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ORIGINAL RESEARCH PAPER

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LEGAL ASPECTS OF SATELLITE TELECOMMUNICATION WITHIN GEOSYNCHRONOUS ORBITAL SLOTS REGARDING INTERNATIONAL ORGANIZATIONS

Abstract

Regarding satellite telecommunications, the critical legal theory of the generally accepted notion of international organizations tends to reflect the problems and issues in relation to the specific regulation of transnational services as a common good, which simultaneously begin to surface in the international community.

Particularly focusing upon the legal aspects of the International Telecommunication Union (ITU) as well as the similarities and differences it share compared to other international intergovernmental organizations with an identical purpose, this paper tends to thoroughly analyze numerous issues in regards to the regulations of the geosynchronous orbit as a natural, yet limited and even scarce resource, and within it, the availability of orbital slots that contain national communication satellites.

Possibility of exploitation, attempts of privatizing extraterrestrial real estate, manifestation of extraterritorial jurisdiction in comparison to its universal distinct and the significantly hazardous notion of space congestions all represent a realistic representation of what

international law fails to appropriately regulate so far in terms of satellite telecommunication, which should be regarded as a global service, instead of its deliberate limitation.

Keywords: ITU, satellite telecommunication, international organization, space law, orbital slots

INTRODUCTION

Human communication is often regarded as unique in comparison to other species due to its abstract characteristic as well as representing important means of sending and receiving information. However, as our civilization has significantly developed over the past centuries, technology has contributed toward the progress in telecommunication and more importantly, satellite telecommunication. In other words, communication satellites play a crucial role in our modern society by their utilization related to television, internet, telephone and other necessary aspects of which everyday life is ordinarily consisted. And as we live with them, most either ignore, or are ignorant of, the substantial body of international law and less formal agreements that underlie modern international communications.[1] (Lyall 2011)

This type of essential requirement is primarily manifested by the extraterrestrial application of communication satellites. Although this may seem as a straight forward notion, there is a high potentiality regarding a mutual combination of natural and social issues, along with a particular emphasis on certain legal aspects in the field of international law.

To carry out a communication function, satellites need to be placed in a certain orbit and use the radio-frequency spectrum, both being limited to natural resources. Access to such increasingly sought –for parts of outer space, which are not subject to national appropriation and require rational, efficient and economical use in an interference-free environment, is managed by the International Telecommunication Union (ITU) – the United Nation's specialized agency for information and communication technologies. (Elina Morozova 2019)

Although the global community is aware of the considerable amount of international organizations that are currently providing and regulating various services and activities, this paper primarily tends to analyze the legal aspects and issues of ITU as one of the oldest global international organization which among other areas, is specifically involved in assigning satellite orbits for basic telecommunication purposes. In addition to this, the specific regulation of satellite telecommunications often result in the contradiction of rather more traditional legal matters, such as clash of state sovereignty, given the fact that, after all, every international organization is consisted of multiple member states and their domestic laws respectively.

However, in order for us to analyze the legal aspects of ITU, principally, we must review the legal constitution issues related to international organizations and how they reflect upon the international regulation of satellite telecommunication.

1 Ignorance, defined as lack of knowledge or information related to international space law, in this case cannot be entirely interpreted as intentional, since international organizations in fact regulated these activities and services, however, that same regulation is not entirely complete, as it tends to miss significant aspects of both natural and social origin.

CRITICAL LEGAL THEORY: PROBLEMS OF TRANSNATIONAL SERVICES AS COMMON THINGS

When it comes to defining an overall international legal personality, among other international organizations, the ITU also seems to lack rational from a theoretical standpoint. This notion is consisted of unsolved issues which are manifested by the very essence of satellite telecommunication as a service. In other words, when applied, such legal powers cannot be easily limited or explicitly granted due to the fact that the interests of the global community must be taken in consideration. Therefore, individual non-member states are perceived as isolated, figuratively speaking.

Overriding the concept of human heritage[2] cannot be in compliance with the general purpose of international organizations as social constructs that provide the realization of any kind of good, activity or service. Put in another way, the common definition of an international organization does not possess the legal capacity to delimit benefits that are entitled to all humanity. This legal fallacy partly depends upon the characteristic of international organizations being generally created between states or as their abstractions. However, this form of discrimination could also be linked in terms of the derivative of the international organization. Namely, although it is indicative for the derivate to be recognized as a treaty, not all organizations derive directly from a treaty, though. Some have been created not by treaty, but by the legal act of an already existing organization. (Klabbers 2002)

Consequentially, ITU represents an exemplary outcome as an organization by resolution from the United Nations General Assembly. The legal status and structure of ITU does not promote complete or absolute unification in terms of the concept of common heritage, but rather through the awareness of promotion, primarily aimed towards international cooperation, a notion that can be perceived and interpreted as quite nebulous. In regards to its legal framework respectively, the founding document of the ITU is entitled as the *"Constitution and Convention of the International Telecommunication Union"*, dating from 1992.

Being an international treaty, it has been signed and ratified by almost all countries of the world however this alone does not guarantee the lack of national discrimination. Additionally, its purposes are not entirely in accordance with the nature and origin of satellite telecommunication as part of the many services of ITU.

Common heritage of mankind, as a principle of international law, is known for fundamentally defining elements and territorial areas as humanity's common heritage from both natural and cultural standpoints. And while certain territorial areas are indeed validly recognized and internationally accepted as common heritage in theory, there are, however, potential applications to the concept that have been often argued. In particular compliance with the focus of this paper, equatorial countries have already proposed that

2 The concept of human heritage mainly refers to the Latin term "res communis omnium" derived from Roman law. Its purpose is to represent and define the Geosynchronous orbit within outer space as part of the common heritage of mankind, otherwise known as a notorious principle in international law.

the geostationary orbit located over the high seas, should be equally recognized a common heritage of mankind.[3]

In order for international law to adequately analyze this request, above anything else, it must take the physics of satellite placement in consideration;

Arthur Clark had famously proposed the concept of geostationary satellites in 1945: If a satellite were placed above the equator at an altitude of about 35,786 km, it would orbit at the same rate as Earth's rotation, such as the satellite hovered above a specific point on the ground. (The Nation 2019)

That being said, it should be concluded that there are actually two crucially intertwined elements that need to be considered res communis omnium from a legal point of view: Geostationary orbits (considered as potential extraterrestrial real estate) and Electromagnetic spectrum (for satellite telecommunication).

It cannot be explicitly stated that the purposes of ITU are defined as a common heritage for mankind, despite that fact that it also includes satellite telecommunication in its primary services. This characteristic should be changed from an international standpoint whenever the nature and origin of a certain good possesses relatively high potential in terms of determining the validity of a certain international organization, such as ITU.

Technological advancements conducted by current standards of the ITU simultaneously lead toward the notion of global inequality, in respect of the geostationary orbit and electromagnetic spectrum as transnational domains.

Consequentially, this issue could cause particular manifestations in concerns to national discrimination. In other words, concerning the relations with non-member states, Article 53 states that: *"each Member State reserves for itself and for the recognized operating agencies the right to fix the conditions on which it admits telecommunications exchanged with a State which is not a Member State of the Union"* (Constitution and Convention of the International Telecommunication Union 1992)

According to the abovementioned article, it is logical to conclude that this approach toward non-member states of the Union demonstrates subjectivity with reference to a potential application of res communis omnium in terms of international regulation as well as the manifestation of an unequal treatment in contrast to domestic law.[4]

The major difference between the legal concepts of obligatory and optionally is quite obvious in this scenario, where the term "right" reserved by the member states is used to describe a non-compulsory national will which opposes the actual meaning of a universal right to satellite telecommunication, often directed towards developing countries, since it is essential for the existence of a modern civilized society. In other words, many consider the universal access to satellite telecommunication as a human right available to every world country, no matter their financial, economic or scientific development. Moreover, the optional will of the member states of the Union does not represent a proper international

3 This request officially refers to the Declaration of the first meeting of Equatorial Countries in Bogota, Republic of Columbia, from 29 November through 3 December, 1976 with the primary purpose of considering the Geostationary orbit as a natural resource and be declared as a common heritage of mankind simultaneously.

4 The general term serves as a reference to every domestic law individually regarded by the member states of the Union, which supposedly have the right to regulate conditions regarding satellite telecommunication with non-member states of the Union.

communication between ruling authorities of sovereign states which should simultaneously manifest global equality on an international level.

The conception of satellite telecommunication can be further explicated through its definition as a public service on one hand, and as a global service on the other. These definitions should be distinguished by domestic law and international law, while emphasizing the strict and proper application and meaning of "state sovereignty" in predicted and limited cases.

Namely, in regards to satellite telecommunications as a public service provided by the state, state sovereignty[5] should by manifested as a right of each nation to determine the legal organization of satellite telecommunication within its territory through domestic law. However, this right should not only apply specifically to the member states of the Union, but to all world nations globally.

On the other hand, in regards to satellite communication as a global service provided by the principles of international law, the concept of common heritage of mankind should also be manifested as a right but not in the terms of state sovereignty. Put in another way, the access of satellite telecommunication is perceived to be provided by a transnational area or territory, where the regulations of privatization do not apply. Due to its origin, the abovementioned service, consequentially, represents an "inherited" right manifested in a universal manner.

That being the case, the binary question concerning satellite telecommunication as a public service versus a global service, should simultaneously provide a legal balance between the adoption of rules, as well as setting the boundaries concerning domestic law realized through state sovereignty and international law realized through the principle of common heritage of mankind. As for the role of international organizations such as the likes of ITU, it should be concluded that their current definition is limiting in respect of the conception of satellite telecommunication.

ALLOCATING THE GEOSTATIONARY ORBIT IN A LEGAL MANNER - POSSIBILITY FOR EXPLOITATION

Another essential characteristic regarding the principle of common heritage is that considered areas and resources must be protected from exploitation by individual corporations or national states. And while it does not seem entirely appropriate to consider individual corporations, there is a high potentiality for the notion of national states to be specifically associated with the structure of international organizations. This logical presumption is derived from the factuality of an international organization being consisted of certain and individual member states.

5 The concept of state sovereignty has a double interpretation. While it originally represents the complete manifestation of control over satellite telecommunication as a public service within a certain territory, it should simultaneously represent the global equality among world countries, additionally applying to the fact that satellite telecommunication, consequentially, require universal access and regulation as well.

In addition, the ITU, as an international organization itself, tends to manage the space ownership issue by the allocation of slots for satellites located in the geostationary orbit.

Going back to ITU's founding document, regulations concerning the use of radio-frequency spectrum and of the geostationary-satellite and other satellite orbits seem to gravitate toward a less formal "obligation", specifically stated in article 44 (2):

"In using frequency bands for radio services, Member States shall bear in mind that radio frequencies and any associated orbits, including the geostationary-satellite orbit, are limited natural resources and that they must be used rationally, efficiently and economically, in conformity with the provisions of the Radio Regulations, so that countries or groups of countries may have equitable access to those orbits and frequencies, taking into account the special needs of the developing countries and the geographical situation of particular countries." (Constitution and Convention of the International Telecommunication Union 1992)

The content of this article can be more associated with the definition of a legal guideline[6] rather than an obligation which should manifest global equality. And following a legal guideline is never mandatory, which consequentially leaves member states of the Union with the opportunity to conduct acts of exploitation by articles of a legal document that are in no way legally binding. Moreover, the attempts of the Bogota Declaration to assert sovereignty over the geostationary orbit have been largely abandoned, prior to the lack of international recognition and support. In addition to this, one of the main conclusions brought by the abovementioned declaration surmises that the solutions proposed by the International Telecommunications Union and the relevant documents that attempt to achieve a better use of the geostationary orbit that shall prevent its imminent saturation, are at present impracticable and unfair and would considerably increase the exploitation costs of this resource especially for developing countries that do not have equal technological and financial resources as compared to industrialized countries, who enjoy an apparent monopoly in the exploitation and use of its geostationary synchronous orbit. (Japan Aerospace Exploration Agency n.d.)

Although on the basis of probability, from a legal standpoint, it is necessary to appropriately analyze the potentiality of exploitation conducted by the Union, at least theoretically.

Hence, when it comes to satellite telecommunication activities specifically, it must be noted that ITU was not as such given formal authority by its member states to 'license' or 'authorize' the physical occupation of positions in the global commons of outer space as such by individual states, for example through the allocation of orbits or geostationary slots along the lines of allocation of frequencies. (von der Dunk 2015, p.15)

While the physical factuality of outer space cannot be unambiguously claimed, it is necessary to mention that the notion of the abovementioned statement should not be consequently assumed that member states regarding the ITU cannot manifest any form of jurisdiction. Its realization is regulated within article 2[7] of the United Nations' Outer

6 Legal guidelines cannot be associated with obligations due to their different aspects of authority upon national states as subjects, as well as their purpose to determine a course of action. The legally binding degree of a legal guideline refers to the term "soft law", whose practical effects have no force upon national states, nonetheless.

7 The notion of outer space mentioned in article 2 is generally referenced since the geostationary orbit is still

Space Treaty, dating from 1967, which states that outer space *"is not subject to national appropriation by claim of sovereignty by means of use or occupation or by any other means."* (Outer Space Treaty 1967)

Although the nature of jurisdiction is understandably limiting, still it does not exclude nations, or more specifically, member states of the Union to conduct extraterrestrial research under domestic law. In other words, no States can rightly exercise claim of sovereignty, because by its very nature the geostationary orbit has no determinable boundaries and the orbit cannot be effectively controlled. (Agama 2017)

Concerning the ITU as an international organization, although certain legal disputes could eventually emerge in relation to the overall definition of an international organization trying to "adapt" within the concept of the geostationary orbit as a global common and the obtained extraterrestrial services which seem to be individually regulated by national laws and their consequential amalgamation into international space law, it is essential to acknowledge the importance of international organizations regarding towards the development of satellite telecommunication regulation and more importantly, the construction of a much stronger legal framework in the future of international space law.

