model separately. Sproule feels that propaganda is organized mass persuasion "representing the efforts made by large organizations or groups of people to sway the public on a certain issue by mass orchestration of alluring conclusions packaged to conceal their goal of persuasion and the lack of arguments to support those conclusions" (Sproule, 1994: 8).

PROPAGANDA AND PUBLIC OPINION

Propaganda can also be informative when certain information is shared, when something is being explained, or when certain instructions are put forward. However, in this type of informative communication, those spreading propaganda are aware that they are not doing it for common benefit, but, rather for reasons of achieving their own goals and objectives. Hence, the propaganda makers endeavour to control information and the way in which it is being developed and distributed via different communication and information strategies. Information sources, or rather propaganda makers, do not attempt to take up the role of persuaders. They typically take on a concealed identity in order to gain greater control over situations and make it easier for themselves to manipulate public opinion. Information management is carried out in various shapes and forms such as withholding information, providing information at a carefully selected time or to counterbalance certain events with a

view to influencing public perception; or creating new information by selectively placing information, as well as distorting or misrepresenting information (Ellul, J., 1973/1962).

Propaganda makers control information in the following two primary ways: (1) controlling the media as a source of information, and (2) presenting distorted information using a seemingly credible source. Exploiting journalists to infiltrate information and share it with the public is a type of distortion (Thomson, O., 1999). During the war in former Yugoslavia, Slobodan Milosević and Franjo Tuđman controlled nearly all media outlets in their home Serbia and Croatia respectively. This propaganda machinery caused huge civil demonstrations in Belgrade against the Serbian Public Broadcasting Company. Another such example is when Chinese students demonstrated at Tiananmen Square in Beijing in 1989, prompting the then Chinese government to ban news of the protests being spread to smaller cities and the other Chinese provinces. In doing so, the government prevented people in those areas from learning of the demands that the students in the great city were putting forward, while, foreign media were reporting the event only because of the fact that they had already been posted to China to report on then Soviet leader Mikhail Gorbachev's state visit to the Far East country (Cull, N. J., Culbert, D., & Welch, D., 2003).

Propaganda is generally considered to be typically attempting to manage public opinion. Land and Sears (1964) define public opinion as a «deliberate verbal response or reaction that an individual gives when prompted by certain stimuli in a situation when certain general issues are open» (Mitchell, 1970:62). Walter Lippmann, on the other hand, deemed public opinion to be something that stems from people who are interested in public life, rather than in a certain presumed or established group of individuals (Lippmann, 1922). He believed that public opinion is as effective as people interested support or oppose the leading contributors to public life. Speier (1950) felt that public opinion exists when a certain right had been afforded to a larger and more prominent set of people outside of power. This right is heightened to the level of expectation when a government presents its decisions and elaborates it in order to allow people outside of power to think over and discuss that decision or otherwise to create democratic grounds for ensuring the success of its decision or policies (Altheide & Johnson, 1980: 7).

Mitchell asserted that there are four types of public opinion prevailing in practice - popular opinion, seen as support in general for a certain institution, regime or political system; established models ensuring group loyalty and identification; public advantage, as afforded to certain leaders; strong and consistent views pervading across the largest part of the public which are related to a certain public matter or on-going situation (Mitchell, 1970: 60–61). Mitchell described the manner

in which a propaganda maker manages public opinion as a flaming drinking glass accumulating and confronting in it different emotions focused on a specific issue which can further be inflamed by a revolt, revolution or insurgence (Mitchell, 1970: 111).

PERSUASION AS COMMUNICATION PROCESS

Persuasion represents a part of communication and is most often defined as a process used to exert influence via a persuasive message with the ultimate goal of the message recipient voluntarily accepting the message received. Victoria O'Donnell and June Kable deem persuasion to be "a complex, continuing, interactive process in which a sender and receiver are linked by symbols, verbal and nonverbal, through which the persuader attempts to influence the persuadee to adopt a change in a given attitude or behaviour because the persuadee has had his perceptions enlarged or changed" (O'Donnell and Kable, 1982: 9). The process of persuasion is an interactive one and, through it, message recipients are expected to ultimately be persuaded that their needs have been accommodated regardless of them being personal or social. This is precisely why persuasion is considered to be better than propaganda, seeing as it satisfies both parties of the persuader and the persuadee respectively. People react to persuasion for reasons of it carrying a promise that it will fulfill their wishes and needs. This entails the persuader being obliged to take care of the needs of the persuadee and acknowledge the process as a reciprocal and transaction-based one, seeing as everyone gets something from it. Politicians must address the needs of their voters if they wish to secure their votes at the next election, hoping that the voters would react, i.e. respond to their persuading.

Researchers identify three different modes of response and reaction in persuadees, i.e. those who have been the focus of persuasion. Roloff & Miller assert that formulating a response is the first reaction (Roloff & Miller, 1980:16). This process is similar to learning whereby the teacher is the persuader and the student the persuadee. They are involved in a process of persuasion through which the persuader attempts to shape the response of the student/audience teaching that student/audience how to behave and positively react to certain matters. Should the audience learn the lesson, it will react in a positive fashion to certain issues and will develop a positive attitude towards continued learning, i.e. persuasion. The second mode entails reinforcing an already elicited response/reaction. If people, i.e. audiences have already adopted a positive stance and attitude toward a certain matter, the persuader reminds the audience of their positive stance and stimulates them to become even more vocal

in expressing their views through a positive attitude. The third one is changing a response, i.e. reaction. This form of persuasion is most difficult of all to carry out owing to the fact that it forces people to change their attitude, with them being made to align to one of the viewpoints on offer or pick a side and start behaving differently while starting from a neutral perspective. In essence, people find it hard to embrace change and, hence, in the process of changing a reaction, i.e. persuasion, the persuader must attach that change to something that the persuadee already believes in. That "something" is otherwise dubbed a transmitter or presenter and is already familiar to the audience and accepted by it. Transmitters take on the form of certain beliefs, values, behaviours, activities, and collective norms.

Persuaders presume that the audience possesses all information on the matter they are persuading it about, as well as that it is aware of their arguments and of the ones being put forward by the opposing side. Although it is presumed that changes that persuaders promise will always take place in order to sustain the support of the audience, persuaders may occasionally mislead the audience into believing in something that will never happen or forms part of a hidden agenda. This process is indeed considered to be propaganda (Jowett, 2005).

Much like in persuasion, a propaganda maker will examine the needs of the target group, emphasize beliefs the propaganda maker feels are vital to those of the targeted audience, and will be well acquainted with their requirements and views. However, the process in which propaganda techniques are used will not result in two parties reaching mutual satisfaction. The two sides involved will not have their needs met, neither will the needs of the propaganda maker alone be accommodated. This is one of the chief features separating propaganda from persuasion and relating techniques.

POLITICAL PERSUASION MODEL IN CONTEMPORARY POLITICAL PROCESSES

Political persuasion is part of contemporary media surroundings and democracy. Those conducting research on political persuasion base their concepts on a number of different disciplines, using theories of communication, political science, social psychology and advertising (Encyclopedia of public relations / edited by Robert L. Heath; 2005). Political persuasion is considered one of the fundaments of persuasion as a mode and tool in social and psychological theories due to it involving a method of convincing people to change their views and opinions within circumstances of them being afforded a "free choice." This deliberate method of persuasion takes

into account the very fact that freedom is never absolute and citizens are able to pick only one message among the many to attach to, as well as present their personal views and behaviour as public (Johnson, K. S. - Cartee & Copeland, G. A., 2004).

Political persuasion is distinguishable from all other types of persuasion by several of its features. Firstly, the change of behaviour is a result of a direct exposure to messages that can be parts of news programs, night talk shows, political comedies and satire, daily debate shows, and other programs that are in their core either not informative at all or are not fully informative, but can have a popular culture character. Secondly, political persuasion is individual, one is being persuaded on personal grounds, whereby group influences include political parties, lobbying, protests, etc. Thirdly, political persuasion is carried out by individuals sharing a certain vested interest, but using political symbolism and placing the entire political situation within the context of certain values, civil rights, societal changes, etc. Fourthly political persuasion represents a serious and unorthodox exploration of contrasts. It entails establishing influence, affording political leaders exposure and highlighting emotional arguments, while involving both political and professional elites in the process and devising messages to be presented to individuals which are often not interested in them or are, indeed, unable to fully understand the political process. (Encyclopaedia of political communication / editors, Lynda Lee Kaid and Christina Holtz-Bacha, 2006).

Persuasion, regardless of the concept involved, has three chief objectives – to form, change, or reinforce a certain behaviour. In the political context, forming, reinforcing, or emphasizing a certain behaviour takes place utilizing the so called process of political socialization which is being reported via the media. Campaigns can, further, alter certain behaviours by particular processes to be considered a part or be organized within a campaign as central or borderline. This concept is defined as a "model of possible explanations" (Heath. R. L., edd. 2005). Heath presumes that communicators underscore certain behaviours through various psychological mechanisms including emotional emphasis, which is often used in US presidential campaigns. Nonetheless, according to Shultz, in political persuasion processes, it should be made clear that candidates are not attempting to alter the convictions of voters, but they are instead to convince voters that the positions they espouse and their own political programme are identical to those of the voters. This means that within the process of political persuasion, the profile of voters should be taken into consideration, as well as the clear and precise identification of their judgments and positions. In this case, messages should be tailored in such a manner to address each individual target audience possible and hence connect them to activities to motivate the audience and highlight their judgments (Sproule, J. M., 1997).

Political persuasion is the fundament of political communication. Controlling political language and image is carried in all possible ways with the most prominent being exerting control over the media. The reasons for this are quite simple – the media possess the power to present reality before the electorate and, hence, politicians attempt through them to acquire the consent of citizens on their constructed concept of reality, i.e. their own political reality (Schram, M., 1987). Researchers have been dealing with the processes and ways in which the public responds and reacts to messages of persuading character and have been attempting to identify the influences that new media and the advent of multimedia platforms have on the process. No matter what the character of the technical and technological development line is, political influence will forever remain related to the political world. In 1946, George Orwell wrote that political language has been "designed to make lies sound truthful and murder respectable, and to give an appearance of solidity to pure wind." This definition has remained to this very day as important and relevant as ever.

Even though persuasion I and of itself is not a dirty word, it is nevertheless often related to propaganda, which definitely is seen as the black sheep of political communication. Propaganda utilizes pressure, intimidation, manipulation, deception and dishonesty, whereas persuasion, i.e. political persuasion, presents people with reasons why they should change certain opinions of theirs and alter the way in which they think or behave.

On occasions, the line delineating persuasion from propaganda is very thin and, hence, in order to meet their objectives, communicators cross that line in the hope that no one will expose their unprofessionalism. In order to avoid such occurrings, professional associations of communicators and those who deal in public relations have developed ethical principles for using persuasion in their line of work. There are more than one aspects to persuasion, but the most important of them is that it is based on actual fact. Propaganda, on the other hand, deals in distorting fact while simultaneously elevating or downgrading the importance of certain elements to a story, influencing people's emotions based on false claims and presumptions, and even using emotion-filled messages inducing fear and insecurity.

LIES AND PERSUASION

Undoubtedly, propaganda and persuasion are different to each other, while differences always have to be both pointed out and underlined, especially when the inter-relation and common denominators are explored. Even from an etymology point of view, the difference between propaganda and persuasion can clearly be

discerned. Whereas propaganda means -*to profess* in Latin, the word -*persuasion* has been derived from the meaning of advocating something, or convincing someone of something (Partridge, 2008). Propaganda is used to communicate the presumed objective of the persuader while seeking out a specific, or rather a presumed and expected reaction. Persuasion, on the other hand, is an interactive process the goal of which is to meet and accommodate the needs of both the persuader and persuadee. In persuasion, people are supposed to be motivated to become active. Propaganda differs from this in aiming to meet the expectations of propaganda makers only and, therefore, it is distinguishable both in its concept and methods used. The difference between emotion and reasonable argument is also a key reason added to distinguish between propaganda and persuasion. Persuaders appeal on the audience's emotions, but avoid manipulating with said emotions, using them instead to highlight and support their genuine facts and relevant information they employ while engaging in persuasion. According to Brown (1963), propaganda is based on emotions and values that can be distorted or shifted within a political campaign in order to persuade the audience, i.e. the voters. Furthermore, propaganda also entails telling lies, seeing as emotional appeals and messages are not necessarily entirely genuine. An important thing to remember in this respect is that the propaganda maker does not act for the benefit for his or her target audience – that is not his or her primary objective. Rather, the propaganda maker is alienated from the message recipients and quite often does not believe the messages he or she is sending out.

Another feature of propaganda is the fact that it can transmit the official message, i.e. information sent out by an official source, to a side source and in that manner attempt to present the necessary propaganda message. The public, or sections of it receiving the message does not even suspect that the message is actually coming from the propaganda maker, hence, finding it, indeed, a bit more credible. As opposed to this, persuaders clearly set their goals from the very start and clearly outline their expectations as to the changes in behaviour or views they wish to elicit from their audiences on a specific issue. Success in this respect can be seen in audiences reacting in an identical way to what the persuader has envisaged (Biddle, 1966; Hovland & Mandell, 1952). Larson (2001) feels that "persuasion is based on both "logical argument" and rational choice which are a result of debate and a discussion between a number of different parties involved. Finally, it is, indeed, true that propaganda and persuasion are used in many cases such as war, election, media, education, advertising, and the like, but the relationship between the persuader and persuadee is different in its nature and objective. To exemplify, there is no direct correlation between the one uttering or writing the propaganda messages and the audience those messages are intended for. On the other hand, persuasion takes

place face to face and this is perhaps one of the single most acknowledged and discernable differences between these two methods. Joseph Conrad has described a good persuader in the following manner: "He who wants to persuade should put his trust not in the right argument, but in the right word." To him, "the power of sound" has always been greater than "the power of sense" (Conrad, 1990). Research professionals have concluded that people must educate themselves on the differences between these two models of communication in order to make up their minds on a certain political matter, election or, indeed, their own lives.

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THE ROLE OF THE SUPREME COURT IN ENSURING UNIFORMITY OF COURT PRACTICE IN THE REPUBLIC OF MACEDONIA[1]

Abstract

The Supreme Court of the Republic of Macedonia has a constitutional competence to ensure uniform application of laws by the courts and thus ensure the uniformity of court practice in the Republic of Macedonia. The recent Report on Macedonia: Assessment and recommendations of the Senior Experts' Group on systemic Rule of Law issues 2017, led by Reinhard Priebe and issued by the European Commission on 14 September 2017 notes the need for achieving a greater uniformity of court practice, emphasizing the role of the Supreme Court of the Republic of Macedonia in that regard. However, the national laws do not always provide for the Supreme Court to exercise its constitutional competence to ensure the uniform application of the laws by the courts and ensure the existence of a uniform court practice. This paper aims at searching a way to strengthen the role of the Supreme Court in ensuring uniform application of laws by the courts. In this regard, a thorough analysis of the relevant national legislation will be conducted.
Finally, this paper draws conclusions and recommendation as regards possible solutions to provide for better conditions for the Supreme Court to exercise its constitutional competence to ensure the uniform application of the laws by the courts and thus ensure the existence of a uniform court practice.

Keywords: marketing, universities, new marketing concept

[1]This paper is based on an analysis that was conducted by the author of the paper, within the Project "Supporting the Establishment of Unified Court Practice in the Macedonian Legal System", implemented by the Center for Legal Research and Analysis and funded by the British Embassy – Skopje, 2016

INTRODUCTION

The responsibility for ensuring uniform application of laws by the courts and thus ensuring uniformity of court practice in the Republic of Macedonia ("RM" or "Macedonia") is assigned to the Supreme Court of the Republic of Macedonia ("Supreme Court"), as one of its constitutional competences (Constitution of the Republic of Macedonia, Article 101). The recent Report on Macedonia: Assessment and recommendations of the Senior Experts' Group on systemic Rule of Law issues 2017, led by Reinhard Priebe and issued by the European Commission on 14 September 2017 ("Priebe Report 2017") indicates that there is a need for achieving greater uniformity of court practice in Macedonia, emphasizing the role of the Supreme Court in that regard. More specifically, the Priebe Repo r t 2017 notes that "the importance of the role of the Supreme Court should be emphasised in providing appropriate safeguards for clarity and foreseeability through greater uniformity of practice".