When it comes to analyzing the high potentiality of exploitation of the geostationary orbit respectively, the term "allocation" can be properly interpreted in respect of two separate aspects:

a) The legal aspect regarding national utilization of satellite telecommunication within the domain of international law;

b) The natural aspect regarding the resource limitation of radio frequencies within the electromagnetic spectrum;

Given the previous interpretation of the legal "collision" regarding the dual characteristic of satellite telecommunication regulations, remarking a duality between domestic laws of member states and their limitation of sovereignty claims in relation to outer space generally, the national utilization of satellite telecommunications can be recognized within the guaranteed freedom of extraterrestrial territory, irrespective of the degree of scientific or economic development.[8] Simultaneously, the United Nations Committee on Peaceful Uses of Outer Space considers seven nonmilitary primary uses of the geostationary orbit: communications, meteorology, earth resources and environment, navigation and aircraft control, testing of new systems, astronomy and data relay. (Finch 1986)

Besides theoretically, the international principle should consequentially apply in practice as well. However, considering the geostationary orbit, being a transnational area in outer space, international legislators cannot entirely determine the placement of this current issue

officially considered as a transnational area, contradictory to the unsupported and unrecognized claims and demands of the Equatorial countries.

8 The principle is theoretically based upon the international status of outer space being an area beyond possession, although there is a significant difference between legal theory and legal practice, as there are many nations that do not manifest the necessary scientific and /or economic degree of development in order for them to actively conduct extraterrestrial activities. The primary fundament for this principle seems to be loosely based upon the fact that it is legally considered for any good or service obtained from outer space and its celestial bodies, to be considered as res communis omnium.

in relation to the legal aspect regarding national utilization of satellite telecommunication within the domain of international law, although its interdependence with the natural aspect habitually intertwines. In other words, regulations manifested by international organizations must have a primary fundament upon the scientific factuality of the geostationary orbit and its unalterable characteristics, meaning that it is necessary for international space law to appropriately adjust.

Furthermore, the realization of these legal adjustments can be additionally scrutinized through the physical capacities regarding the geostationary orbit. Namely, radio frequencies within the electromagnetic spectrum are considered international resources which enable satellite telecommunication. As a result, communication satellites are frequently placed in a geostationary orbit in order for Earth-based satellite antennas to be permanently positioned in the sky toward the satellites' locations respectively, excluding their need for tracking-purposed rotation. But even though the radius is significantly wide-ranging, the placement in geosynchronous slots cannot be fully manifested due to the fact that it does not possess the spacious capacity for an unlimited number of satellites.

This being said, it is logical to assume that the geostationary orbit issue places the developed countries which have the technological resources and skills required to make use of the attributes of the geostationary orbit at odds with those countries which are afraid that, when they acquire the required skills to make use of the geostationary orbit, the resource will have vanished. (Finch 1986)

Perceived from a legal standpoint, this position of technological leverage contributes towards the emergence of a spillover effect[9] with reference to the negative impact that scientific superiority of developed nations has upon the potentiality for natural resource exploitation relating to developing nations which have not yet launched communication satellites, on an international level.

Since radio frequencies within the electromagnetic spectrum, by their origin, are technically considered as natural resources, its manifestation could be reflected through the subjective utilization of natural resource management, where the notion of exploitation is primarily dictated by the significantly higher demand of developed nations compared to developing countries, respectively. Additionally, without the factual possibility of expending or replenishing radio frequencies within the electromagnetic spectrum as limited resources, the allocation of resources should represent a process with a global regard, conducted by the ITU as an international organization, in such a manner that will support an international strategy not limited to its member states only. As a consequence, the concerning global strategy may create the illusion of resource maximization, however, the geostationary orbit issue cannot be entirely interpreted in international proportions.

Efficient allocation of limited resources requires a new system which would allow for the maximization of resources to not be achieved through an illusion of restricted utilization only. That being so, it could be concluded that the domain of international law is in need of a special legal entity as an advance of the generally known definition of an international organization that has the capacity to provide the implementation of such a system.

9 Not to be confused with the Spillover Law Theory and Legal Definition: the legal principle of separating the same evidence that is relevant to both a defendant and a codefendant;

EXTRATERRESTRIAL REAL ESTATE AND THE UNIVERSAL DISTINCT FROM EXTRATERRITORIAL JURISDICTION

Regarding its composition, the Union ordinarily calls upon the principle of universality[10] as well as the desirability of universal participation in the Union. However, when it comes to orbital positioning, it plays a very important role for its member states, as any nation planning to launch a satellite in the geostationary orbit, must firstly apply to the ITU for an orbital slot.

Orbital slots, often referred to as "the parking spots" of outer space, cannot be unreservedly regarded as extraterrestrial real estate as such claims have not yet been recognized by any authority, with no legal standing whatsoever. Also, the geosynchronous orbit is regarded as a scarce real estate. Lack of supply of radio frequencies as a "commodity" for satellite telecommunication should inevitably lead to an increase in orbital slots prices if the number of buyers in high, emphasizing the demand. In reality, with the exception of the significantly high demand for orbital slots, regarding world nations, there is no cost for an orbital slot.

The notion of universal jurisdiction significantly differs from the notion of extraterritorial jurisdiction[11], as the contrast follows the application of international law on one hand, and domestic law on the other, no matter if the legal element or aspect in question is "abroad", or in this case, a transnational territory.

In theory, according to universal jurisdiction, international organizations such as the ITU and its member states are allowed to claim jurisdiction over a certain legal aspect, similarly to extraterritorial jurisdiction, where the main difference lies in the legal eligibility. Namely, in order for an extraterritorial claim to be effective, there has to be a sort of legal "agreement" regarding the external territory. And since the external territory in this case is regarded to the geostationary orbit, within outer space, there is no need for a special agreement, due to the fact that it is universally guaranteed for outer space to be freely explored by any nation in the world community.

However, the legal eligibility comes to a negative lighting when universal jurisdiction cannot be obtained in practice due to the lack of economic and/or scientific advances concerning developing countries. Consequently, particular international norms and rights that are considered erga omnes[12] and are closely linked to the universal status of outer space, is not the real problem, regarding satellite telecommunications, but rather the individual advantages of nations.

Another important technical aspect to consider is the "lifespan" of a communication satellite; even though a satellite ordinarily stays in orbit until the end of its mission, which

10 While the principle of universality is ordinarily defined as the allowance for the assertion of jurisdiction in cases where the alleged crime may be prosecuted by all states, based on the principle that such crimes harm the international community, regarding the composition of the Union, it serves as a reference to outer space being an area where regulations are most universal in their applicability.

11 The notion of extraterritorial jurisdiction in this context mainly refers to national space law, meaning that every state conducting extraterrestrial activities in consequently regulated by their domestic laws that apply in outer space. In other words, nations are able to exercise authority beyond its normal boundaries, that is, the geostationary orbit;

12 Concerning the direct and practical availability of satellite telecommunications, the Latin phrase erga omnes, meaning "towards everyone" is referred to the universal status of outer space in theory;

is usually a couple of years, generally speaking. As a result, national administrations by ITU ordinarily keep refilling for the slot, thus giving it an indefinite purpose of utilization, meaning that the orbital slot can be used by a certain nation for an unlimited or unspecified amount of time.

While this does not guarantee that an orbital slot is automatically "privatized" by a nation. In other words, it's the first-come, first-served principle that applies to orbital positioning, which without any formal acquisition of sovereignty, records a promptness behavior to which it grants an exclusive grabbing effect of the space concerned. (Space Legal Issues 2019)

In comparison to similar international organizations, it is worth mentioning that the ITU does not entirely represent a monopoly concerning satellite telecommunication. Even though there are multiple international (intergovernmental) organizations, Intelsat and Intersputnik are the most prominent organizations to appropriately analyze, particularly their jurisdiction aspect;

Intelsat Corporation, for instance, was originally formed and previously recognized as International Telecommunications Satellite Organization, even though its legal constitutions has changed and is now defined as a communications satellite services provider. As an organization, Intelsat was based upon the Communications Satellite Act of 1962[13], aiming to join private communication companies in order to make satellites more obtainable. Although the act itself encourages global coverage, its jurisdiction is predominantly based upon domestic law and the concept of privatization, specifically stating:

"In order to facilitate this development and to provide for the widest possible participation by private enterprise, United States participation in the global system shall be in the form of a private corporation, subject to appropriate governmental regulation." (Communications Satellite Act 1962)

Intertwining domestic law and privatization in contrast to the global community, primarily regarding the U.S, emphasizes the presence of extraterritorial jurisdiction on a national level. However, interesting enough, similarly existing international organizations tend to manifest different regulations in consideration of non-member states of another international organization, such as the case with Intersputnik;

Intersputnik, on the other hand, was created through the Intersputnik agreement, signed in 1971 after three years of negotiation. Its purpose was to create an international communications system using Earth satellites. Intersputnik was to be considered a juridical person.[14]It differed from Intelsat in that nonmembers of the ITU could join, and it did not use the weighted voting formula which in the early years of Intelsat gave the United States a major control. (Library of Congress, 1976, p.7)

13 With president John F. Kennedy signing the Communications Satellite Act of 1962, it is interesting to notice that its original purpose was to deal with the issue of commercialization of space communications, which by itself, was very controversial in that time.

14 Intersputnik as a juridical person, would represent an organization that is legally authorized with rights and duties, while simultaneously being recognized as a legal person in the international community. This constitution allows its identification as an opposition to other international organizations that regulate the benefits obtained through the service of satellite telecommunications;

Even though Intersputnik is nowadays mainly considered a commercial entity, its objective continues to represent the tendencies of common use of communication satellites, thus creating an additional option for nations, previously regarded as nonmember states, to obtain the status of member states in order to achieve a manifestation of equality when it comes to using the service of satellite communication as a human heritage. Therefore, while Intersputnik was established among Socialist countries, other nations have since been invited to join the system, apparently in the hope of making it competitive with Intelsat. (Library of Congress, 1976, p.127)

International competition concerning satellite telecommunications contributes for the contrasting concept of jurisdiction to be perceived in a dual manner: organizationally and inter-organizationally. In other words, a certain international organization, such as ITU, would singularly regulate extraterritorial jurisdiction among its member states as a whole, all while maintaining an international relation and tolerance with oppositional international organization of identical purposes, known as inter-state cooperation.

SPACE CONGESTION AND GEOSYNCHRONOUS ORBITAL SLOTS

Satellite positioning is known to have a fundamental purpose and role when it comes to obtaining extraterrestrial assets, primarily satellite telecommunications, to be more specific. However, it was previously mentioned that the geostationary orbit, although quite vague, has limited capacity that cannot possibly support an unlimited number of satellites. Consequently, it is defined as a limited and even a scarce natural resource of transnational origin, simultaneously contributes in being under the destructive influence of a much bigger issue perceived from both natural and legal aspect – space debris.[15]

Namely, it has been so far perceived that space debris orbiting in the geostationary orbit has a lower collision speed compared to the low Earth orbit (LEO). In fact, this physical characteristic is rather expected, considering that all communication satellites share the same speed, altitude and plane, being located exactly above Earth's equator.

However, a new analysis has found that the threat posed by space debris to satellites in geosynchronous Earth orbits (GEO) is much greater than has been assumed until now. Researchers predict that the population of active GEO satellites can be expected to suffer one potentially mission-terminating impact every four years on average. (Physics World 2017)

This being said, the rapidly evolving space industry may come to an abrupt halt due to the formation of a hazardous extraterrestrial zone for active communication satellites within currently registered orbital slots. While it seems that the main issue for satellite operators was to make better use of the currently available geosynchronous orbital slots or to ultimately develop new positions, a new legal issue simultaneously arises: international liability for damage caused by space objects regarding international organizations respectively.

15 Referring to space debris of artificial origin, two debris fields are currently formed around planet Earth, one of them being around the Geostationary orbit, besides the low Earth orbit;

While the jurisdiction of international organizations was previously discussed in this paper, the supposed perplexity of international liability represents an important aspect that needs to be appropriately analyzed from a legal standpoint.

However, firstly, it is necessary to define the role of international organizations regarding the hypothetical, yet highly potential scenario of orbiting space debris to collide with a communication satellite within the geostationary orbit.

As part of the five agreements that are fundamental for the very creation and essence of space law, the Convention on International Liability for Damage Caused by Space Objects, also known as the Space Liability Convention, dating back to 1972, has the purpose of expanding the liability rules from an international aspect and may properly apply in regards to the regulations that are consequent to the abovementioned possibility.

Concerning its status, among the four international intergovernmental organizations, only Intersputnik has directly declared acceptance of the rights and obligations written in the Agreement. However, regarding the ITU, the European Telecommunications Satellite Organization (EUTELSAT IGO) has also declared direct acceptance toward the Agreement with the main purpose of further provision of rights to use orbital locations and radio frequencies assigned to the member states of the ITU. In other words, we have a manifestation of indirect acceptance which results with identical legal effects in terms of accompanying rights and obligations.

With reference to communication satellites, the Liability Convention specifically defines the term damage as *"property to international intergovernmental organizations"*, while the term space object mainly alludes to artificial objects that do not have to necessarily be fragments of satellites for that matter.

Article 3 states: *"In the event of damage being caused elsewhere than on the surface of the earth to a space object of one launching State or to persons or property on board such a space object by a space object of another launching State, the latter shall be liable only if the damage is due to its fault or the fault of persons for whom it is responsible."* (Liability Convention 1972)

In theory, international liability concerning the damaging of a communication satellite in the geostationary orbit would have a vague characteristic and would not only necessarily include nations as member states of international organizations as liable in regards to any damaged communication satellites. Otherwise speaking, nations that legally launched and owned the previous artificial space object[16] – now space debris, and may simultaneously not be a member state of a supposed international organization, would also have to demonstrate good faith, that is, the honest intent to fulfill a promise or contract in a fairly manner. The demonstration of fault should, therefore, signify an appropriate agreement based on the principles prescribed by the Liability Convention.

In order for this to be additionally achieved, the supposed nations in question are also necessary to rely upon the Convention on Registration of Objects Launched into Outer Space, otherwise known as the Registration Convention, adopted in 1974. Information regarding the registered space objects should be able to appropriately clarify the sides, in

16 The term artificial space object is closely associated with manmade constructions and items that have been sent into space by a certain nation – governmental space agency or private space company.

terms of determining the liable launching state, as well as settling hypothetical disputed over damaged communication satellites in the future.