In addition, the need for greater uniformity of the court practice in Macedonia was also noted in latest reports of the European Union ("EU") on the progress of Macedonia, as an EU candidate country (European Commission, 2014; European Commission 2015; European Commission 2016). The EU progress reports on Macedonia note the need for improved reasoning and transparency of court judgements as well (European Commission, 2016).

A research conducted on the status and treatment of the court practice in the legal system of RM, where the research methodology involved interviews with key representatives of the judiciary, showed that not only there are different perceptions and opinions regarding the status and treatment of the court practice, including the court practice of the Supreme Court as the highest court, but also that there is a variety of opinions regarding the effect of the principal standings and principal legal opinions of the Supreme Court, as its main tools for ensuring uniformity of court practice (Center for Legal Research and Analysis, 2015). Moreover, the procedural laws do not always provide for the Supreme Court to exercise its constitutional competence to ensure the uniform application of the laws by the courts and ensure the existence of a uniform court practice.

This paper will focus on searching a possible solution to strengthen the role of the Supreme Court in ensuring uniform application of laws by the courts and thus creating better conditions for reaching greater uniformity of court practice in Macedonia. In order to provide a starting base for reaching a possible solution to increase the level of uniformity of the court practice, through emphasizing the importance of the role of the Supreme Court in that regard, a thorough analysis of the relevant national legislation will be conducted, while the effect of the authority

given to the Supreme Court will be shown mainly through analysis of various principle standings and principle legal opinions adopted by the Supreme Court. After determining the status of court practice in Macedonia, it will be suggested that court practice, especially the decisions of the Supreme Court, together with its principal standings and principal legal opinions, should serve as an additional means of argumentation within the reasoning of court judgments, in order to increase the uniformity of court practice as well as to improve reasoning and transparency of judgments. Finally, certain improvements and changes of the national legislation will be suggested as well, in order to provide for better conditions for the Supreme Court to exercise its constitutional competence to ensure the uniform application of the laws by the courts and thus ensure the existence of a uniform court practice and legal certainty as well.

STATUS OF COURT PRACTICE IN NATIONAL LEGISLATION

Article 98 of the Constitution of the Republic of Macedonia ("Constitution"), which is replaced by paragraph 1 of Amendment XXV, is the starting point of any discussion on the status of court practice within the Macedonian legal system. Namely, the second paragraph of Article 98 of the Constitution foresees that "courts adjudicate based on the Constitution and the laws, and the international agreements ratified in accordance with the Constitution". The first paragraph of Article 2 of the Law on Courts almost literally reflects this constitutional provision: "the courts adjudicate and base their decisions on the Constitution, the laws and the international agreements ratified in accordance with the Constitution".

Taking in consideration Article 98 of the Constitution and Article 2 of the Law on Courts, where the formal sources of law in RM are explicitly foreseen, it could be noted that the court practice is not a formal source of law and that the courts can not make decisions based on the court practice, i.e. based on previous court decisions. It could also be noted that the Macedonia belongs to the Continental law countries, where the doctrine of *jurisprudence constante* is dominant and previous court decisions are not binding for the judges.

However, some procedural laws contain elements of the doctrine of *stare decisis*, where previous court decisions (court precedents) are considered a source of law. Namely, such elements can be found in Article 386 of the Law on Civil Procedure, which stipulates that "the court to which the case was returned for a retrial is bound to that case by the legal understanding on which the decision of the revision court is based, by which the challenged second instance judgment was abolished, or by which the second instance and the first instance judgment were abolished ".

It could be noted that Article 386 of the Law on Civil Procedure suggests a formal bindingness of the lower court to the decisions of the higher court (the Supreme Court in this case) in a retrial, which is usually characteristic for the common law systems. It should also be noted that the term "legal understanding", used in Article 386 of the Law on Civil Procedure, is rather wide and insufficiently precise concept that requires further interpretation and refinement.

On the other hand, the other procedural laws, such as the Law on Criminal Procedure and the Law on Administrative Disputes, do not contain similar provisions regarding a possible formal bindingness of the lower courts to the legal understanding expressed in certain decisions of the higher courts, as it is the case with the Law on Civil Procedure.

Another issue that arises from the wording of Article 98 of the Constitution is whether the court practice could serve as an additional means of argumentation within the rationale of a certain court decision, whereby the court, when interpreting the law, will use court practice as a reference, i.e. will refer to a prior court decision. Namely, the aforementioned research conducted on the status and treatment of the court practice in the legal system of RM showed that there are different perceptions and opinions regarding this issue as well (Center for Legal Research and Analysis, 2015). The ultimate purpose of using court practice as an additional means of argumentation would be reaching a greater uniformity of court practice, and thus increasing the legal certainty as well as the transparency of court proceedings and the reasoning of court judgments.

When answering this question, one should have in mind that the courts apply the formal sources of law (the Constitution, the laws and the international agreements ratified in accordance with the Constitution) through the adoption of court decisions. It should also be kept in mind that the rule of law principle is included among the basic principles of the constitutional order of RM (Constitution of the Republic of Macedonia, Article 8).

Taking in consideration that the law is applied to a particular set of facts through the court decisions, it could be claimed that using court practice as an additional means of argumentation will increase uniformity of court practice and contribute to greater respect for the principle of equality before the law, which stems from the rule of law principle. In this respect, the decisions of the Supreme Court, as the highest court in the hierarchy of the courts, are especially important. Further, given that the principle of legal certainty stems from the rule of law principle and that it generally refers to "non-retroactivity of the law, accessibility and predictability of the legal provisions and guarantee for a uniform interpretation of the laws" (Predescu & Safta, c.2009, p.4), it could also be claimed that using court practice as an additional means of argumentation and greater uniformity of court practice contribute to greater respect for the principle of legal certainty as well.

SUPREME COURT AND UNIFORMITY OF COURT PRACTICE

The Supreme Court is the highest court in Macedonia and, *inter alia*, it is responsible for ensuring uniform application of laws by the courts (Constitution of the Republic of Macedonia, Article 101). The main instruments for implementing this competence are the principal standings and the principal legal opinions, which the Supreme Court considers and approves at a general session. Namely, it "determines principal standings and principal legal opinions on issues of importance for ensuring consistency in the application of the laws by the courts, on its own initiative or on the initiative by the meetings of judges or court departments" (Law on Courts, Article 37). It can also "consider issues related to the operation of the courts, law enforcement and court practice" (Law on Courts, Article 37).

For example, at a general session of the Supreme Court held on 9 December 2009, a principal standing was adopted as regards the concluding of a court settlement pursuant to Article 307-310 of the Law on Civil Procedure, as an issue of relevance to ensuring uniform application of laws by the courts. Also, at a general session of the Supreme Court held on 20 December 20011, a principal standing was adopted on a legal question whether the Supreme Court is a competent court to act upon appeals against the decisions of the Administrative Court, except in the cases provided for in Article 63 of the Law on Administrative Disputes.

Further, the Department of Criminal Law of the Supreme Court adopted a principle legal opinion on 21 January 2015 on the application of Article 206(2) of the Law on Criminal Procedure, which foresees an obligation for the statement of the accused for canceling some of the rights foreseen in Article 206(1) to be signed by him. This principal opinion was adopted due to an initiative filed by the Strumica Basic Court for legal opinion, in order to ensure uniform application of the laws by the courts. On 26 September 2016, the Department of Civil Law of the Supreme Court adopted a principle legal opinion on the expiration of a claim of the Pension and Disability Insurance Fund for unpaid contributions for pension and disability insurance in bankruptcy procedure, due to the fact that it found inconsistent court practice within the lower courts on this particular legal issue, when deciding upon revision submitted to the Supreme Court.

There are numerous other principle standings and principle legal opinions adopted by the Supreme Court, on its own initiative, or another person's or court's initiative, as regards issues of relevance to ensuring uniform application of the laws by the courts. Consequently, it could be claimed that the Supreme Court ensures uniformity in the application of laws by the basic, appellate and specialized courts (Škarić and Siljanovska-Davkova, 2007, p.729) and that it has a key role in ensuring a uniform court practice.

The principal standings and the principal legal opinions, through which the role of the Supreme Court for ensuring the uniform application of laws by the courts on the whole territory of RM is expressed, are mandatory for all the councils of the Supreme Court (Law on Courts, Article 37). In other words, the principal standings and the principal legal opinions of the Supreme Court are binding only for its councils. Yet, in this context, one should have in mind that its responsibility to ensure the uniform application of the laws on the whole territory of RM, by using the principal standings and the principal legal opinions as main tools, must not be neglected. Moreover, one should also keep in mind that the Supreme Court, as the highest court in Macedonia, represents a final instance for supervising the judgments.

Taking in consideration the foregoing, it could be argued that the principal standings and the principal legal opinions have, at least, strong persuasive effect in the decision making process by the lower courts, despite the fact that they are not formally binding for them. Namely, they are a strong authoritative argument in the interpretation and application of law by the lower courts. In this sense, similar interpretation could be used as regards the decisions adopted by the councils of the Supreme Court. Namely, given that the Supreme Court is the highest court and the final instance for supervising the court decisions as well as responsible to ensure uniform application of the laws, it could be argued that the decisions adopted by its councils are highly authoritative means in the interpretation and application of law by the lower courts in similar cases, regardless of the fact that they are not formally binding for the lower courts and have *inter partes* effect (Fon & Parisi, 2006, p.520). This is especially important as an argument in favor of using court practice, particularly the court practice of the Supreme Court as the highest court, together with its principal standings and principal legal opinions, as an additional means of argumentation within the rationale of the court decisions, in order to increase uniformity of court practice and legal certainty.

Other tools that are at disposal of the Supreme Court in order to ensure uniformity in the application of the laws and uniform court practice are the following: preparation of a collection of court decisions with sentences and concise explanations (Court Rulebook, Article 72); the department of court practice established within the Supreme Court (Court Rulebook, Article 73), and the Information Centre of the Supreme Court that maintains database of final and non-final court decisions with integral text without anonymizing the data of the parties and other participants in the proceedings (Law on Case Flow Management in the Courts, Article 11).

A very important tool for the Supreme Court, in terms of ensuring uniformity in applying the laws and thus ensuring uniformity of court practice, is the revision by exception, foreseen in Article 372(4) of the Law on Civil Procedure. This Article

stipulated the following: "The revision by exception is permitted as well against a second instance judgment, against which a revision cannot be submitted according to paragraph (2) of this Article[2] , in case the second instance court allowed for that in the adopted judgment. The second instance court may allow a revision by specifying the scope of the legal issue that would be raised before the Supreme Court, in case it considers that the decision in the dispute depends on the resolution of some substantive-legal or procedural-legal issue, which is essential for ensuring uniform application of the law and unification of court practice. Within the rationale for the judgment, the second instance court is required to specify for which legal issue it allowed the revision and to cite the decisions that indicate uneven application of the law, as well as to explain the reasons why it considers that this is important for ensuring uniform application of the law and unification of court practice".

This provision is important, in the first place, due to the fact that not all court decisions adopted by the lower courts meet the conditions in order to be submitted for review before the Supreme Court[3]. In such cases, it turns out that, in practice, the appellate courts are the highest courts in the hierarchy of the court system, instead of the Supreme Court. Moreover, the Supreme Court is unable to exercise its constitutional competence to ensure the uniform application of the laws by the courts and thus ensure the existence of a uniform court practice. Consequently, it could be claimed that the revision by exception, foreseen in the Law on Civil Procedure, is very important tool for the Supreme Court in ensuring uniformity of the court practice. However, provisions similar to Article 372(4) of the Law on Civil Procedure do not exist in the other procedural laws.

Namely, the Law on Criminal Procedure contains limitations as to which judgments reach the Supreme Court for review. There are two options in this regard: request for request for protection of legality that can be filed by the public prosecutor (Law on Criminal Procedure, Article 457) and request for extraordinary review (Law on Criminal Procedure, Article 463). Yet, although not all judgments fulfill the conditions in order to be reviewed by the Supreme Court, the Law on Criminal Procedure does not foresee means in order to provide for the Supreme Court to exercise its competence to ensure the uniform application of the laws

[2] According to article 372(2), parties may file for a revision against the second instance judgment, if the value of the dispute to the challenged part of the judgment exceeds 1,000,000 denars.

[3] For example, parties may file for a revision against the second instance judgment, if the value of the dispute to the challenged part of the judgment exceeds 1,000,000 denars (Article 372 of the Law on Civil Procedure (consolidated text), Official Gazette of the Republic of Macedonia No.7/2011); also, the person sentenced to unconditional imprisonment or juvenile imprisonment of at least one year and his counsel may submit a request for extraordinary review of a final judgment due to violations of the law in cases stipulated in this Law (Article 463 of the Law on Criminal Procedure, Official Gazette of the Republic of Macedonia No.150/2010)

in such cases as well. It could be noted that the appellate courts are practically the highest courts in such criminal matters, while the Supreme Court is unable to ensure the uniformity of court practice.

The Law on Administrative Disputes provides for the decisions of the administrative courts to reach the Supreme Court for review under limited conditions as well. That is through request for protection of legality that can be filed to the Supreme Court by the public prosecutor against the decision of the administrative courts upon the request for retrial (Law on Administrative Disputes, Article 49); and through special appeal that can be filed to the Supreme Court against the decision of the administrative courts upon the proposal for protection due to illegal actions by an official (Law on Administrative Disputes, Article 49). It could be noted that the Higher Administrative Court is practically the highest instance in the judicial hierarchy regarding administrative matters, while the Supreme Court is almost completely unable to exercise its role as regards ensuring the uniform application of the laws in the administrative area.

CONCLUSIONS

The court practice in Macedonia is not a formal source of law and the courts cannot make decisions based on the court practice, i.e. based on previous court decisions. The legal system is based on the doctrine of *jurisprudence constante* where previous court decisions are not binding for the judges.

Yet, some procedural laws contain elements of the common law doctrine of *stare decisis*. Such provisions can be found in the Law on Civil Procedure. It could be concluded that inconsistencies exist between these laws, which could lead to various ambiguities and create potential for different interpretations as regards the level of obligatoriness of the decisions taken by the higher courts, in terms of decision making and application of law by the lower courts. It could even lead to a completely inappropriate conclusion that the level of obligatoriness of the decisions of the higher courts in the application of laws and the decision making by the lower courts is different for different legal areas. In any case, there is a need for harmonization of the procedural laws in this regard.

Taking in consideration that the courts apply the Constitution, the laws and the international agreements, as formal sources of law in Macedonia, through the adoption of court decisions, it could be concluded that using court practice as an additional means of argumentation when law is applied will contribute to greater uniformity of court practice and thus to greater legal certainty as well as greater transparency of court proceedings and improved reasoning of court judgments.

Moreover, having in mind that the Supreme Court is the highest court and has a key role in ensuring uniformity of court practice, it could be argued that it is very important for its decisions, together with its principal standings and principle legal opinions, to be used as an additional means of argumentation by the lower courts, especially in terms of strengthening its role to ensure uniformity of court practice. The latter could be supported by an appropriate intervention in the Law on Courts, particularly Article 11(1), which foresees that "the judge decides impartially with application of the law on the basis of a free assessment of the evidence", and Article 35, which determines the competences of the Supreme Court. Of course, the eventual interventions shall be in accordance with Article 98 of the Constitution, which determines the sources of law, and Article 2 of the Law on Courts, which almost literally reflects this constitutional provision:

However, the Supreme Court is sometimes unable to exercise its constitutional competence to ensure the uniform application of the laws by the courts and ensure the existence of a uniform court practice, due to the fact that certain court decisions adopted by the lower courts do not meet the conditions required in order to be submitted for review before the Supreme Court. In such cases the appellate courts are practically the highest courts in the hierarchy of the court system.