Since the register is kept by the United Nations Office for Outer Space Affairs (UNOOSA), international organizations, such as the ITU, are guaranteed to be predominantly considered, thus directly expanding their purposes, rights and obligations toward their member states and also other world nations.

CONCLUSION

Satellite telecommunications represent a unique global service, which, although are currently provided and regulated by international organizations, face many legal issues and fallacies in regards to the traditional legal doctrine. Therefore, considering the transnational nature and origin of satellite telecommunications, perhaps the recognized definition of an international organization may not be entirely suitable.

In other words, changing or adapting the essence and definition of international organizations in relation to extraterrestrial activities, may be a highly potential consideration for international legislators. Many issues including sovereignty, rights and obligations, access, potential privatization, clashes between international law and domestic law should be appropriately taken in consideration to avoid manifestation of monopoly as well as discrimination on an international level.

Additionally, orbital slots located in the geosynchronous orbit are exposed to significant potentiality of damage, where regulations regarding international liability have not been officially predicted.

Space has become a highly congested area while satellite operators bring great risks of creating debris, prior to collision occurrences under intimidating velocities. Existing opportunities may seem irrelevant in the future, as the legal construction of international organizations does not act in compliance with the global community. Consequently, there is a necessity for new systems where certain adaptations to specific parameters need to be made as a form of privatization of orbital slots within the geostationary orbit as extraterrestrial real estate, which is a real challenge to international law and to the future legal regulation of international organizations.

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ORIGINAL RESEARCH PAPER

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POLICE REFORM IN THE REPUBLIC OF MACEDONIA: BETWEEN COMMUNITY POLICING AND DEMOCRATIC POLICING *

Abstract

This paper focuses on the substantial changes that were imposed on the Macedonian police after 2001 and the impact which the external intervention of the EU and OSCE has had on police reform in this country. This intervention concentrated on transforming the existing, state-centred police structure into a democratic institution which, operating in accordance with the ECHR, signed by the Republic of Macedonia in 1995, aimed at becoming a service to all the citizens. The main question is, whether and how imported universalist ideas and models, such as community policing and human rights, can work in an ethnically divided society. It will be argued that community policing as implemented in practice can hardly become a form of democratic policing as long as the dominant processes in society are burdened by the supremacy of ethnicised politics over the law.

Keywords: police reform, human rights, community policing, democratic policing, the Republic of Macedonia

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INTRODUCTION

Police reform in the Republic of Macedonia[§] cannot be analysed in isolation from other processes of democratization of the state. Analysis shows how difficult it is to reform and change police behaviour in a democratic direction and how state institutions tend to continue to act more as a 'service for the Government' than as a service for the citizens. On the one hand, reports by the Macedonian Helsinki Committee indicate that efforts to transform the police force in the Republic of Macedonia into a democratic institution over the last two decades have never achieved any significant level.[1] On the other hand, the Macedonian Minister of Interior stated publicly in mid-2012 that police reform had reached its final phase.

In 2005, one prominent Macedonian expert on security wrote that there remained a very long way to go before a democratic and accountable civilian police force could be established.[2] According to Lidija Georgieva, a professor of Conflict Prevention at the University of "Ss. Cyril and Methodius" in Skopje, police reform in Macedonia became a priority in the light of ethnic tensions in the country which needed to be addressed in conjunction with such reform. In fact, the events of 2001[3] were the decisive factor for the police reform that took place, not as a bottom-up process but as the result of a top-down process of international intervention by the EU, the OSCE and the US. The international community guided and implemented police reform in Macedonia following the conclusion of the Ohrid Framework Agreement, with the general consent and cooperation of the Macedonian Government. It was the beginning of the end of the era in which the police acted as the prime protector of national security—an era which had lasted for too long considering the radical political changes in the region.

The paper focuses on the substantial changes imposed on the Macedonian police after 2001 and the impact which the external intervention of the EU and OSCE and other international bodies have had on the processes of police reform. This intervention included several programmes and projects with different tasks, though mainly concentrated on transforming the police structures into a democratic institution serving its citizens. From an apparatus protecting the state of the Republic of Macedonia, which until 2001 emphasised security over democracy, the police evolved in line with a new concept of community policing that seeks to build a partnership with the citizens and offer equal services to all communities while respecting ethnic differences. As stated in Article 49 of the European Code of Police Ethics: "Police investigations shall be objective and fair. They shall be sensitive and adaptable to the special needs of persons, such as children, juveniles, women, minorities including ethnic minorities and vulnerable persons." In all successor states of the former Yugoslavia, community policing has been deemed a central aspect of police reform.[4] The aim is to provide a service that is usable and adaptable for all citizens, regardless of their ethnic identities.[5] This study puts particular emphasis on the effects of the large-scale integration of members of non-majority communities, mainly ethnic Albanians, into the country's police structures as a follow-up to the Framework Agreement—the so-called

§ The country's recognized international name in the UN is the 'former Yugoslav Republic of Macedonia'. A UN member since 8 April 1993, the country is often referred to by the shortened form 'Macedonia'.

process of 'ethnicisation' of the police. The main question addressed is whether imported ideas and models such as community policing and human rights can work in a divided society. It will be argued that the way in which community policing was implemented means that it cannot be turned into democratic policing while the dominant processes in society are burdened by the supremacy of politics over the law, i.e. the so-called process of 'politicisation' of society. The study is based on micro-research including theme-guided interviews with police officers, domestic experts and representatives from the EU and OSCE office in Macedonia, as well as on the use of various secondary sources. A total of 16 semi-structured interviews were conducted, most of them through direct contact, while some were conducted through written communication. Five of the randomly chosen respondents refused to participate and answer the questions. The interviews with police officers (9 Macedonians and 2 Albanians) were conducted anonymously. Additionally, five expert interviews were carried out with domestic academic specialists, including professors of security studies and civil society experts involved in the field. Meetings were scheduled with representatives of the EU and OSCE in Skopje, but these meetings generated mostly formal answers and data regarding police reform projects. The OSCE representatives stressed that their community policing project was almost complete.

FROM A ONE-PARTY STATE TO A MULTI-ETHNIC SOCIETY

The modern state of Macedonia is a multicultural and multi-confessional society. The Republic of Macedonia as part of Socialist Yugoslavia existed from 1945, but the Republic of Macedonia as an independent state has existed since 17 November 1991 and the adoption of the new Constitution. After independence, the 1991 Constitution provided the opportunity both for the recognition of equality deriving from civic belonging as well as for the recognition of differences in relation to the ethnic, cultural, language and religious identities of the diverse groups within the society. In spite of the initial proclamation of the official state policy for coexistence and integration in the 1990s, the socio-political characteristics of the society were reflected primarily through the establishment of dominant ethno-national organizations. Macedonian society turned into a divided society for the reasons given in 'Ahmeti's Village', an excellent analysis of the European Stability Initiative written in 2002: 'It is not in the Albanian parts of Kicevo town, however, but in the rural Albanian municipalities of the region that the absence of the state is most visible. Diaspora money helps to substitute for the state itself. According to one Albanian villager, if one calls the police, or goes to court, the result is even a greater mess.'[6] Ethnic and cultural differences, which were already well established, became the cause of confrontations. Instead of building a model of multiculturalism, Macedonian society acquired elements of plural society, and the process of ethno-political mobilization became a factor producing cleavages. After the conflict of 2001, as a result of internal but mostly regional tensions and the implementation of the Ohrid Framework Agreement, the state was transformed into a model of separation of powers between diverse ethnic groups, through the balancing of individual and group rights as a consequence of the 'ethnicisation' of many spheres

within the society.[7] The reform process forced the previous holders of state positions (the Macedonians) to share such access and revenue in new ways. Albanians gained in political importance and succeeded in competing against Macedonians for more power and resources and thus brought to an end their role as 'second class' citizens prior to 2001. The rights were the concessions that Albanians gained through constitutional recognition and protection. But the political philosophy that was already in play, the clientelistic relations between the citizens and the state, was enhanced through the ethnicisation of politics, engendering undemocratic practices across a wider social field (including amongst Albanians). Rather than becoming more democratic (via external intervention), the 'clientelist' system now includes both Macedonian and Albanians and their clienteles. What has changed is not the system but the fact that some Albanian constituencies can now also exploit the state economically from within. Clientelism has thus become a substitute for democratization and political order.

The other smaller ethnic communities did not gain such political prominence or significant privileges. Some are still culturally marginalized but gained social prosperity—the Serbs, Vlachs, and Turks. The group most discriminated against remained the Roma, who are both ethnically and socially deprived. Research studies reveal that the Roma continue to suffer structural discrimination together with higher unemployment and poverty.[8] Despite the principle of non-discrimination and fair representation of the members of communities in public administration and public enterprises, the Roma community participates with only slightly above zero percent.

In these circumstances, radical changes were introduced after 2001. But while the amendments made to the Constitution satisfied the Albanian community, they infected society with an 'ethnic rights' virus. This is an approach whereby every single element of society and politics is dominated by ethnic components that serve to freeze ethnic differences, with an impact opposed to that sought by civic and democratic development and a universal human rights approach.[9] Ethnicity in Macedonia was thus politicized, creating two rigidly divided ethnic and political blocks. The instruments available for control by Parliament and other bodies were either not sufficiently independent or suffered from low capacity. Many of these structures within the Ministry of Interior are still more prone to protect the interests of the political party in power rather than the citizens and their human rights, says Rizvan Sulejmani, professor of Political Science at Tetovo State University.[10]

Professor Lidija Georgieva sees the police force after 2001 as being more modernized but still lacking adequate democratic control and with weak parliamentary supervision.[11] The need for stronger respect of standards and procedures in the activities of the police was evident. The reason why this was not taking place was the weakening of the professionalism of police officers due to their political subordination and dependence on higher political hierarchy. While the requirements are for greater professional police engagement, the expertise and integrity of police officers are under political pressure from politicians that interferes with their daily duties.[12] Police structures are used to pursue the private interests of people in higher positions within the police, and police officers are very often the prime arbiter who will or will not be prosecuted.

In accordance with the Framework Agreement, the state agreed to police reform and to fulfil the arising obligations concerning the need for fair representation of minorities in the

police force, specific training for minority recruits, the introduction of multiethnic police patrols and implementation of the concept of 'community policing'. But things did not go as planned. Independent sources have put forward serious objections to police performance and made allegations of increased political influence over police activities. The state has continued to be the primary object of protection for the police, while police protection of human rights is arbitrary when not illusory.[13] Some claim that the police force in Macedonia has never been independent enough and has always been subject to political influence. The Ministry of Interior has never designed a proper system of control sufficient to prevent the excessive use of power by the police.[14] According to official reports by the Ministry of Interior, however, an internal control commission has now been established and has been active in the last two/three years with the aim of trying to fill the identified gap.[15] These are the symptoms that will be analyzed in the next sections of the paper after some conceptual clarifications.

'COMMUNITY POLICING', HUMAN RIGHTS AND DEMOCRATIC POLICE

According to Marenin,[16] police reform is one of the most complicated tasks that can be undertaken by a state: policing is a difficult job in itself, he says, and reforming policing even more so.[17] And yet reforming the policing system is an essential process in order to ensure law and order, the protection of human rights, to achieve a higher level of human security, to enhance the efficiency of democratic governance, and to support all citizens in a non-discriminatory fashion. In this paper we are concerned with human rights and 'community policing' as categories important to provide security and protection to all communities through building a democratic society and democratic police.

The first category for explanation is the concept of human rights. Today the discourse of rights is employed by everybody in spite of the varying political orientations and alliances among the actors involved.[18] Europe in the last sixty years has been dedicated to the protection of human rights—a dedication arising from the horrors suffered during the Second World War and widespread acceptance that all should be held accountable to the rule of law.[19] The concept of human rights entered upon the world stage after the adoption of the Universal Declaration of Human Rights in 1948. In subsequent decades, human rights gained in importance and became the epicentre of democracy and of the democratic evaluation of any state. Indeed it is possible to interpret the increased adoption of human rights in post-communist states as being primarily an outcome of the formal dictates of EU membership.[20] Most of the candidate countries had to adopt legislation with human rights norms. Macedonia in 1995 signed the European Convention on Human Rights that guarantees basic human rights to all citizens, which was ratified in the Parliament 1997. Article 3 of the Macedonian Law on Police states that the main function of the police is to protect and respect the fundamental freedoms and human rights guaranteed by the Constitution of the Republic, laws and international agreements, to protect the legal order, to prevent and detect offenses, to take measures to prosecute perpetrators and to maintain public order and peace in society. In everyday practice, human rights are theoretically best

protected by the law enforced by the police. However, as Neild elaborates, citizens regard the police with fear as brutal, corrupt and unprofessional.[21] Also, wherever multi-ethnicity prevails, there is a demand and need to increase the participation of minorities in the police in order to secure human rights.

Human rights are the fundamental basis of community policing as a shared set of principles and values. They define the relationship between the police and the community.[22] The concept of 'community policing' evolved out of the public's interest in the quality and effectiveness of the functioning of local police forces. Trojanowicz and Pollard (1986) found that patrol officers received more information from community citizens because they knew the residents. Skogan and Hartnett (1997), meanwhile, define community policing as including the promotion of greater communication between the police and citizens, problem-oriented policing, permitting the public to participate and empowering communities to help themselves.[23] Another view of the community policing model seeks to strike a balance between reactive responses and proactive problem-solving. Specifically in the case of crime and disorder, community policing is about partnership between the police and the citizens.[24] The next citation shows that we are in the top-down state business: for community policing is usually defined by the government, also, as a strategy of the police, not of communities, and may be performed by one division or department of the police or by the police force as a whole.[25] This changes the tasks, training and goals of police organizations. Where failed and transitional societies are characterized by the delegitimization of existing policing, police reform is perceived as essential and highly recommendable. This is when community policing is set to play its roles in practice, often reduced to three procedures as a model fashioned for transitional societies: watch schemes, police-community forums, and problem-solving policing.[26] Community policing, with its distinctively proactive emphasis, has proven to be a dramatic improvement over traditional and essentially reactive models of policing. Only when the community and the police can truly work together for their common good will citizens feel that they can trust the police.[27] Community policing is the actualization of the concept that the police force in a democratic society are not supposed to be insular, self-contained, or cut off from the communities from which their power derives (Skolnick, 1999).[28] As Davis, Henderson and Merrick argue (2003), however, the introduction of community policing faces significant obstacles in developing countries whose police forces have limited experience of democratic practices.