The Law on Civil Procedure is the only procedural law that foresees a means for regulating such cases. Namely, in its Article 372(4), it provides an important mechanism for such cases to reach the Supreme Court, if the dispute depends on the resolution of some legal issue, which is essential for ensuring uniform application of the law and unification of court practice. In this sense, foreseeing similar provisions in the other procedural laws as well could be another possible solution in order to strengthen the role of the Supreme Court to ensure uniformity of court practice and enable it to fully exercise its competence to ensure the uniform application of the laws.

Namely, Article 463 of the Law on Criminal Procedure, which foresees limitations about filing a request for extraordinary review of a final judgment to the Supreme Court, could be supplemented with a new paragraph 2, which will foresee an extraordinary review of a final judgment by exception, similar to Article 372(4) of the Law on Civil Procedure. A request for extraordinary review of a final judgement would be allowed to be filed before the Supreme Court regardless of the limitations foreseen in paragraph 1, if the dispute depends on the resolution of certain legal issue, which is essential for ensuring uniform application of the law and unification of court practice.

Similar provision could be also foreseen within the Law on Administrative Disputes. In this sense, a new Article 51 could be added, which foresees that a revision before the Supreme Court is allowed against the decisions of the Higher

Administrative Court, in case a dispute depends on the resolution of a legal issue, which is essential for ensuring uniform application of the law and uniform court practice. However, having in mind that even if such a provision is foreseen, it still does not significantly change the fact that the Supreme Court is unable to exercise its constitutional role as regards ensuring the uniform application of the laws in administrative matters, it is worth exploring the possibility to review the role of the Higher Administrative Court, primarily in the direction of re-examining the purpose and the need for its existence.

Of course, one should always have in mind that one of the most important conditions for any court to function properly and fulfil successfully its duties, including the Supreme Court, is to be financed in a manner that will enable it to function optimally and independently.

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CAPACITY FOR INNOVATION AND PRODUCT DEVELOPMENT OF FOOD INDUSTRY IN REPUBLIC OF MACEDONIA

Abstract

There is a consensus among the researches and the practitioners that the capacity for innovation is crucial for competitiveness of companies and their respective national economies. Innovative endeavors of companies bring improved products and efficient manufacturing, distribution and marketing. Our research shows that the Macedonian food industry puts emphasis on the technology and the financial issues when decides on new product launching. The "soft" areas of marketing or human relations are considered sufficient or their importance is not adequately recognized. This is consistent with the Global Competitiveness ranking of Macedonia as efficiency driven economy. Following the triple helix model, companies in food industry in Republic of Macedonia could benefit if they cooperate more with the scientific institutions, work together in business cluster, or use the support of the state established Innovativeness Fund. Our companies should work more on systematic scouting of the mega trends in the industry, in the standards of food safety and in the area of the growing social concerns about food ingredients that are considered not adequate or even dangerous for consumers. The concern for these trends should replace the current technology and finance orientation in their decision-making. Moreover, the development of the staff, the reestablished R&D departments and intensive business networking and clustering should also get more attention in order the Macedonian food industry to be more competitive on the regional and the global market.

Keywords: Innovation, globalization, New Product Development, Triple Helix Model

INTRODUCTION

To take advantage of the globalization, a company has to be agile and knowledge based. Moreover, it should innovate regularly its product line, processes and its marketing strategy. When it comes to their innovative capacity, the big companies with high financial strength and with established technology and know-how have obvious advantages. However, the big companies are same time prone to multilayered and slow decision-making. In these terms, the small businesses are more agile, creative, have better consumer intimacy and readiness for risk taking. Their flat organizational structure creates fertile culture for innovation. It proliferates faster, resulting in shorter response time, virtue that large firms are unable to provide (Bianchi at al. 1997). Nevertheless, to stay competitive, companies, no matter the size, have to constantly innovate, using industry specific knowledge in the process of improvement or extension of their product line. This paper provides overview of the specifics of the Macedonian food processing industry in relation to their capacity to innovate and for new product development. There is consensus among the researches and the practitioners that the capacity for innovation is crucial for competitiveness of companies and their respective national economies. Our research shows that the Macedonian food industry puts too much emphasis on the technology and on the financial issues when deciding of new product launching. The "soft" areas of marketing or human relations are considered sufficient or their importance is not adequately recognized. This is consistent with the Global Competitiveness ranking of Macedonia as efficiency driven economy.

LITERATURE REVIEW

Innovation is dynamic process, performed by organizations successfully involved in management of internal and external, driving or impeding factors (Tiwari and Buse 2007). Literature classifies innovation by its scope, level, nature and depth Cleveland (2005). The "level" describes type of innovation: new products and processes, continuous improvement, cross-company redesign, new markets and customers and strategic business redesign. Others stress that the knowledge acquisition is the key factor that determines a firm's innovation performance (Cohen and Levinthal 1990; Yli-Renko, Autio and Sapinza 2001). For Yap and Souder, crucial question is how firms to remain innovative with limited resources and little market influence. Variations in the innovativeness may help explain why some companies succeed, while many fail (Frambach 1993). According to Rogers (2003), innovation is idea, course or object perceived as something "new" by some, or all of members of a group, that will use it.

The three stages of the innovation process are the concept, the implementation and the marketing. The concept encompasses idea generation, idea evaluation and project planning. The implementation entails design, prototyping and testing, while the marketing stage is made of initial production, market roll out and market penetration (Fabian and Schmidli, 2005). Successful innovation requires coordinated efforts of all parts of a company. Finally, the creativity of the leader together with special skills and knowledge of the innovation management that they need to possess, are the two crucial factors for the process (Kettunen at al. 2007).

The innovative products can help the businesses in strengthening their competitive position, especially on the new markets (Boutellier at al. 2000). The innovative ventures bring novel or improved products and promote efficient manufacturing, distribution and marketing. However, important aspect for food processing companies is their ability to understand and to accommodate to endless variations in consumer preferences in different countries or regions. When go out of their native country, in order to achieve same level of meeting the taste of the consumers, companies need to study the overall social context in the particular country or region where they plan to enter. Rovira-Nordman and Melen (2008) call for intelligent combination of technological and social knowledge when discovering new market opportunities.

In their innovative efforts companies are faced with many obstacles. The lack of innovativeness drive is one of major internal barrier Other barriers are among the financial aspects of the innovation process in terms of the high costs of the R&D of new products and the uncertainty of market success of these products. Moreover, innovativeness is not entirely domain of the businesses. Businesses are only one side of the Triple Helix Model, comprised also by the research institutions and the government (Etzkowitz, 1993, Rangaa and Etzkowitz, 2013). The management of the innovation on the level of the economy calls for coordinated efforts of all parties of the process. The role of the knowledge and learning has been widely recognized (Johanson and Vahlne,1997, Forsgren, 2002, Petersen at al., 2003). Small businesses are particularly dependent on support from outside and we are still looking for appropriate models (Ericsson and al. 2000, Sapienza at al. 2005).

Many believe that industrial clusters allow companies to be more innovative and share the unique knowledge that is spatially concentrated and difficult to be replicated elsewhere. In the clusters there is intensive sub-contracting between many vertically interrelated companies on the value chain (Boari 2001). Success of the new product development is contingent on the willingness of a company to take additional risk and on the presence of culture that tolerates product failure (Harveston at al. 2000). However, for small firms the risk is often disproportional with their capacity to absorb it (Duysters and Lokshin 2001). Clusters foster the

risk mitigation (Eisingericha at al. 2010). In these agglomerations small firms are able to innovate through alliances with strong-tie partners, customers and suppliers (Morosini 2004, Yli-Renko at al. 2001).

SPECIFICS OF FOOD INDUSTRY

Food industry operates in constantly changing market with the taste of consumers as decisive factor of that change. Together with the meeting of the tastes and preferences of consumers, companies must apply high quality standards and care for the nutritional value of products, safety and labeling. Companies should also ensure that the new product will not retake the market share of the existing products. Companies successful in launching new products follow market-driven process and seek answers to the following questions: (a) what are unfulfilled needs in the market segment, (b) if we meet that needs, will the market recognize our efforts, (c) how long we will keep our first mover advantage? The development of a new product in the food industry can be surveyed from technological, market and financial perspectives. The accumulated technological knowledge in developing the new products is crucial in the whole process. It reduces the number of trials and the related costs, avoiding errors from past be repeated. In addition to the classic parameters such as the size of the potential market, market share, or planned margin, one of the most important features of new product development is achieving a quick market roll out. The speed of the roll out can be increased by proper project scheduling and it is particularly important when the product is neither technologically nor otherwise significantly different from the products of the competition. The increased competition from the private brands producers and from the small patisseries lowers the profits in the food industry, worldwide. This forces companies to lower their R&D budgets. Some raise debt and some chose mergers and acquisitions to achieve economies of scale that will enable steady development.

Although companies operate under similar conditions, almost each of them has distinctive approach to the new product innovativeness. However, there are some common criteria: (1) the concept should be innovative enough, but not too radical to be understood as very risky, (2) benefits for the user (nutrition facts and so on) should be clearly stated; (3) differentiators (what is different with this product in comparison with other products has to be stated; (4) merchandizing (distribution channels, in shop displays) to be defined and (6) existence of an action plan how, when and who will perform the planned activities. In Kraft Foods, the process of developing new products starts with mega consumer trends analyze, new

technologies emergence and brand positioning. While Kraft puts the emphases on the idea and design stages, same time is equally concerned with the marketing and consumer related issues of the new products development. Well-structured process with clearly defined stages and gates that provides decision-making based on specific metrics for each phase is a must for all companies. It ensures that the efforts and the investments will bring sustainable results (Cooper and Edgett, 2017).

OUR RESEARCH

Our research is based on a survey of executive managers in 38 companies in the food industry in the Republic of Macedonia. Among the most prominent companies included in the survey are Vitaminka Prilep, Prilep Brewery, Zito Prilep, BImilk Bitola, Evropa Skopje, Ideal Sipka Bitola, Donia Prilep, Soleta Skopje and Vitalia Skopje. Seven of the surveyed companies qualify for the list of the top 200 most successful companies in the Country. The survey was conducted during 2014 and 2015.

The food processing is one of the strongest parts of the economy of the Republic of Macedonia. The country has many competitive advantages of the including a good combination of continental and sub-Mediterranean climate, environmentally friendly production practices, sound food processing technologies, highly qualified labor available throughout the rural areas, very good access to the EU markets and a reputation for quality food products. With app. 600 million euro worth trading, mainly with the EU countries, the food processing sector is also among the major exporters. Its contribution, together with the agriculture, to the Gross Domestic Product is app. 16% (Invest Macedonia, 2017). In these terms, the indicators generated with this survey somehow present the general prevailing attitude of the business leaders in the Republic of Macedonia. Moreover, they correspond with the results presented in the Competitiveness Report compiled by the Global Economic Forum. According to this referent Index, Republic of Macedonia is efficiency and not innovativeness driven economy (Global Competitiveness Report, 2015).

The survey included a semi structured interviews. On the first question, do they, as top managers, use external sources of information to trace the global trends in the food industry, 18 answered that they are doing this regularly. Frequently check the mega trends 17 of the interviewed and rarely 3. On the question about the person responsible in their organization for regular checking of the market and other relevant social and economic trends, 19 of the interviewed answer that they are doing that task in their company, 13 answered that they have appointed person, 5 established separate unit and one of the managers answered that they have sector for regular market trend scouting.

On the question do they carefully monitor the other companies, especially their competition, 8 of the interviewed managers answered that they regularly follow the competition, 22 frequently, 7 are doing that rarely, while one of the interviewed never refers to the moves of the competition.

On the question of use of external expert knowledge in their new product development process, 3 of the interviewed answer that they are relying on external professional expertise regularly, 10 are doing that only for larger ventures, 24 are doing that on a case by case basis, and one is not using external expertise, at all.

Nearly two-thirds of the managers (22) think that their companies lack staff needed to properly meet the challenges related to the development of new products and they will have to make new employments of educated personnel. Approximately other third of the interviewed (12) reported that their companies are well-equipped with human resources. Three of the interviewed do not consider this important deciding factor, and one of the interviewed answered that, in order to properly address this issue, his company will need completely new team.

Constantly invest in the professional development of their teams, 23 of the interviewed managers, 11 answered that they invest in training and professional development of their teams when some investment in new plant or process is done, while 4 reported that their investment in the professional development of the staff is negligible.

When asked about the technology employed, 29 of the managers consider their current technology sufficient for the new product development requirements. Nevertheless, they would consider additional investment if needed and 9 of them answer that they will definitely need to change the applied technology if new products are to be added to their current product lines.

Regarding their general attitude towards the investment in technology, one of the managers answered that the needed investment is never an issue in his company if the market requires a particular investment, 9 reported that the volume of the incremental investment is sometimes a decisive factor. For 28 of the managers financial issues are very relevant factor for their new product decision.

Regarding the research and development budgets, 11 of the managers reported their regular budgets for these purposes. Limited budgets for R&D have 16, while other 11 have no R&D budget at all.

Regarding the competiveness internationally, 3 of the interviewed managers responded that they mostly compete internationally. For the rest of the interviewed managers (35), the local market is the key for their operations.

In terms of their experience and value that they perceive in various forms of business networking and clustering, 22 do not see tangible benefits of their membership in these associations. For 16 of the interviewed managers the benefits are quite limited and there is no interchange of relevant knowledge or risk syndication, like in case of the clusters in the developed countries.

CONCLUSIONS AND RECOMMENDATIONS

Our research is limited by its volume. However, the fact that it involved the most important players in this sector we can draw some, we believe, relevant, conclusions about their general attitude in relation with the new product development initiated innovativeness. This particularly having in mind that the answers we collected proved the major findings of the Competitiveness Report about the profile and the trends of the economy of the Republic of Macedonia in terms of its competitiveness. According to this Index, Republic of Macedonia is not an innovativeness driven economy and still competes on the low cost of the production factors (Global Competitiveness Report, 2015).

The general orientation towards the technology issues in relation with the new project development is mirrored in the low number of managers who regularly and thoroughly monitor the mega market, economic and social trends.

Practically half of the managers reported that, in fact, do not follow the market trends in an organized manner. Moreover, it seems that they tend to keep even such scarce information for themselves. Also, it seems that they fail to monitor their competitors.

The number of managers who answered that they regularly use external knowledge in their new product development process is less than 10%. This means that they are missing the opportunity to work close with research and development institutions in academia and are lacking the opportunities that such regular cooperation within the triple helix model, brings.

The answers regarding the level of the human resources are inconsistent. While 60% of the managers answered that they constantly invest in professional development, nearly two-thirds of them, think that they lack proper staffing to meet the new challenges related to the development of new processes and products and that they will have to make new employments of educated personnel.

The answers regarding the technology are also internally inconsistent and prove the findings of the Global Economic Forum Competiveness Index that assesses the sophistication of the technology employed by the companies in the Country as below the EU average. The applied technology is often energy inefficient and lacks automation and information system integration.

Regarding the finance for the new product development, almost 75% of the managers answered that the volume of investment is very relevant for their final decision in case of new project development. This is also consistent with the Competiveness Index findings that the country suffers from the lack of access to the EU structural funds, compared with some common benchmarking countries, like Bulgaria or Croatia.

Regarding the research and development budgets, managers reported very limited budgets. This is consistent with the fact that the Country invests in R&D ten times less than it plans in its strategic papers. In other words, this common denominator for the entire economy is present in the food industry, too. However, it considerably limits the competitiveness of this industry, especially on the foreign markets. Macedonian food industry should put much more emphasis on its competiveness internationally. If that happens, then the various forms of business networking and clustering, that are now insufficiently used, will come into focus.