With the rise of democratic institutions, governments and civil societies have looked for ways to transform police agencies from organizations that have served to control citizens to organizations that are accountable to citizens (Neild, 2001).[29] Democratic policing strategies are not always transferable and cannot be expected to wholly solve the larger inadequacies of police organizations that operate with decades of misconduct behind them.[30] Basic principles for democratic policing have emerged. These commonly mentioned requirements suggest three basic conditions for democratic policing: professionalism, accountability, and legitimization.[31] In democratic societies, the police are accountable as an essential aspect of the rule of law. To paraphrase O'Rome and Moore (1997), the rule of law means that policing gains legitimacy by performing a legal rather than a political function, i.e., by serving the law rather than party-politics. The police acting in accordance with such democratic principles, standards of human rights, developing democratic community-oriented forms of

policing and being democratically and legally accountable, are all characteristics that can be summed up by the concept of 'democratic policing'.[32] Police accountability has become more prevalent in recent years as citizens have become less trusting of the 'state' and as openness and transparency have become both demanded and expected.[33] As Manning notes, it is the existence of a democratic state and democratic culture that produce democratic policing, while there is no evidence that the contrary can result.[34] International regime-norms centre on the protection of human rights as the fundamental core responsibility of democratic policing systems.[35] The police must always respect the rule of law in accordance with procedural rules. They must respect and protect human dignity and maintain and uphold basic human rights as well as civil and political rights.[36] In the last two years, basic elements of democratic police reform have also gained a remarkable level of interest amongst a number of participating states in Eastern Europe, including Macedonia. Some of them have undertaken similar tasks, training multiethnic police services as a measure of post-conflict confidence-building and further reforming their national police forces into democratic institutions of law enforcement.[37] Finally, one element in defining a democratic society is a police that is subject to the rule of law, embodying values respectful of human dignity rather than the wishes of a powerful leader or party—a force that can intervene in the life of citizens only under limited and carefully controlled circumstances and which is publicly accountable.[38] As Berkley put it, "the police cannot be more democratic than the society they come from". It is also expected that other organizations and professions in society will be affected by the presence of democratic policing.[39]

The term 'community policing' is occasionally used as if synonymous with democratic policing, but such a perception is inaccurate (Bayley, 2009).[40] In fact, community policing is easier said than done. On the one hand, community policing is not just a programme but an operational and organizational philosophy; on the other hand, democratic policing is one step further along the scale of cooperating and partnership-building with the community, but primarily towards accountability procedures. This paper is an analysis of the implementation of community policing through the transformation of the police and the protection of human rights, bearing in mind the interdependence between the democratization of society and the democratization of the police.

IMPORTED POLICE REFORM

The Framework Agreement of 2001 postulated a number of obligations regarding the restructuring of the police, including confidence-building measures through the introduction of multi-ethnic patrols in crisis regions, the employment of significant numbers of members of non-majority communities and, in the long run, the enhancement of the concept of community policing through processes of decentralization and through shifting the values of police officers towards a more proactive and preventive role. After the conflict of 2001, several projects managed by the European Agency for Reconstruction and the OSCE mission, together with other international partners, swiftly recruited and trained members of minorities in the duties of police officers as an obligation arising from the Framework

Agreement. The OSCE helped to develop the concept of better relations between the police and citizens in the crisis regions, to build confidence between citizens and a multi-ethnic police presence, and to cooperate with citizens on local security problems. These projects, implemented immediately after the agreement was reached, sent out encouraging signals as to the stabilization of the situation and the revival of trust among citizens in previously unstable regions.[41]

The restructuring of the police in Macedonia began in March 2002 in the framework of the EU-CARDS programme and the arrival of a team of experts from EU countries. The reform officially started with the enactment of the Strategy for Police Reform (2004) and a National Action Plan for Police Reform (2004). The most important and sensitive reform of the police was the decentralization of police structures. This approach was connected with the inclusion of the concept of 'community policing'. But the overall strategy was to fully return to the rule of law and respect for human rights at national level.[42] "The police in Macedonia before the conflict was more militia than police. It was more oriented towards the protection of state interests than the needs of the citizens, i.e., concern for human rights.'[43] Due to the low level of trust between communities, however, each demand issued by Albanians for the greater democratization of the state was treated by the Macedonian community as a security issue. According to Sulejmani, Macedonians preferred security over democracy, while Albanians preferred a more democratic state to greater security and this is why the police had more elements of militia than police as a civic concept of protecting human rights. Ethnic-based incidents were resolved repressively with the use of police force, without even trying to find a solution based on preventative political activities. According to Alexandar Ivanov, assistant professor of Constitutional Law at the University of St Clement Ohridski in Bitola, the events that took place in the Municipality of Gostivar and in the Albanian-populated part of Skopje, Bit-Pazar, and the reaction to the illegal establishment of the University of Tetovo (i.e., controlling protests by students demanding higher education in Albanian), were precisely a matter of the police acting to protect the state against the legitimate or illegitimate demands of the Albanian community.[44] According to Lidija Georgieva, it was in this period of the mid-1990s that the concept of human rights was transformed in Macedonia into one of ethnic rights.[45] Albanians as a community started to struggle for more rights through ethnic demands for a better position within Macedonian society using political means. From that point onwards the 'ethnicization' of politics bred an ethnically divided society and dominated political events, disallowing proper democratic development and the creation of a civic concept more compatible with human rights and democratic policing. From the point of view of the police officers interviewed for this paper, the period before 2001 was not so different from the previous system prior to 1991: the mission and goal of the police remained the same, with the only difference being that the police started to talk about protection and serving the citizens, but without major changes in the minds of police officers.[46] Before 2001, however, all the higher positions in the police force were held by Macedonians and it was impossible that police commanders in Albanian-dominated regions would be from the Albanian community.[47]

During 2003, the Police Development Unit of the OSCE trained 1,156 new police cadets, of whom nearly 15% were females. This was an important step forward. Of this total, 66.6% cadets were Albanian, 14.4% were Macedonian, 6.5% Turkish, 3.6% Roma,

2.3% Serbs, and 1.9% Bosnians and others.[48] Because of the disproportional number in national demography, in 2004 the OSCE assisted the police in training 325 more candidates from different ethnicities. When the OSCE started with the training of new recruits in 2001, the police service included only 3.8% ethnic Albanians and a negligible proportion of other minorities. In 2005, over 15 per cent of the police force was ethnic Albanian and nearly 4.5 per cent from other minorities.[49] Other data shows that today in the Ministry of Interior there are 1,398 police officers of Albanian ethnicity. The percentage of Macedonians employed in the Ministry of Interior is 77.8%, Albanians are present with 17.6%,[50] and all other communities less than 5%. Even though the proportion of Albanians employed in all ministries is 26.17%, they hold only 11.58% of higher positions.

Two European police missions, EUPOL Proxima and EUPAT (2003–2005), paved the way for the comprehensive and overall implementation of police reform in the field. The reform included different actions and goals regarding border management, the fight against organized crime and corruption, building confidence between the local police and the population, implementing community policing, police-judiciary cooperation and enhancing professional standards and internal control. The importance of the missions was double: enhancing the operative capabilities of the EU in future crisis management actions and assisting Macedonia in its efforts to implement the police reform according to European standards and procedures. Finally, the new Law on Police of 2006 stated the need for reforming the model of operation. The new Law on Police supported the continuation of the reform in compliance with the Strategy from 2004. A restructuring of the Ministry of Interior also took place. All of these activities depended mainly on international resources and political will on the part of the Government. The concept of community policing was officially introduced in Macedonia in 2008 with additional changes to the Law on Police. Its basic goal was to improve the image of the police by working in accordance with new imposed human rights standards in cooperation with local self-government units and the citizens. Citizens Advisory Groups were the major tool of direct communication between citizens and the police, implemented by international organizations. Introduced for the first time in the crisis regions after 2001 and proving successful, they were spread throughout the whole country. In 2009 there were 140 such groups.[51] Local Councils for Prevention were also established under the legal framework of the Law on Self Government and the Law on Police. These kinds of bodies were established in most municipalities.

According to Isabelle Ioannides, Macedonia was taking a ‘dual track’ approach in the context of EU efforts to reform the Macedonian police. This entailed the European Commission assisting the long-term structural changes in the Ministry of Interior and the police in support of the country’s institutional development, in line with the SAP, whereas short-term ESDP crisis-management missions, such as the recently completed EUPOL Proxima, tackled ‘urgent needs’ in support of the Framework Agreement.[52] The EU invested a great deal in police reform in Macedonia and at the same time tested their mechanisms for crisis-management operations. This reform was accompanied by competition on the part of EU structures and organizations, but also among different international organizations and member states. For instance, Proxima and the OSCE have competed with similar tasks and programmes, especially ‘community policing’. In 2006, Proxima and EUPAT left, while the OSCE remained. It was also questionable whether ‘urgent needs’ could be resolved

by the Proxima mission in the short term.[53] For the time being, the 'turf war' between the European Commission and the Council was undermined by competition and ineffective coordination.[54] The mandate of the EU was to assist Macedonia in improving internal security by developing a capable, depoliticized, decentralized, transparent, community-based and multi-ethnic police service responsible to citizens' needs and accountable to the rule of law.[55] With large-scale projects like the Macedonian police reform programme, it is always difficult to assess the impact of the transformation in the police. Ioannides stressed that Macedonia should be treated with cautious optimism. The main concern is that reforms in the police have been implemented primarily because of the international presence in the country, meaning that human-rights standards might suffer if reform is not embraced and respected by the whole police structure, top-to-bottom.[56] Even the recruitment process for cadets was politicized, with ethnic Albanian partners succeeding in pushing forward their candidates under the watchful eye of the international community, writes Ioannides.

Increasing the number of members of minority communities in the police force and reforming the criteria for their inclusion bred major concerns amongst the public. Designing models for police work in multiethnic regions is conditional upon the need to maintain peace and stability, to strengthen confidence in institutions and increase loyalty to the state, and upon building respect for the rights of members of minority ethnic communities through principles of anti-discrimination.[57] The key objectives were the complete implementation of the principle of decentralization, equal representation of minorities in the police, a preventative role for the police, and promotion of the concept of the police as a 'service for the citizens'.[58] Police reform became an essential prerequisite for the success of post-conflict peace-building missions. In most societies recovering from intra-state conflict, the police act—both prior to and during the conflict—in a manner that is politically biased, militarized, corrupt, ethnically (or group) divided, disrespectful of human rights and inefficient in terms of ensuring the security of all citizens.[59] The contribution of the international community (i.e., the EU, OSCE and the US) has been critical in shepherding police reform in Macedonia and bringing the police up to European standards. In addition to bilateral support, the OSCE has provided basic and specialized training courses for thousands of cadets throughout the 2000s. The OSCE has had a positive impact on the process of meeting the objectives of the Framework Agreement in relationship to the redeployment of the police to the former conflict areas and ensuring proportional representation.[60] Things have changed and today Albanians can find employment in state institutions, including the police, which was unthinkable only ten years ago.[61] But even from the Albanian side there are complaints about party-political patronage and the exclusive employment of those citizens who hold party membership or are close to some higher positioned politician. Albanians with neither party membership nor connections remain in the discriminated group.[62] Today, belonging to a political party is far more important than which community you come from. Thus with existing resources of the state the political leaders are prone to buy loyalties from their own ethnic communities. The author's stance on minority policing recruitment is that the way it was done, through political party patronage, has only reduced much needed trust on the side of the citizens. For both reasons, the newly recruited police officers will be more loyal to political leaders than citizens and the professionalism of the newly recruited will always be in doubt as they carry out their daily tasks that should protect the citizens rather than political appointees.

In the following section I will show from the perspective of domestic police officers on the ground and domestic experts whether or not the increased representation of smaller communities, mainly Albanians, represents a new upgrade of the services of state institutions to the citizens. As Florian Bieber argues, one has to be aware of the double-edged effect, assuming positive but also negative consequences. The rapid increase of minority members in the police often does not facilitate the greater professionalism of the police, though it might serve crucially to enhance the legitimacy of the police, which is an aim that takes priority in a post-conflict environment with low levels of trust. Still, as Bieber stresses, without structural changes to the police, including a broad reform agenda to emphasize community policing, modern policing methods and human rights, the inclusion of minority members in the police force is unlikely to shift the overall relationship between the state and its citizens, including its minorities.63 With regard to numbers, according to the Macedonian Ombudsman office, Albanians raised their participation in the regular police structures from 16% in 2010 to 18% in 2012, and their participation in middle management positions in the police from 10% in 2010 to 13% in 2012. Macedonians still hold 82% of managerial positions and 77% of positions in the regular structures, while the Roma and Turk community are represented only slightly above zero in both types of positions.64 The most important achievement to be gained through these actions should be that minorities will accept the police as their own, as trusted and respected.