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THE MIGRATING MOVEMENTS AND THE MULTICULTURAL LANDSCAPE IN THE POSTCOMMUNIST COUNTRIES

Abstract

The multicultural context of Southeastern Europe existed even in the beginning of the XX century. The historical implications were present much earlier, but the political turbulences in the last hundred years have changed the demographics and the social landscape as well. This part of Europe faced various types of migrating implication. The ethnocentrism as a poisoning appearing in these types of movements is a very important issue. The European so-called "pillar" countries are covering the migration routes with the political aspects and leaving the multicultural policy unjustified and practically useless. The national coordinates of the newborn countries in the beginning of the XXI centuries are starting the unlikely process of nationally constitution of the land. The migrating processes are practically the emerging of the "age of ideologies" to the "age of culture" and the nationwide streams would be very soon replaced with the cultural diverse environment. The ethnos is not a practical category and it doesn't secure any mechanism of coexistence. The multicultural concept is also the new understanding of the freedom and the articulating of the cultural differences into the proper legislatives will change the landscape of the Southeastern Europe and will relax the irrational tensions. The role of the media is exceptional in these hard but very productive processes. The migrating waves in the end of the second decade of the XXI century will not bring another economic crises and inevitable poverty, the civic concept and the multicultural character of these countries will open a new range of possibilities. The inclusiveness is not a burden, it's a new kind of mutual life. This paper is trying to reconsider some experiences and theoretical approaches where the crossroads of the migrations and multiculturalism lead us – circling or to the future prosperity.

Keywords: Migration, multiculturalism, nationalism, media, diverse

THE ORIENTATION OF MULTICULTURALISM IN THE TRANSITIONAL COUNTRIES

In the nineties, the heart of the Southeastern Europe's multiculturalism propagated exclusively by the hybrid country so-called Yugoslavia had been declining, but together with the other post-communist countries (The Check Republic, Slovakia, Bulgaria, Poland and the countries established after the decline of the USSR) announced the new political convergence where the ethnic communes openly presented their needs for diversity on every grounds. In the beginning of XXI Century, especially in its second decade, Southeastern Europe faced various types of migrating implications. The reinforced migrating displacements embraced with the wide political and social legislative of countries like Canada and Australia provoked very huge and serious disputes that in the nineties had full swing considering the high argumentations around the "attenuate and exacerbate perception of the cultural threat. Multicultural proponents contend that under democratic government by the majority, minorities face disadvantages of recognition and accommodation, requiring cultural specific minority group rights."(Kymlicka 1995, Kymlicka 2001, Taylor 1994). The new countries (Sweden, Netherland) that support the policy of open acceptance of the migrating populations create their own policy about them and their own social legislative and funds for accepting and accommodating of the migrating communities as well but, these policies were criticized by the new observers who recognize the "opportunism" between the lines. Namely, the scientific critics blame the multiculturalism for "exacerbating social divisions, fueling divisiveness, retarding immigrants' and in some cases, undermining a country's liberal democratic values." (Barry 2001, Gitlin 1995, Hollinger 2000, Huntington 2004) From this point of view, so established multicultural policies increase such irritated relations between the divisiveness and trust claiming that the diversity undermines even the civic character of the host society and the political engagement of the migrating communities as well. But, in the practical sense the proofs discover that multiculturalism "promotes collective-mindedness among immigrants by providing them with instrumental support and symbolic legitimacy which could increase overall "stocks" of social capital as immigrant population grows". (Bloemraad 2006, Vermuellen and Berger, 2008) Hooghe and his colleges highlight the intermediary effect of the multicultural policies positive or negative, but emphasizes that such policies don't mediate any diversity-trust link. Their researches identify two competing hypotheses: one suggests that multiculturalism promotes trust and engagement in the context of diversity, while the other suggests that it ignites a backlash lowering aggregate trust and possibly willingness to engage in collective endeavors. The third aspect is exceptionally contradictory, and it might

increase general distrust by highlighting differences, but this might motivate people to join a group, rather than honking down. (Hooge at al. 2007)

In this types of movements the ethnocentrism appears as a very important factor, mostly in the countries who were traditionally oriented to basically registrated populations as the carriers of the statehood like the countries of South Eastern Europe. In the nineties, the democratic processes in the post-communist countries open the possibilities for political differentiation of the ideological aspects on every social level. And despite the exceptional domination of the left orientated political subjects, the right orientated Demo – Christian parties initiates that multicultural dialogue that took very strong swing together with the movements inspired by the migration processes. Economically strengthened Poland, Check Republic, Slovakia and former USSR republics Latvia, Lithuania, Estonia, and especially the former DDR Germany opened the doors for the lower economic relapsing countries like Slovenia, Croatia, particularly Bosnia and Hercegovina, Montenegro, Serbia and Macedonia. The Yugoslavian Federation's symbolic multiculturalism exploded into ethnic intolerance with bloody consequences, and that intolerance was reflected even in the countries not affected with the military conflicts. The silent segregation in that ethno tolerance under the guise of banishment on the famous Bare Island in the Adriatic Sea, after the numerous victims in the very end of the XX century confirms the hypothesis that the multiculturalism in the new era, in the democratic environment, doesn't understand ideological conventionality nor does it understand severe civic linings. The Post-Yugoslavian countries are still struggling with the ethnocentric symbioses that in the new wave of immigrants from the present wars in Syria and Iraq alerted them to draw the multicultural mosaic where there will not be the preferential nations and the owners of the people's good and the spiritual bosses of the national treasure. The medias in this context are playing a very important role because of their mediating efforts in the most sensitive moments; moments when on the post-communist countries' borders are many starving immigrant families, not to mention the number of immigrants who died trying to reach desirable destinations in Western Europe.

THE POLITICAL SYMPTOMATISM OF MULTICULTURALISM

We could divide the migrating movements in the South Eastern countries into two segments: migrations that use governmental and social mechanisms of those countries for their painless and appropriate transferring of the immigrants from the third country to the Western world's destinations and the migrations that start from South Eastern countries to the west. This territorial differentiation on the first side is

just a product of the legislatives and of the social justifications, but the implications that media denote expose numerous questions exceptionally symptomatic toward the political reality of the countries where the migrations are aimed to and the countries through the migrant groups are transferred. As the third migration segment in the South Eastern countries(mostly in the Post-Yugoslavian countries) is the "interior" type of migration or so-called "forced migrations" initiated during the military conflicts and very soon after them very infamously known with the phrases "ethnic cleansings" or "human movements" especially present in Bosnia and Herzegovina and Serbia, and partly in Croatia too. This type of migration is mostly present in the early nineties and is completely motivated by the political turbulences and symptomized by the fierce ethnic homogenization and its distorted in the countries where the immigration is aimed to as a negative ethnic process.

Generally, according to the details by MIS (Migration Information Service) the countries that accepted the biggest amount of immigrants in the period from 1990 to 2000 are : Germany (1.200.000), and after are Austria (221.000) and Switzerland (144.000), but in the end of the nineties Italy (606.000), Greece (500.000) and Spain (420.000) went over those numbers. Mostly, these migrations are economic, but it is evident that after Yugoslavian war these migrations changed the demographic picture of these countries. The immigrants of the post Yugoslavian countries that had been hosted by EU countries in that period were: Bosnia and Hercegovina (600.000, this number enormously rose after the war), Croatia (72.000), Slovenia (20.000), Macedonia (23.000), Yugoslavia (here are Montenegro and Serbia as the parts of the remaining of post-war Yugoslavia) (1.100.000). The other South Eastern countries have these amounts of immigrants to EU countries: Albania (104.000), Bulgaria (151.000), Chech Republic, (150.000), Hungary (180.000), Poland (570.000), Romania (330.000), Slovakia (55.000). Here are also the former USSR republics that became independent countries: Armenia (102.000), Azerbaidjan (660.000), Belarus (625.000), Estonia (167.000), Georgia (510.000), Kasakhstan (710.000), Kyrgyzstan (162.000), Latvia (50.000), Lithuania (49.000), Moldova (220.000), Tajikistan (81.000), Turkmenistan (69.000), Ukraine (1.600.000), Uzbekistan (325.000) and the immigrants from the Russian Federation (740.000). The Southeastern countries count 1.540.000 immigrants, post Yugoslavian countries 1.815.000, the former Russian Federation countries 3.730.000. The number of the immigrated citizens from the transitional and post-communist countries in the most turbulent period (1980 – 2000) is 6.010.000. The war initiated migrations are much bigger, so the post-Yugoslavian countries are more frequent then the countries from the Eastern Europe. Here we have also the painfully transitional countries like the former Russian Federation are, but the balance are almost the same given the bigger population of those countries.