'DEMOCRATIC' ACHIEVEMENTS IN THE POLICE

Police reform strategy in 2003/4 opened the door to affirmative action for the employment of members of non-majority communities. This was necessary for the police working in multi-ethnic areas to increase confidence among minorities. The new doctrine demanded respect for the principles of proportional ethnic representation to support the efficiency of the police. The only problem was the employment of inappropriately educated people, since only a small number of the members of minority communities had adequate educational qualifications to work for the police.[65] The inclusion of non-majority communities took place in the lower echelons of the police but not in higher commanding positions. There was low representation in the civilian part, too, especially in higher positions. There are several reasons for this: political factors, personnel factors and the lack of a strategy as to how to mainstream this issue. One of the political reasons why Macedonians do not want to implement this Constitutional provision is that of a low level of confidence, because they think that the Framework Agreement was imposed on them, and because Albanian politicians do not want to resolve this issue in a systematic way but rather seek to use it for political aims.[66] Most domestic academic experts think that this process was positive and contributed towards easing tensions among ethnic communities. Regarding professional standards, some experts stress that this criteria was respected but should be updated through better training and education.[67] It was a positive step for the affirmation of members of smaller ethnic communities, but absolutely negative in terms of the individual skills and capacities of the selected police officers. The process of re-socialization was approved and

the selection was based generally in most cases on military privileges from the conflict in 2001. This process should have been subjected to more strictly defined criteria.[68] Many supported the inclusion of Albanians in the police structures, but genuinely opposed the selection of people with very low skills. Some of the new recruits (both Macedonians and Albanians) were promoted to the position of police chiefs with zero expertise or education.[69] Some domestic experts argue that it is recommendable for police officers to be from the same ethnicity as the criminals and law-breakers whom they are acting against.[70] Generally, there is no specific political opposition to employing minorities in the police, i.e., the so-called process of 'ethnicisation'; rather the objections are levelled at the low educational achievements and skills and professionalism of the new recruits. Understandably, the job of the police job is complex and new police officers will be faced with difficult situations and have to act with caution and sober minds.

Other important aspects should also be considered in discussing police reform in Macedonia. According to one of the domestic academic experts interviewed, the Macedonian police after 2001 underwent only quantitative reform, restructuring processes, affirmative actions for minorities, implementing the 'community policing' concept and other technicalities. However, scepticism regarding de-professionalization grows in parallel with the increase in political influence over the employment of inadequately educated personnel, and this is crucial in the evaluation and qualitative aspects of the reform. This negative evaluation does not count for the international community but for the Macedonian Government which speaks of police reform citing international benchmarks while the real transformation goes in at least a different direction. Management of human resources in the Ministry of Interior and a career system are absent from the functioning of the police organization.[71] The reform and new concepts are acceptable, but in practice political parties are not ready for the full professionalization and independence of the police. Political parties like to have greater political control and to use the police as an instrument of power. They oppose the new concepts and are not ready for increased decentralization whereby the municipalities and citizens will have opportunities to create their own security and to influence HR policy.[72] The same source added that the high level of politicization undermined the criteria of professionalism and meritocracy on account of political loyalties. The political model of the state remained 'clientelist' because that is the heritage of the political culture and the mismanagement and inefficiency of institutions from before. The only difference today than 10 or 20 years ago is that the system now includes Albanians alongside privileged Macedonians. Instead of democratizing, the state continued with political practices close to corruption, resolving the needs of ordinary citizens only if they are close to political party's pyramids.

Let us consider the annual reports that the Helsinki Committee of Macedonia published in some of the critical years.[73] In 2001, the Committee reported that police training in human rights and the introduction of ethno-sensibility were totally lacking. In 2004, the Committee stressed that the general processes in the country were characterized by further imbalance in the power of the legal and legitimate structures of government compared to the higher posts of political parties. The implementation of the principle of fair representation in many cases was achieved by negating the principles of competence and ability in the structuring of state institutions and the public administration. In 2005, the Committee stressed that the

development of democracy and democratic institutions continued to be limited due to the dominance of party-political interference. In practice this is manifested with a concentration of overall authority in the hands of leaders of political parties. In this way all procedures, rules and criteria are negated, and the only valid criteria remains the will of the party. Not only the state but the society as a whole is more and more nurturing loyalty to its own ethnic group, which is contrary to the goal of building a multicultural civic society in which the basic value should be understanding and respect for differences. Those citizens who do not have connections to some important political (ethnic) centres have no guarantees that in any situations their human rights will be respected and protected. Finally, in 2009 the Committee emphasized that the Ministry of Interior remained the most unreformed segment in the state. It had remained as it was in the old system and state: an efficient tool in the hands of the ruling party. The attempts of some ministers through EU missions (Proxima, EUPAT) to do something about police reform ended unsuccessfully. In 2011, serious violations of fundamental civil and political rights were registered, which were no ordinary occurrences but an indication of systematic weaknesses in the protection of human rights and the rule of law. Discrimination on the basis of political affiliation continues to be one of the leading bases for discrimination, especially in the public administration. Even the annual reports of the Ombudsman, as a professional and independent organ with special status for the protection of citizens' rights, were critical in many sections. Several aspects concerning police activities have been stressed in the last couple of years: that the police has not fully investigated cases of misconduct by police authorities on the side of the Sector for internal control and professional standards and that cases against police officers are by definition delayed for eternity, while after the raising of charges by police officers, trials are undertaken with priority procedure (MHC, 2010); and the weaknesses in the procedures for the acceptance of new police officers and their inadequate training in the course of their work are reasons for the violations of human freedoms and the rights of citizens (MHC, 2011).

Some of the domestic experts interviewed are positive, sharing the opinion that the police reforms generated some results but that more long-term criteria for professional functioning are needed.[74] One of the mid-level police officers stated that the reforms recommended in the reports have been implemented but the results seen on the street are insignificant. For most of the older and newly elected police officers, the concepts are not clear at all. Some models and their elements are a matter of mere 'copy/paste' from more mature democracies. These concepts are not understood by most of the newly and currently higher positioned police officers because they were employed through party-political campaigns and not according to their merits. A genuine change in the Ministry of Interior will only occur if the selection of middle and higher managers is based on technical criteria rather than political affiliation. The police reforms among the heads of police officers are not yet finished. The police reform will be finished when the police deliver and public prosecutors and courts realize the criminal cases against people who are currently in powerful positions. Unfortunately, some of them will be prosecuted only when they eventually step down from the positions they now hold.[75] These instances give a clear picture of the politicized nature of police in Macedonia.

Many of the interviewees also stressed the socio-political factors that negatively influence police work in general and police reform in particular. Firstly, corruption is widespread within society. The impact of corruption is proved by regular data of different corruption research and indices. There is corruption in every state structure and, according to public perceptions, in the police as well. According to the experience of citizens who paid at least one bribe in the 12 months prior to the survey, the public officials who receive most kickbacks in the former Yugoslav Republic of Macedonia are doctors (58% of citizens with recent corruption experience give bribes to doctors), police officers are second (35%) and others.[76] "The police cannot fight corruption because our hands are tied. The bosses from above tell us who we should pursue and who we should not. When we do proper investigations and deliver to the judiciary, they change the decisions and misuse the evidence. Sometimes we work for nothing, just embarrassment. Instead, the politicians should tell the police who is guilty and who is not in advance, in order not to waste our time."[77] Secondly, the police are a powerful and repressive mechanism and can work very selectively. Most of the cases the police investigate the judges will work on and convict the prosecuted clients. But the rest of the cases are pre-selected in some period of time because the police are given too big a role and too much strength in prosecution. One police officer cautiously mentions, for instance, that Albanian police officers have a low rate of finished investigations and proceedings to the courts.[78] This can happen for different reasons: ethnic loyalty, political corruption, or simply fear of criminals. Here the symbioses of 'ethnicisation' and 'politicisation' fully flourish and become obvious at the expense of the democratic police and human rights philosophy. Thirdly, there is still a culture of impunity concerning police officers. It is very seldom that police officers are charged due to corruption, excessive use of force, or mistreatment of people under investigation. The new legal changes, including one Constitutional amendment concerning the wider surveillance operations with the help of wiring, gave police even greater freedom in 'doing business' regarding the technology of providing evidence for law-breakers. Fourthly, there are many cases the police are investigating for which weak evidence is provided through using threats and pressure, and a lot of cases are dismissed. The police in many police structures still consider themselves as an instrument of repressive law enforcement and do not mind using physical force. Fifthly, the already mentioned politicization of police structures is a major problem and every Government seeks to use this force for its own benefit. The professionalization of police officers is highly dependent on the circumstances within society. As of today, many high-ranking police officers are acting as party-political soldiers and this discourages other police employees and decreases police efficiency. This may be a consequence of the way in which the new nationalist parties were created on the model of the former Communist party as a mechanism to control society. The 'exclusive nationalists' are not interested in democratic values. They have 'never succeeded in constructing a popular narrative about peace and human rights'.[79] They are interested only in power to rule, nothing more and nothing less. Sixthly, there is almost non-existent supervision by Parliament and there is a persistence of almost untouchable police appointees within the security services, which rarely share reports from their areas with parliamentary committees unless they ask for traffic news and bank robberies. The media and the civil sector are too weak to monitor the police and to evaluate their work. The police are not sufficiently

open towards the public either. And an even more important problem is that generally the police are not decentralized and are under a high degree of political influence, with great power of control that is misused by politicians. The police have supremacy in relation to the public prosecution, have more resources and are decisive as to who will be prosecuted and who will be convicted, bearing in mind that the judiciary only finishes what the police has delivered.[80] Clearly, through the eyes of my respondents who are engaged in and are knowledgeable about the reality of policing on the ground, the Macedonian police reform process is underachieving in multiple respects.

CITIZEN'S PERCEPTIONS OF THE POLICE

In the following section I juxtapose to the above findings some quantitative data regarding the general satisfaction of citizens with police work. Namely, what is the average level of trust of the police as a state institution compared to other state organs and what are the citizens' attitudes concerning the extent to which state institutions protect their personal rights. Survey data which have become available in the last two years will give us a broader picture of the opinion of the end-users of police work. Satisfaction with police work, trust in the police as an institution, and the state concern for the citizens will be used as indicators of the democratization of the police in its mission to become a 'service for the citizens'.

According to a 2012 survey financed by the OSCE on behalf of the Ministry of Interior, conducted on a representative sample of 2,600 citizens and 500 police officers and later publicly presented,[81] almost half of the respondents generally confirmed their satisfaction with police work, and this trend is increasing compared with 2010 and 2008 (there is an increase from 2008 from 33.8% to 49.7% in 2012). This percentage is twofold when the results are presented with disaggregated data regarding the ethnicity variable for Macedonians (53% satisfied) and Albanians (only 37% satisfied). The impression is completely different because the survey showed that this ethnic difference appears in most of the questions regarding the evaluation of police work. Albanians, after ten years of the conflict, still do not have as much trust in the police as Macedonians. The goal in Macedonia was to integrate the police as an essential, valued, and trusted part of the wider community.[82] According to the conclusions in the survey analysis, the confidence of the citizens in the police is increasing, but Albanians and other ethnic groups still show a more negative attitude and lack of trust in the police compared to Macedonians.

In 2011, the Institute for Social Analysis[83] published a survey under the title 'Democratization awareness of the citizens of Republic of Macedonia'.[84] One of the questions was 'Which institution in Macedonia do you trust/distrust the most?' Of eight institutions (the Parliament, the Government, the President, the Police, the Army, the Courts, Religious communities and overall trust/distrust), based on a representative sample for the country of 1,600 respondents, the police had the third highest level of distrust with 14%, after the Courts (29%) and the Government (24%). The police are among the least trusted, with 2%, together with the Courts with 2% (no institution is trusted with 41%, religious communities with 20%, the Government 15%). The police is probably among

the least trusted because it is still seen as part of the state apparatus and not a structure that should primarily provide services to the citizens and protect their basic human rights. If we analyze the independent variables, the greatest deviations will be noticed in ethnicity, again, which as a variable in our society could greatly change the percentages in comparison with the general distributions of frequencies. These are so-called 'ethnic nodes'[85] that affect the answers about important questions in policy. Albanians with their attitudes completely change the percentages of mistrust in the Government (in a negative direction) and the percentages of trust in religious communities (in a positive direction). Trust in the police amongst Albanians, according to this survey, is less than one per cent.

A third example is taken from research entitled 'Political culture and identities' financed by the Open Society Foundation Macedonia and published in 2012[86] (Simoska et al., 2012). The answers to two questions are significant. According to this research, the citizens have a negative perception as to how much the state takes care of their interests. The scale was from 1 to 10, but grouping the modalities in two categories, from 1–5 and 6–10, will show that the citizens in 85% of cases think that the state does not care about ordinary citizens. Albanians have an even higher negative result, with 95% avowing state negligence of the citizens. The second question was how much the state and its institutions protect their rights as citizens. The answers were shown on four scale modalities (regularly, often, rarely, never). Grouping the answers showed that 75% of the respondents of the survey believed that the state and its institutions rarely or never protect their human rights as citizens. These results in the country with a candidate status for EU membership prove that the political elites representing the people are not seen as working in the interests of the citizens.

If democratic policing is a benchmark then Macedonia is not doing very well with regard to citizen-police relations and the low level of citizens' satisfaction,\. The European Commission Progress Reports from 2008 until 2012 shed light on a large number of inconsistencies regarding the police reform, the high level of politicisation of the police, weak supervision and control, porous human resource management, and the employment of inadequately educated police officers. These weak aspects regarding the training of staff, non-existent merit-based recruitment policy and weak parliamentary control are repeated year after year. These remarks are consistent with the broader societal weaknesses mentioned in this paper in interviews with experts and police officers. Maybe some phases of the police reform are at an advanced stage considering some elements of the system and particularly the police-community relationship; others, connected with police efficiency, the police mission, police officers' behaviour and other human resource aspects in addressing citizen's needs, are still to be worked out. Schroeder wrote that a confusing number of judicial, penal, and police reform projects have been active in the Western Balkans at any given time during the last decade. These have sometimes created problems among the implementers themselves. [87] For instance, the 'The Former Yugoslav Republic Of Macedonia 2011 Progress Report' stresses that 'the numbers of cases of ill treatment which were prosecuted was down to 27 criminal charges against 29 police officers in 2010, as compared to 36 criminal charges against 50 police officers in 2009. No cases of illegal arrest were reported'[88]. But this is only the reported cases that reached in written form some instances and structures. The culture of impunity in police conduct still prevails.

Gordan Kalajdziev, professor of Criminal Law at Ss. Cyril and Methodius University in Skopje, argues that nobody understands the police reform because the reforms depend on international partners and they change course with each new project in the Ministry of Interior, and because they believe the leaders of the Ministry actually do not want real reform. The new reforms in the judiciary and police again are implemented without a clear strategy and with a dose of adventurism and improvisation. As Florian Bieber argued, despite the ambitious goals of international intervention and the largely cooperative local government, the transformation of the police has been slow and cumbersome. Maybe the reason is that the 'long-term reforms cannot be imposed externally: laws might be imposed, but their implementation inherently has to result from the political commitment of the domestic actors. Support has, however, but often lacking or remained lukewarm.'[89] Macedonia makes no difference regarding police reform results, considering that the process itself is usually a complex matter and long-term task.

CONCLUSION

For a long period, the most important element in the area of police reform in Macedonia has been missing, i.e., the political will of the leadership to transform the police into a democratic institution. The matter of addressing police accountability and civilian supervision by Parliament and institutionalizing democratic policing by designing checks and balances between the state institutions is also lacking. Unfortunately, police reform appeared on the security agenda only after the armed conflict in 2001 when an 'urgent need' for involving the police in a post-conflict peace building settlement was both recognized and prioritized. Thereafter, police reform had to cope with necessary transformation and urgent issue of rebuilding trust among the local population in the former crisis regions, competing with and reversing a previously militarized police culture. Inside that security gap, the territories without any state security presence, the concept of 'community policing' was implemented with the main goal of building trust among the multiethnic police units and the local population with the support of strong international monitoring. Compared to defence reform, which had been going on for a couple of years previously under NATO leadership, the police reform was a much more difficult and challenging task. The traditional, functional but highly centralized police structure was in question:[90] namely, whether it could turn into a functional, accountable and citizen-serving institution and take a more proactive role in protecting public law and order and providing for the safety of the people and their rights and property.

There are different variants of 'community policing' with a great deal of similarities. Also, there is no one model of 'democratic policing' that can be bought off-the-shelf. This makes police reform a challenging adventure. The Republic of Macedonia agreed to reform its police forces in order to design a better instrument for human rights protection, including different groups and collectives. Abuses at the hands of the police largely targeted the ethnic Albanian population, since the police force has historically been comprised of ethnic Macedonians. A lack of trust is evident between the Macedonian and Albanian ethnic

groups when it comes to police activity and might be one of the reasons for the bloody civil conflict that emerged in 2001 (Grillot, 2008).[91]

Police reform in Macedonia, it was argued, 'happened' due to the events of 2001 and the need for a new approach based on 'community policing' in order to protect the smaller communities. The process of Euro-Atlantic integration somehow 'occurred' at the same time and police reform was not the only reform undertaken in this period. It was elaborated that the police structure still suffers from internal weaknesses and negative contextual factors that obstruct greater progress toward becoming closer to the concept of a 'service to the citizens'. Even though a lot was done in the security area (EU, OSCE, US, NATO), a lot of work remains regarding the democratization of the state, good governance and 'democratic policing'. This paper has particularly stressed the impact of the massive integration of members of non-majority communities, mainly ethnic Albanians, into the police structures. On the one hand, this contributed to stopping further violence, easing ethnic tensions and building more trust among communities, solutions overcome by political compromise. On the other hand, Macedonia should look for more systematic long-term solutions aimed at a more professional role for the police structures and their de-politicisation and respect for the rule of law and stronger checks and balances. It was argued that imported ideas and models like 'community policing' and human rights can be introduced in a divided society but that they cannot work while the dominant processes in society are burdened by the supremacy of party politics over the law. The rule of law must be the cornerstone of the state and the main pillar of human rights. Macedonia is not following the civic nation model but an ethnic democracy model, while the nature of its democracy has remained flawed, and being a multicultural society complicates the other processes of democratization, including police reform. The conclusion is that the concept of 'community policing' has mainly been implemented, but the implementation of democratic policing will be delayed. Whatever has been reformed so far within the police structures is not enough and it will be necessary for the Ministry of Interior to engage more sincerely in reforming the police and other justice institutions in a way compatible with democratic society. Grillot in 2008 stressed the fears on the part of the international community that 'once the international community withdraws from Macedonia, the practices of old will return. The Macedonians will quickly return to past policing practices if it were not for international presence'. The current development may support such a statement, as research has shown that some ingredients are undermining efforts if the aim is to enhance police reform and the human rights agenda in Macedonia. There is a vision but there is no political will to carry it out.

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PROFESSIONAL PAPER

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TEORETICAL MODEL OF POPULAR EDUCATIONAL CHILDERN'S TV PROGRAMMES FOR EARLY AND MID-CHILDHOOD

Abstract

The subject of interest in this text is popular educational children's TV programmes in Macedonian production and in Macedonian language (aimed at children aged 2-12) in the time period before Republic of Macedonia's independence (1985-1991/2) and from thereafter until today (2020). The content analysis of these children's programmes provide an insight into the problem (which does not seem to have any background national research and even the wider region as regards the subject of the research), a breakdown of main points, elaboration and guidance through a specific theoretical model for further application into practice, with the intention of raising the criteria and improving the strategies of producting better quality children's TV programmes, since all current analyses indicate insufficient quality when it comes to educational and pedagogic elements.

Keywords/phrases: content analysis, children's TV programmes, pedagogic and educational elements, television, theoretical model

INTRODUCTION

The quality of content of all TV programmes aimed at children as the focus audience is a (relatively) unresearched field in Macedonia, and the wider region. The conclusion arising from all consulted literature around this topic as well as conducted field research is that past and current investigations related to children's TV audiences are mostly around the influence of specific TV content on children's behavior and their psychological and emotional development. In that context, a starting point of analysis is violence shown on TV and this type of research is focused on its influence upon children's behavior and development. Also, a frequent starting point of analysis in that type of research is a specific inappropriate content shown on television in time slots that allow the content to be available to children even though it is not appropriate for their age and level of psychophysical, intellectual and emotional development and have a negative effect on them (for example, content containing violence, erotic scenes, pornography, hate speech, 'soap operas' etc.). That type of research often provides recommendations and advice on increasing the quantity and quality of children's TV programmes; however it lacks analysis of specific content aimed at children that would offer an appropriate model and guidance for creating relevant and good-quality TV programmes for children.

In 2012/13, research was conducted over the quality of popular educational children's TV programmes in Macedonian production broadcast by Macedonian TV stations in the period before Republic of Macedonia's independence (1985-1991/2) and after (1991/2-2012). This research pointed to the need for creating a theoretical model for a children's TV programme that will take into consideration all aspects of the research and that would summarise all findings, ultimatiely creating a relevant model for a popular educational children's programme (for early and mid-childhood[1]) that would be applicable in practice.

In his research paper „Quality in Children's Television", Peter Nikken (Nikken 1999) notes and mentions the fact that certain institutions and other research shows that TV stations and productions should offer better quality programmes to children, without actually specifying the qualitative standards that these programmes should satisfy nor do they offer a model to follow in the process of creating and executing children's programmes. Aiming to fill this gap is the primary focus of the theoretical model of a children's programme further presented in this text, as an outcome of the extensive research.

When creating a theoretical model for a popular and educational children's programme, the following elements/aspects need to be taken into consideration (Koneska-Vasilevska 2013):

I QUALITY OF CONTENT IN CHILDREN'S TV PROGRAMMES

When it comes to the quality of content in children's TV programmes, the overall focus is on the content's effects: "The media no longer address us to broadcast objective

1 Early age or early childhood refers to children aged two to six, and mid-childhood refers to children aged six to twelve, therefore the age spectrum for these children's programmes is from two to twelve.

information, but to conquer our minds. As Gebels already emphasised: 'We no longer talk in order to say something, but to achieve a certain effect'" (Ramone 2004: 24). When it comes to this element, the type of effect on the audience is crucial considering that producing (bad) quality TV programmes directly influences the psychological, intellectual and emotional development in children and therefore is especially important what and how the content is shown, since this will determine what the effect of these programmes will be on the children (Bryant and Oliver 2008).

In regard to the effects of the message on the recipients within the communicative process, the main theory (model) to consider is the one by Harold Lasswell that includes the following elements: Who –> Says what –> Via which channel –> To whom –> With what effect. In this model, Lasswell emphasises the question of produced effect more than its meaning (Fiske 1999: 30-31). The segments of research included in Lasswell's model (or paradigm) are: analysis of control (which corresponds to the *sender),* analysis of contents (which corresponds to *what is said* in/with the message), analysis of media and support (which corresponds to *via which channel* is the message being sent) and analysis of effects (which corresponds to the *effect* of the message on the recipients) (Fiske 1999).

Also, when it comes to the element of (bad) quality children's TV programmes and the effect that broadcasting this content on television has on children, it is especially important to mention George Gerbner, who represents the *cultivation theory.* This is a social theory interested in the long-term effects of television upon viewers. Cultivation theory points to the influence of television in educating an audience, mostly consisting of children and youths (Shanahan and Morgan 1999). Gerbner believes that television as a mass-medium is fundamentally different than all other mass-media and emphasises its power in shaping the way our society thinks and functions and in distorting the perception of reality among viewers. And the children are the most vulnerable group of TV viewers. Gerbner is of the opinion that what you watch on television in childhood can have a special effect on your personal beliefs and view of the world and society which the child will cultivate further in life, as an already grown-up adult (Shanahan and Morgan 1999).

II SOCIETAL, POLITICAL AND CULTURAL CONTEXT

Another aspect to be considered when creating a theoretical model for a children's TV programme is the societal, political and cultural context in which the content is being created, and which has an overall and general influence upon all aspects of life, including the media, and the content of TV programmes aimed at children specifically (Jameson at Gjorgjevic 2012). In this regard, it is important to mention the societal, political and cultural theories (A. and M. Mattelart 2003; Gjorgjevic 2012). Within this context, it is also necessary to mention the ownership of media, or television specifically, which directly depends on the type of organisation and development during the various time periods; thus, the Republic of Macedonia's independence welcomes the first appereance of TV stations in private ownership alongside the existing public service.

In relation to this, when comparing socialism and capitalism on societal, political, economic, and cultural grounds, Erich Fromm (The Frankfurt School) says that the capitalist order is ruinous for humanity, because everything comes down to profit. He believes that in capitalist society (in all its shapes) capital rules over man with a sole goal – maximum profit, whereas socialism puts man in the middle, to rule over capital, over circumstances to use it for his own goals, and the expedinture and profit are not goals of their own (Fromm, 1989). Perhaps this can be an explanation why there are significant differences between our production of children's TV programmes before our country gained independence and right after and all throughout the following years (Koneska-Vasilevska 2013).

III PEDAGOGIC AND EDUCATIONAL ELEMENTS/CONTENT

A third aspect to be considered when creating a solid theoretical model for a children's TV programme is the pedagogic and educational elements or content. A conclusion can be drawn from the 2012/2013 research that the pedagogic and educational elements and content are more present in children's TV programmes of Macedonian production and in Macedonian language in the period before the country's independence (1985-1991/2) and right after (1993), compared to the following years within the given timeframe (2012) (Koneska-Vasilevska 2013). Thus, in the total of 13 analysed episodes of "Ajde da se druzhime" and "Bushava azbuka" (produced in 1985) and "Dajte muzika" (produced in 1993) TV programmes, research findings show that there is presence of pedagogic and educational elements and content, and this can be observed via the following (Koneska-Vasilevska 2013: 93):

1. Use of a standard register and modern Macedonian language by the participants in the programmes.
2. Selection of appropriate, relevant and diverse topics and genres in the programmes.
3. Qualified and technical team for the ideation, preparation and production of the programmes, which led to the use of appropriate audiovisual elements.
4. Appropriate and decent external appereance of the participants in the programmes.
5. Appropriate and decent behavior by the participants in the programmes.
6. Appropriate and decent non-verbal speech by the participants in the programmes.
7. Stimulating playfulness by the participants in the programmes.

When it comes to programmes produced after Republic of Macedonia's independence (in the period from 2002 until 2012): "Aj ti zamizhi", "Bonton", "Pet plus", "Svetot ima osum strani" and "TV-lektira", the findings after analysing 23 episodes are that the previously mentioned categories are either not as present as in the programmes "Ajde da se druzhime", "Bushava azbuka" and "Dajte muzika" or in some cases completely absent (Koneska-Vasilevska 2013: 93). It is important to single out the "Dajte muzika" programme as standing in the middle, because, although produced after the country's independence, it does contain pedagogic and educational elements and quality content at the same level as the programmes produced before the independence; however it lacks certain other elements, as characteristic for those programmes produced after. Therefore, this programme signifies the process of "transition".

Hence, the findings of the full research point to the necessity of creating a theoretical model for a children's TV programme that would ensure the presence of quality content for all future children's TV programmes.

CONSTRUCTING A THEORETICAL MODEL FOR A POPULAR EDUCATIONAL CHILDREN'S TV PROGRAMME

The extensive research from 2012/2013 was instrumental in initiating the creation of a model for a children's TV programme, but a few new children's TV programmes in Macedonian production created in the last few years, such as "Svetot na Bibi", the new version of "Dajte muzika", "Gore-dolu site sme ednakvi" also encouraged this research. A new wave of children's TV programmes that are mindful of good quality content has been noted. "Pet plus" was one of the programmes included in the research from 2012/2013 and it was a solid starting point for further creation of good quality children's TV programmes, unlike the "Aj ti zamizhi" programme, also included in the research, where the quality of content is not appropriate and the primary focus must have been on creating a commercial product (Koneska-Vasilevska 2013).

Thus, in "Svetot na Bibi" TV programmes ("Skaznite na Bibi", "Azbukata na Bibi", "Uchime so Bibi i Bobi"), an expert team responsible for the entire "Svetot na Bibi" project including its TV programmes is noticeable: there are scriptwriters, illustrators, professional actors, animators, editors, producers, directors. Therefore, these programmes have both entertainment and pedagogic and educational elements. A team of experts stands behind the new version of the "Dajte muzika" programme too, which is a project that, above all else, carefully considers quality content for children's TV audiences, and therefore provides appropriate entertainment mixed with pedagogic elements and takes special care of sets, costumes, music and acting in service to the psychological, intellectual and emotional level of age-appropriate children's development.