The immigration movements unconditionally change the multicultural policy of the most powerful economic countries in Europe, but also of the countries in the other continents. Twenty five years after, the medias (especially the printed ones) conclude a tired multicultural strategy of the western world. The statements of the German chancellor, Angela Merkel, that the multiculturalism in Germany is unsuccessful (Guardian 2010), as well as Horst Seehofer's, the leader of the Bavarian Christian social union that "the multiculturalism in Germany is dead" (Speiegel 2010) initiates very dangerous animosity towards the huge contingent of the disadvantaged and is predetermined to be unworthy in the lands with a strong financial capital. Here, in a very symptomatic mood we could include the former French President Nicola Sarcosy who explicitly states that the multiculturalism is a missing concept and France " was too much concentrated on the identity of the persons who are arriving there and not enough on the identity of the country who accepts them" (The Telegraph 2011). With a very restrained, but critical statement joins the former British primeminister David Cameron too say that "The British longtime policy was a failure" and calls for "better integration of the young Muslims who will struggle more with the growing "domestic" extremism". (BBC News 2011). Here are also the less notable statements of the Spanish former Prime Minister Jose Maria Aznar (The Washington Times 2012) and the Australian Prime Minister John Howard (Telegraph 2010) also related to the unsuccessful multicultural policies in their countries. The statistics are to the contrary with the statements about the bad multicultural policy indicated by these very important statesmen and they indicates seven million resettled people in the countries of Western Europe, the population equivalent to 30% of the whole population of the former Yugoslavian Republics. The legislative that enables social and economic safety is additionally symptomized by the political turbulences and highly contradicted as indicated in the medias by Angela Merkel's statement from 2014 when she said that "you immigrants are very important to us" (novosti.rs 2014) This statement is a reminder of the animosity to the immigrants in the middle of XX century when the anthropologists and the ethnologists, as well as economic analytics, were indicative of the "the cultural closings" of the host countries for the immigrants, something that on the other side in the beginning of the XXI century had led to certain segregated gatherings of the settled cultures. This is a kind of conflict which forms in political activity when influent political structures attempt to strike back and is indicative on the multicultural level as a relaxing model of interaction. As a side effect here exists the so-called media "blindness" of the European countries, their occasional imperviousness to the migration waves, the conflict situation that produces ethnocentricity, on which the European Union is continuously indolent, particularly in the second decade of the XXI century. There is a very big difference

in the methods and aims of both types of migrations mentioned above, but here the cultural policy of the host countries is the same - multicultural societies without policy against ethnocentric political streams. It is obvious that the political uses of the immigrations erode the multicultural character of every country, and the reversible performance in that direction could directly affect the economies of the powerful Western European countries.

THE MULTICULTURAL SOCIETIES IN SOUTH EASTERN EUROPE – THE THREAT OR THE SOCIAL CONSISTENCY

The identity discourse in the political distortions that affected Europe in the transition from XX to XXI century becomes very problematic exactly because of its dynamic restructuring. The multicultural matrixes imposed by the migration more and more instruct the civil concept, so the processes of redefining of the states on the Western Balkan became painful and tough. The XXI century began that very complicated process of transforming from the "age of ideologies" into the "age of cultures". The migration processes are not something that appeared here and now. The multicultural matrix had its ground back on the other historical streams, but the civil qualifier was excluded from the social and governmental life.

Every culture during the migration carries its traditions with itself, historical justifications for its national contexts - intimate and collective. The civil identity is the part of the constitutional policy that starts from the reality and strives to come to a compromising solution of all group and individual conflicts in the frame of the existing political and legal institutions. Habermas very precisely thinks that the relationship between "ethnos" and "demos" had a very short life given that the citizenship had never been related to the national context of the country. Based on that kind of differentiation, the modern understanding of freedom could be separated from the nationalism where it obviously descended from. (Habermas 1995) Kymlicka tries to connect these diametrically different concepts by the conceptualization of the so-called mutual national identity, or the multicultural citizenship saying that "the citizenship is not only legal status defined by the collection of rights and responsibilities, but it is also the identity, the expression of somebody's membership in the political community." (Kymlicka 2009) The migrations emphasize the liberal point of view to the national identity and in that direction we have a very precise statement of Yael Tamir who claims that he couldn't recognize the opposing to the ethnocentric nationalism in the complete denial of the national interests, but in the alternative understanding of it. (Tamir 1993) The migration processes exactly distorted the statements of the pillar countries in

Europe. Every understanding of the identity of the native and the immigrant both has its liberal and non-liberal components. The proper balance between them opens the doors of the multicultural policies, although the poison of the ethnocentrism has only political references.

The Balkan countries, especially the former Yugoslavian descendants continually face the migration processes passing through them, but on the other hand their governments' burn up the ethnocentric flames and the civil concepts there are very far from the proper implementation. The last transferring immigrant routes through the post-communist countries to Europe left behind the challenge for another rethinking of the multicultural policies; namely, the attitude that the people from the different national groups will have mutual affection to the society only if they understand it as to where they could develop their national identity without subordinations. (Kymlicka, Opalski, 2001) For not to be understood as a utopia, the practical implementation of all these statements has their predestinations punctually in the mass movements. The economic stability is a challenge, but the cultural and the social balance have intimate values. The Western Balkans is moving very slowly in that direction. The poisoning ethnocentrism in the period of the immigrant crisis in 2015 and 2016 via various types of medias almost demonized the migrant movements burning up the nationalistic aspect which, for the sake of the truth always appears by demand. For its successful inclusion, the solid multicultural policy has to be well-funded economically and financially. In that case identity doesn't matter; most important are the benefits of mutual life before all the civil prerogatives. As I mentioned above, the countries of the Western Balkans see the multiculturalism as a threat, as the suffocation of the patriotic feelings and the denial and erasing of the modalities, but exactly those multicultural modalities have a future and they will work only if the global political reality in South Eastern Europe will be balanced finally and properly. All that is required is:

- Opening of the special funds for social protection for those who decide to begin their life in the places they finally migrated;
- Real, and before all punctual media coverage of all movements and complete referring for the conditions with very intensive dynamics;
- Impregnating of the multicultural matrixes in all segments of living – politics, economy, education, culture;
- The exact demographic coordination of the movements of the settled persons and their proper treatment;
- Complete regulation of the civil rights that require the right to vote and the right of the use of their native language, equality in applying for employment and the right for an education on their native language;

THE CONCLUSION OR THE BALANCING OF THE CONTROVERSIES BETWEEN WESTERN AND EASTERN EUROPE

South Eastern Europe post-communist countries very quickly and successfully got through this transitive period. The worst fate of the multicultural aspects and the influence of the migrations had the countries of the post-Yugoslavian Federation and despite their economic instability (Slovenia and Croatia are exception) they hardly implemented the multiculturalism in their social movements. The pseudo-segregation conspired on the policies of the southernmost countries (Serbia, Kosovo, Macedonia) inspired black social and political burn ups, which would be extinguished only through the multicultural civil concept and at the same time the undesirable conflicts and consequences would be avoided. The balance between national and civil concept in those countries should not be solved only theoretically and only as the political promise. Those countries should definitely deliberate themselves of the ghosts from the past and all their national symbols mustn't be used for the delineating of the territories. The cultural dialogue between particular entities has to find its positive moments and the multicultural aspects have to find some practical application in all segments of living as soon as possible. The ethnos is not a practical category and it doesn't secure any mechanisms for coexistence. The coexistence has its intimate and communication prerogatives. The articulating of them in the independent and legally supported legislative, the cultural differences will find their own similarities. They all have their human components; the importance is in the proper balancing. Finally, USA as the intensive example of a multicultural paradise is created only by immigrants.

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