On the other hand, the "Gore-dolu site sme ednakvi" programme continues the trend of one moderator, who is simultaneously an author of the programme, as is the case with the "Aj ti zamizhi" programme (Koneska-Vasilevska 2013), which significantly reduced the standards of having more diverse and better quality television offering for children, since it lacks expert guidelines for including appropriate pedagogic and educational elements. Frequent use of jargon and slang by the moderator can be detected as well, and elements of ensuring the programme is a commercial product etc., which implies that additional pedagogic and educational elements are needed and a more diverse offering of similar content, as well as taking care of proper use of language and presentation of topics in order to be identified as a good quality content, appropriate for children TV audiences.

According to the findings above, it is paramount to offer a theoretical model for a popular educational children's TV programme which would be applicable in practice, that is, that would help the ideation and creation of this type of TV programmes and provide a direction for creating content that maintains appropriate qualitative criteria and standards and would include appropriate educational elements (see: T-1).

T-1: THEORETICAL MODEL FOR A POPULAR EDUCATIONAL CHILDREN'S TV PROGRAMME (FOR EARLY AND MID-CHILDHOOD AGES)

PROGRAMME PREPARATION	Analysis of societal, political and cultural context	Before starting on creating and implementing a specific children's TV programme, it should be placed within the societal and cultural milieu in order to be accepted.
	Assembling a team *Psychologists, pedagogists, communicologists, proofreaders, producers and editors, directors, scriptwriters, set designers, costume designers, professional actors, professional moderators, composers and songwriters, technical staff, various culture, arts and education collaborators*	An expert team is especially important for the preparation and further implementation of a children's TV programme since a diverse team would naturally involve inclusion of various aspects and elements that would contribute towards a comprehensie final product, that is, an expert in each field would bring quality to some aspect, and when combining all aspects, the final product would offer good quality and diversity for the children and would include everything that a popular and educational children's TV programme should contain.
	Selection of topics	Topic selection for children's TV programmes is especially important when it pertains to the educational and entertaining element. All topics within the programme should be age appropriate, relevant and diverse and include several pedagogic and educational, as well as entertaining aspects and popular content, in order to intrigue the child, encourage curiosity and ensure the child is entertained while learning.

IMPLEMENTATION OF THE PROGRAMME	**Speech** - *Verbal* - *Non-verbal*	Verbal speech: To use standard register modern Macedonian language by the participants in the programme. Non-verbal: Appropriate and decent non-verbal speech by participants in the programme, without any vulgar, forced and mocking gesticulations and grimaces.
	Appereance and behaviour by the participants in the programme	Appropriate, decent and natural external appereance of the participants in the programme, as well as their appropriate and decent behavior.
	Audiovisual elements	Use of audiovisual elements which, when combined with the rest of the recommended aspects and elements, would contribute to a well-created whole.
	Playfulness	Implementing playful activities in order to encourage playfulness among children, and positive feelings as a consequence.
EFFECTS OF THE PROGRAMME	**Impact on the mental, intellectual and emotional child development**	In terms of the effect upon children's audiences, the TV programme should have a positive impact on the mental, intellectual and emotional development of children and "impose" a specific system of values long-term.

Considering all these findings, it is important to mention that when ideating, creating and implementing popular educational children's TV programmes, these projects should ideally be independent ventures in order to reduce the commercial aspect which should not be a primary concern and all given laws, regulations and norms set by relevant institutions for abidying by the qualitative standards and criteria should be respected, as well as having a moral responsibility during the entire process.

CONCLUSION

The results of the extensive research conducted in 2012/2013 that investigated the quality of content in popular educational children's TV programmes in Macedonian production and Macedonian language in the time period before the Republic of Macedonia's independence (1985-1991/2) and after (1991/2-2012) drew a general conclusion that children's audiences in the Republic of Macedonia should consume TV content that would involve more educational elements, has better quality and is more appropriate, because those TV programmes currently offered either do not contain all necessary elements or have not been appropriately presented, and in some cases those elements even come second because of the strong focus on commercialisation of this type of programmes.

Henceforth and also due to the occurrence of a few more recently broadcast TV programmes, the need for constructing a theoretical model for a popular and educational children's TV programme (for early and mid-childhood) has arisen, with the aim to raise the level of quality television content offered to children.

These programmes should use the good quality programmes produced before the country's independence and right after as the standard and they should adapt these to the current level of development and therefore offer children an all-round good quality product. Gaps should be identified and negative elements that are not contributing to a better-quality children's TV programme should be removed. And in combination with new technologies and achievements, which have not been available before or were significantly less available, huge breakthroughs can be made. However, in order for this to happen, some "classical" values and standards with no "expiry date" should be met. Only in this way would children be offered good quality TV programmes and encourage maintaining real values and set real criteria and standards for further development.

This text aimed at summarising all this in a single theoretical model for a children's TV programme that can be applied in practice, taking into consideration the findings and conclusions from the more extensive research in 2012/2013 on the quality of children's TV programmes in Macedonian production and adding those in context to the current and future offering.

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ORIGINAL RESEARCH PAPER

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THE INSTITUTE OF PROPERTY IN CIVIL LAW – THEORETICAL AND PRACTICAL ASPECTS

Abstract

The article analyzes the notion, function and characteristics of property as one of the most undefined categories of civil law, namely of the private law in general. In an effort of shedding light on the institute of property, the article follows the path of the historical development of this institute, starting from Roman law until the contemporary law. Since the institute of property and the institute of ownership in theory and in legislation are often used as synonyms, this fact can cause difficulties in applying legal norms that refer to the notion of property, respectively, ownership. Thus the article will clarify the relationship between these two significant institutes. It will also analyze the functions that the institute of property has in the legal relations within various comparative legal systems, always following the transformation of the notion of property depending on the function that it realizes. Furthermore, the article will analyze the importance of property within the

framework of private law, the relationship between property and property law, as well as between the notion of property law in an objective sense and property rights in a subjective sense.

Keywords: property, ownership, responsibility, property law

INTRODUCTION

Property is one of the most important categories, and at the same time one of the most complicated and least understood categories of the civil law, namely, private law in general.[1] The right to peaceful enjoyment of property is a fundamental human right, that is protected under the provisions of the European Convention for Human Rights and guaranteed by the European Court of Human Rights.[2]

The legal theory has not yet achieved to give a unique definition of the notion of property because its meaning has three dimensions: legal, economic, and as a category of land registry (Klarić, Vedriš, 2006). The theoretical definition of the notion of property gains importance because this notion is not defined in normative acts, moreover in the Republic of North Macedonia we do not have yet a codification of civil law which would serve as the main normative text which would define the institute of property. Thus, even though the term property has been used in most of the national legislation in the area of civil law, we do not find its definition in any of them.3 The notion of property is not defined even in the systems that have proper civil codes. The German civil code (Bürgerliches Gesetzbuch-BGB) in several of its provisions refers to property, but it does not give its definition in any of them (BGB, 83). The French Civil code too, like the German civil code, mentions the term property several times, but it doesn't define it. The issue of the notion, functions and characteristics of property is still present today because the term "property" is used in various provisions of private and public law, but the legislator does not appear to be consistent in using this term, therefore, often the term "property" is used to denote the institute of "ownership" and vice versa. The resolution of the dilemmas regarding the notion, functions and characteristics of property is also linked to the immediate need to define the property sphere of the civil law from the non-property sphere, the latter's legal protection for the sake of the truth in recent decades has gained considerable importance.

PROPERTY LAW AND PROPERTY

Property consists of all the subjective civil rights that belong to a subject and which can be expressed in monetary value. The basis of property are the real rights, from which the most important is the right of ownership of movable and immovable things (Kovaĉević-Kuštrimović, Lazić, 2008). Property, namely the property relations that are created about

1 In the everyday life, the term "property" is used to refer to the idea of economic wealth, which entails positive values that can be expressed in money, and in this context it is unacceptable that a person that has no property value possesses property. The idea of property is consumed by the economic condition of the subject in general, which includes debts, and which may be good or bad depending on the level of the assets and liability.

2 Article 1. Protocol 1 to the European Convention on Human Rights protects the fundamental right to the peaceful enjoyment of property. This right is subject to restrictions the admissibility of which is assessed in each individual case by the European Court of Human Rights..

3 Thus, the Law on Ownership and Other Real Rights uses this term nearly 60 times, but does not define it. Similarly, Law on Obligations uses the term property in approximately 70 cases, or the Law on Inheritance in 17 cases.

it make up the basis of property law. The term "property law" is used to refer to civil law as the set of legal norms which regulate property relations and in that case the syntagma property law is used in an objective meaning. This name was used in socialist states precisely because of a lack of tolerance for the notion of private law, but this name is not acceptable because civil relations are not always property-related, but they also include other relationships that have non-property character. The notion 'property law' which included norms governing the property sphere of social relations has long been used in the civil doctrine of the Republic of Northern Macedonia as well (Групче, 1983). The term property law is still used in Swiss theory to this day, but in its substantive sense it includes only real law and the law of obligations (Tour et al., 2002).

HISTORICAL DEVELOPMENT OF PROPERTY

The term property has been established in Roman law long before the notion of ownership. Roman law has dedicated a central role to property, and in the framework of legal capacity it has also acknowledged the capacity to possess property (von Schwind, 1950). In order to define property, the Romans often used the terms *"bona"* and "*familia pecuniaque,"* and less so the term "*patrimonium"*. The term "*bona*" included goods and property, while the term "*familia pecuniaque,"* implied people and goods, the family members of *pater familias*, slaves, movable and immovable things, etc (Stanojević, 2010). The notion of property was linked to the institute of *civis Romanus*, *paterfamilis* and to inheritance (Margetić, 1997). Since under Roman law the head of family was a holder of rights[4], property was inseparably linked with him and transferred only through inheritance (Gavella, Belaj, 2008). With the development of the market economy, property is transformed as basis of transactions, whereas as part of the property were not considered things that have no material value, but only those things that have had a circulating value. In the period of the Roman Republic, under the notion of property, only physical things and assets were included, but not debts. After the collapse of the Republic, the notion of property began to be understood as a whole that included assets and debts (Stojĉević, 1998). In later developments, in addition to the general notion of property (*bona*, *patrimonium*), Roman law also recognized the special property (*peculium*, *merx, dos*), which included special funds within personal property. *Peculium* entails the part of the property that one person gave to another (father to the son), but only to carry out a certain activity, while that part of the property continued to be part of the property of the giver. *Merx,* was a category narrower than *peculium* and related to undertaking certain act. *Dos* represented a special property, which wife brought into marriage, but with which husband administered (Klarić, Vedriš, 2006). One category of things that could not be subject to private law is known as *res extra patrimonium*. In addition to private property, Roman law also recognized public, respectively, state property called *aerarium*, which initially was not owned by anyone. At the time of the Principate, *aerarium* became private property, where one part was administered by the Senate (*aerarium populi Romani*) while the rest by the emperor (*fiscus Caesaris*), but

4 First of all, the paternal property (patrimonium) is presented, and then the maternal one *(matrimonium)*

in the end, all the state-owned property became the private property of the emperor (Eisner, Horvat, 1948).

In medieval law property in its substantial sense has not been recognized for a long time. Medieval law used the term "property" to denote "ability to act" (Köbler, 2010). In 1539 the term "property" was first used in its substantial sense, as an obligation of every citizen each year to pay tax on their property. For Carl von Savigny (1840) "debt is considered as a component of property", so, the author defines "property" as a set of rights that remains to the holder after deduction of debt (Savigny, 1840). Since then, the legal concept of property has taken into account the assets and debts, while the so-called "natural concept of property" includes only assets.

In later history, various theories which dealt with the notion and importance of property were developed. The most pronounced is the classical subjective (personal) theory of the 19th century, created by the French authors Aubry and Rau. According to this theory, the idea of property derives from the idea of personality and is an expression of the legal power that a person has. According to the authors of this theory, a person's property includes all goods indiscriminately, both inborn and the ones that are created later on, the assets (subjective property rights) and liability (debts).[5] It is important to emphasize the fact that even if debts exceed assets, this circumstance does not deprive the person of property; therefore, it will be considered that the person has property even though he does not possess any property goods. According to this theory, a person can have only one property, which is indivisible and cannot be transferred. Property as a entirety is closely related to the personality of the person (the holder), and as such cannot be transferred to a third person because it doesn't have independent existence. On the contrary, the rights and obligations that comprise property are transferable on the legal circulation and can be expressed in money, moreover the rights that can't be transferred are not included in the property. During his life span the subject cannot denounce his property, nor can he be deprived of it against his will, he is separated from property only in case of death (*mortis causa*), whereby his personality ceases to exist and the property is transferred to the heirs (Stanković, Vodinelić, 2007). So, even though property is not transferable, it is still heritable. However, as to the assertion that property as an entirety cannot be an object of civil relationships *inter vivos* in our law of obligations there is an exception where property as an entirety may be an object of *inter vi*vos civil relationships, hence, the Article 1022 of the Law on Obligations states that: "by the contract to cede property during life time, the assignor shall be bound to cede all of his/her property or a part of the property to the descendants ".

The authors of this theory consider that the subjective right of ownership can be created over property. Obviously, such an approach is unacceptable, first and foremost because it contradicts the principle of specification (the right of ownership can be established on things and rights precisely specified), and secondly that the right of ownership can be created only on things and categories equated with the things, but not over claims. However, this approach of the authors may have been encouraged by the fact that property as such can be inherited and passed on to the heirs. But, the transfer of ownership over property through

5 This concept has been abandoned with time, thus in the contemporary civil law debts (liabilities) are eliminated from the notion of property, while only subjective property rights (assets) deemed to constitute property.

inheritance constitutes only one exception, because otherwise property is a broader notion than ownership, which consists also by other property rights, claims related to handing of things and transfer of rights, monetary claims arising from civil obligation relationships, etc.

The most common criticisms addressed to subjective (personal) theory are related to the theoretical claims that property is a personality quality, respectively that property is an expression of the legal capacity of subjects. The remarks are also related to the fact that the theory cannot provide explanations regarding the creation of particular types of juristic persons such as foundations created on the basis of testament. Since a testament produces legal effect only after the death of the person, the subjectivist theory which claims that property cannot exist without a holder, has failed to explain how the testator's property is transferred to the foundation, given that the same one is created after a certain period of time after the death of the testator (Kovaĉević-Kuštrimović, Lazić, 2008). This deficiency of subjectivist theory is explained by Brinz's objective theory, who in 1860 developed the theory of patrimony of affectation (*Zweckvermögenstheorie*), which asserts that property is not inseparably linked to its holder and it can be thought of as a set of property rights that has a specific purpose, in which case it is property without a holder (Becker, 2007).

The approach of the subjectivist theory, according to which, all property rights that have monetary value are transferable can be criticized because not all rights that have monetary value can also be transferred. For example, the right of usufruct is a property right, which is included in the property of the subject but it cannot be transferred due to its strictly personal nature. The subjectivist theory has maintained a degree of flexibility in asserting that all property rights that have monetary value can be part of the property. Thus, several authors assert that within property, indirectly are included the personal non-patrimonial rights, through the institute of compensation for non-patrimonial (personal) damage (Stanković, Vodinelić, 2007).

THE NOTION OF PROPERTY IN THE THEORY, SPECIAL LEGAL PROVISIONS AND THE JUDICIAL PRACTICE OF THE REPUBLIC OF NORTH MACEDONIA

Our legal theory is dominated by the view that every subject of civil law should have property, because civil transactions are realized and expressed through property. According to the principle of pecuniary sanctions, as one of the fundamental principles of civil law, in the case of infringement of the civil law relationship, the sanction will strike the property of the subject infringing the right, thus, the subjects are liable through their property, and this represents its guaranteeing function (Живковска, 2011). But despite the importance of the institute of property as a basic category of private law there is still no unique approach to its notion and content. Property as an institute of property law is expressed in several meanings, such as a set of property goods, namely, objects of property law and other rights (in economic sense); as a set of subjective property rights belonging to a person (in legal sense); and as a relation between assets and debts (according to land registry).

In specific legal provisions depending on the matter that they regulate and the intentions of the legislator, the content of property is determined in different ways. In the Law on Inheritance of the Republic of North Macedonia (1996) the term property includes the entirety of things and rights that belong to the testator. However, in certain cases the law uses the expression property to designate only one category of things, so in Article 37, paragraph. 1 of Law on Inheritance, the legislator states: "Spouse, ancestors, adopters, descendants, the adopted and their descendants and persons referred to in Article 29 of this Law, who have lived in a household with the testator are entitled to household items that serve to satisfy the daily needs, other than items with great value" (Article 37, paragraph 1, Law of Inheritance). In some provisions the term property is used to denote both rights and debts (Article 137, paragraph 1, Law of Inheritance). The Law on Family of the RNM uses the term property in many cases and it seems that the legislator when using the expression property considers a set of economic values belonging to a subject. It is also worth noting an interesting fact that points to the ambiguity and lack of consistency of the legislator in using the term property. Thus, in Article 204, paragraph 2, which defines the special property of the spouses, it is stated that: "as individual property is considered the property and the right to the property that the spouse will obtain by inheritance, legacy and gift…". From this provision we do not understand what type of right to property is being discussed, moreover when it is clear that property as an entirety cannot appear as an object of law *inter vivos*, but only exclusively *mortis causa.*

In judicial practice the notion of property is used to define property goods, especially things. Thus, in the case of the division of common property between the spouses in judicial procedure, the immovables (vineyards, houses, cars,) and other movables and immovables are considered as part of property. In some cases, the common property is required to be proven in a juridical procedure. Even in these decisions courts consider items as property, recognizing the claimant the right over 1/6 of the ideal share of the common property-spousal apartment.

PROPERTY AND OWNERSHIP

Property and ownership in everyday life are often wrongly used interchangeably with each other or used as synonyms, therefore it is necessary to distinguish the notion of property in civil law (*universitas juris*) from the notion of the law of ownership. The notion of property includes everything that subjects possess, such as rights, things, interests, etc. all of which they have the right to use, take fruits and dispose freely. Property represents a broad notion, an integral part of which may also be ownership, but not necessarily, meanwhile some authors with the term property imply a complex set of rights, entitlements, powers and privileges of the holder of rights over other persons.

The term property from civil law perspective implies all subjective civil rights with patrimonial character that belong to a subject of law. Namely, property in addition to ownership includes other subjective civil rights of patrimonial character. In this context it is wrong to identify property with ownership because ownership may be the object of

property, meanwhile the entirety of property only in exceptional cases can be subject of ownership *inter vivos* because not all subjective rights that make up property are of patrimonial character (ex. claims from civil obligations).

The authors of the subjectivist theory Obri and Ro consider that property consists of rights and obligations and not things, and that things are included in property as rights over things, while as things are included in the patrimonial mass. Therefore, it is fairer to understand the notion of property as a set of subjective civil rights rather than of items since items enter into one's property indirectly through the rights that exist over them (Vuković, 1950). The dilemmas regarding the content of property continue to this day. Often in legislation, in theory as well as in practice, we find the terms "property" and "property mass" to be used synonymously (in similar manner acts the Law on Ownership and Other Real Rights). The use as synonyms of the aforementioned expressions can cause many misunderstandings and controversies, therefore, we must make distinction between the notion of "property" as a set of rights and duties and "property mass" as a set of items over which the rights are constituted, respectively, as transaction value or as a pecuniary expression of the economic values to which the rights and duties relate (Gams, 1991).

Ownership represents the fundamental institute of civil law and the main subjective right that is included in the property of a subject (Живковска, 2005). Ownership, as a subjective civil right, acts on everyone and gives its holder direct legal power over things. It represents the full power that can be exercised within a given legal order, while the content of the entitlements of the holder to use, take fruits and dispose of the things belonging to him, is determined by the provisions of a particular legal order (Kovaĉević-Kuštrimović, Lazić, 2008). In fact, in a narrow sense the object of ownership can only be corporal things, and exceptionally rights as non-corporal things (Живковска, 2011).

There are some opinions stating that ownership as a way of economic acquisition differs from other forms of acquisition of things, due to the fact that ownership represents a direct acquisition of a thing, which is not entirely accurate because things in the economic sense can be directly acquired in other forms, ex. through lease. However, the acquisition through lease is not a complete acquisition - ownership acquisition, but rather about partial and limited acquisition. Therefore, only when the subject in its entirety acquires a thing, i.e., when third persons are completely excluded from the acquisition, we talk about ownership, as an absolute real right over his thing.

Ownership is created and exists within the framework of property. Property, whether exclusive or common, is always a wider notion than ownership, whether exclusive or common, meaning that the notion of property entails within itself the notion of property (Групче, 1985), and in this context, every ownership is at the same time property, but not the opposite, namely, every property is not ownership at the same time, as it may be a civil obligation claim. Regarding property it can be said that it represents the acquisition of circulation value whereas ownership represents the acquisition of the value of use (Gams, 1991).

DEFINITIONS OF THE NOTION OF PROPERTY

In legal theory there are different definitions of the notion of property. This is because, as noted above, the modern European codifications use the term property, but do not contain a definition of it in order to have a clear picture of what we mean by the notion of property and what its content is. Property in German law is not protected as a "special right" in the sense of § 823 Abs. 1 BGB (Teichmann, 2004). In the German Civil Code (BGB), namely, in the norms that regulate relations of civil and commercial areas, property is defined as a set of a subject's rights that have pecuniary value, i.e. the liability is not considered as a part of property (Larenz, 1989). In the civil legislation of other countries the notion of property in every legal norm may have different content and can be interpreted in different ways. The German legal theory has adopted a large number of definitions, which have been further incorporated into German-speaking (Austrian and Swiss) legal theory. The German legal theory considers that the notion of property has different meanings because it serves for the realization of different functions, thus it distinguishes the general and the particular notion of property.

LEGAL CONCEPTION OF PROPERTY (GROSS PROPERTY)

Property as a legal category (gross property under German law) represents a set of property rights that belong to a subject. According to a well-known principle of civil law, the subjects of the law in the legal transactions are liable with their own property, therefore given the fact that the debtor is liable to the creditor's claims with all his property, there is no logic to also include debts within the framework of property. Property includes rights over things and not the things themselves, that is, the right ownership over certain things and not the things on which the rights are established.

In the legal meaning of property, i.e. gross property, by which the debtor is liable in the legal transactions, only the property rights, respectively, the rights that have pecuniary value are included.[6] Usually these are rights that can at the same time be transferred, with the exception that within property may be included rights, that are not transferred provided that a material value can be created by their use or exploitation (personal servitudes). Property also includes claims that arise out of an obligation for compensation of non-material damage due to the infringement of personal rights, as well as parts in various forms of joint property. However, property cannot include personal and family rights, as well as personal qualities of a man.

6 Property does not include possession itself unless the right to possession exists.

ECONOMIC CONCEPTION OF PROPERTY (NET PROPERTY)

In economic sense, property represents a set of goods (objects of ownership and other absolute patrimonial rights) of a subject expressed in monetary value. This is actually what we call a property mass. The transfer of goods is realized through the property mass, so that money is earned for a sold item and vice versa, namely, the value of usage is converted to turnover value and vice versa. Property in economic sense, or net property, is created when the debt is deducted from the gross value of property (Larenz, 1989). It consists of the rights and liabilities (debts), more precisely, the value of the rights reduced by the value of the liabilities (debts). Regarding the definition of the notion of property in the economic sense, net property, in there is no uniform position contemporary legal theory. While in the Croatian theory the notion of property in the economic sense - net property coincides with the term property in the meaning of land registry, this is not the case in the German law (Klarić, Vedriš, 2006).

Economic conception of property or net property in certain legal situations continues to respond to the needs for an institute, which would include the rights and obligations that belong to a subject. In our positive law, property in the economic sense to a certain extent is expressed when determining the value of succession property in the provisions of the Law on Inheritance. In fact, the legislator uses the word "inheritance mass" and speaks about goods and not rights over them. In support of the provisions of the Law on Inheritance, first of all property goods that belong to the testator should be recorded and estimated, and then debts, expenses for the estimation of property and the burial of the testator should be deducted from its value (Article 33, Law on Inheritance). From the provisions of the law we can conclude that the inheritance property as well as the property in economic sense is constituted by assets and liabilities (debts).

PROPERTY IN TERMS OF COMPENSATION OF DAMAGE

The notion of property is also important in the area of law of obligations, namely the law on compensation of damages. In the Law on Obligations it is said: the damage represents a reduction of one's property (simple damage) and obstruction of one's growth (lost profit), as well as the violation of personal rights, non-material damage (Article 142, Law on Obligations). In the context of the law of compensation of damage the notion of property in economic sense (net property) is more important because it encompasses both rights and obligations. However, from the legal provision that regulates the compensation of damages it appears that the notion of property in the economic sense is not sufficient to include the position of the legislator, according to which the property of the injured party may be reduced not only because of the decreased subjective property rights (their value), but also due to the creation of new obligations or the increase of existing obligations. With regard to the obstruction of property increase (lost profit), as a type of damage, the notion of property in an economic sense is not sufficient, since the lost profit is not meant to be expressed over the set of subjective property rights of the injured party. Thus, if tortfeasor through his

actions prevents the injured party in concluding a contract with a third party, in this case the injured party has not lost any subjective right, although he has suffered property damage. As noted above, we can conclude that for the purposes of compensation of damage, the notion of property is broader not only from the notion of gross property but also from the notion of net property, because it includes within itself the lost profit.

The notion of property in our law of obligations comes into expression even with regard to unjust enrichment. When a portion of a person's property is in any way transferred to another person's property, and such transfer has no legal basis in any juridical act or law, the acquirer is obliged to return that portion of the property if it is possible, otherwise he should compensate the value of the enrichment (Article 199, paragraph 1, Law on Obligations). From cited legal provision we can conclude that property according to the legislator is constituted by the things and not the subjective property rights. The question that arises is the right of the contracting party, in the event that on the basis of an invalid juridical act or subsequent annulment the item has been transferred to the acquirer. Whether the contracting party will have the right to claim to return unjust enrichment, or the return of the item by means of a *rei vindicatio*.

Concerning the dilemma, if the contracting party which on the basis of an invalid juridical act has transferred an item to another party has the right to request the return of the same, by a legal action *(rei vindicatio*) because he still remains the owner on the ground that the transfer of the property rights of one party into the property of the other party has not occurred (there is no legal basis), or besides the legal action *rei vindicatio* he has the right to seek restitution of what was gained without a legal basis (condiction), different legal systems have different positions. Some of them allow the use of both means in alternative way, while others exclude condictio once conditions for *rei vindicatio* are fulfilled. In German law, in which ownership is transferred to the acquirer on the basis of a real legal act (*traditio* or registration in the land registry) regardless that the juridical act which served as a legal basis is invalid, the owner loses the right of ownership and has no right to use *rei vindicatio* but, can return the item by claiming restitution for unjust enrichment (Article 929, 873, BGB). Austrian and Swiss law have opposite view from the German law. Thus, the invalidity of a juridical act that serves as the legal basis for the transfer of ownership prevents the acquisition of the ownership so the owner does not lose the right of ownership, and therefore he can use the legal action of *rei vindicatio.*

CONCLUSION

Regardless of the different attitudes on the definition of the notion of property, certain characteristics of property remain unchanged. Property is a unique legal notion, a legal category, which always belongs to a subject. It is indivisible, as is the subject to which it belongs. In principle, property as a legal category cannot be transferred during the life of the subject, because it is so closely related to him/her thus cannot be divided. In exceptional cases, property can be transferred (disposed) during the life of a person (*inter vivos*) and in the cases when of the conclusion of a contract for the transfer of property is made during the

life of the subject. The content of property is comprised of various property rights, claims related to items or money, as well as property entitlements of authors or inventors. The most important right contained in the content of property is ownership, which together with other real rights forms the basis of property. Property entails all the opportunities that its holder can realize in the market by being possessor of things and rights. In legal theory, property is defined in several ways, as economic, legal and land register category.

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