Authorities and Procedures of Legal Protection in the Balkan States

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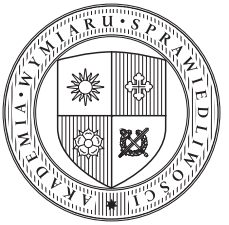
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Ministerstwo Sprawiedliwości

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Authorities and Procedures of Legal Protection in the Balkan States

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Projekt pn. „Instytucjonalna architektura organów ochrony i przestrzegania prawa w porządkach prawnych współczesnych państw w perspektywie komparatystycznej” realizowany na podstawie umowy nr DFS-V.7211.1.2020 na powierzenie realizacji zadań z Funduszu Pomocy Pokrzywdzonym oraz Pomocy Postpenitencjarnej – Funduszu Sprawiedliwości, którego dysponentem jest Minister Sprawiedliwości

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Introduction

Preventing and combating crime is one of the key responsibilities of a modern state. In the course of their implementation, the state acts as a guarantor of internal security and at the same time assumes the role of a guardian of crime victims. The activity of the state authorities in this field is undoubtedly of great importance and is associated with the fulfillment of far-reaching social expectations. For this reason, it is necessary for legislators who are responsible for preparing legal solutions to take action in this area, to look for mechanisms and institutions adapted to the reality of a given country and, at the same time, as effective as possible. Certainly, good law is a factor that determines the achievement of the desired results in dealing with the phenomenon of crime. Without this element – which is a truism – the state cannot have any success in this field.

Being aware of the importance of this issue, we present a reader with a book that is part of current scientific research on legal regulations to prevent and combat crime in modern democratic countries. This book was prepared by an international team of experts from several Central European academic centers (Northern Macedonia, Romania, Serbia). Its content consists of studies presented in the following chapters, each dedicated separately to selected authorities and institutions involved in counteracting the phenomenon of crime in individual countries. They all fit within the adopted research concept, which covers issues such as:

1. Bodies ensuring the pluralism of the media market and the protection of the rights of users of electronic media in the context of crime prevention, its causes and conditions;
2. Bodies upholding the integrity of the electoral process in the context of crime prevention, its causes and conditions;
3. The systemic status of the prosecutor's office and the legal status of the prosecutor in modern countries in the context of crime prevention, its causes and conditions;
4. Independent anti-corruption authorities and anti-corruption courts in the context of crime prevention, its causes and determinants.

The guiding idea of this monograph is to present legal solutions and institutions for preventing and combating crime – and against their background the experiences in selected countries that emerge in the social reality. Individual authors review national legislation in a specific subject area and present the most important normative constructions in a compact and synthetic way. In many cases, they do not avoid elements of the practice of applying the applicable law and often formulate their own assessments and observations in this context. Thanks to this, the book as a whole creates a broad cognitive perspective, allowing a Reader to become acquainted with the title issues in a multifaceted way, taking into account experiences recorded in various places on the map of Europe. As it seems, its content is all the more interesting as it concerns the Balkan states, where crime, especially in the form of corruption, is relatively high. Undoubtedly, studies on the legislation of such countries can provide particularly valuable observations from the point of view of the effectiveness of the functioning solutions.

For obvious reasons, the book is addressed mainly to people who deal with the subject of preventing and combating crimes at work. Therefore, it can be successfully used by practicing lawyers having to do with these issues on a daily basis, but also by people responsible for the preparation of normative solutions to reduce and eliminate criminal phenomena. In the latter case, the possibility of finding inspiration in the legislative analyzes seems to be particularly valuable.

GORAN
ILIK

The State Commission for Prevention of Corruption in North Macedonia: Understanding Its Role and Place in the Political System

Introduction

Corruption has long been recognized as a significant challenge to the development and stability of countries. In the Republic of North Macedonia, the State Commission for the Prevention of Corruption (Commission; SCPC) was established in November 2002, following the Law on the Prevention of Corruption in April 2002. Designed as a preventative body, the Commission was entrusted with curbing corruption and promoting integrity within the Republic of North Macedonia. Over the years, it has played a pivotal role in fostering transparency, accountability, and good governance by implementing various anti-corruption measures and spearheading the fight against corruption.

Initially, the Commission's primary focus was on preventive measures due to its lack of prosecution authority. However, it quickly became evident that proactive measures alone were insufficient in combating corruption. Consequently, the Commission assumed direct responsibility for enforcing the Law on Prevention of Conflict of Interest, enacted in 2007, and gained the authority to supervise lobbying in the Republic of North Macedonia under the Law on Lobbying.

Historically, the Commission's composition consisted of members appointed by the Assembly of the Republic of North Macedonia, who initially served in a non-professional capacity until November 2010.

Amendments and additions to the law on the Prevention of Corruption established a professional status for the Commission members, elevating their role and expertise in combating corruption effectively.

Since its establishment, the Commission has made significant strides in its mission to prevent and combat corruption within the Republic of North Macedonia. Its proactive approach has resulted in developing comprehensive anti-corruption measures, including formulating codes of conduct for public officials, anti-corruption training programs for civil servants, and formulating a national anti-corruption strategy.

The pivotal role of the Commission in promoting transparency, accountability, and good governance cannot be understated. It acts as a critical bulwark against corruption, creating a fair and just society where public officials are held accountable for their actions. By building public trust in the government, the Commission reinforces the foundations of democracy and fosters an environment conducive to sustainable socio-economic development.

In 2019, the Republic of North Macedonia undertook a significant legal and institutional reform, focusing on anti-corruption legislation. Throughout this reform process, the State Commission for the Prevention of Corruption occupied a central position. As an independent anti-corruption body, the Commission played a pivotal role in preparing and adopting the new Law on Prevention of Corruption and Conflict of Interests, a critical milestone in the country's fight against corruption. This legislative reform not only introduced more stringent conditions for the election of the Commission's president and members but also endowed the Commission with new preventive and repressive powers, reflecting the country's unwavering commitment to combat corruption effectively.

This article explores the role played by the SCPC, shedding light on its efforts to enhance transparency, accountability, and good governance. By examining the Commission's functions, powers, and competencies, this study seeks to underscore the critical importance of combating corruption as the country's most serious problem and to identify the place of the SCPC in the Macedonian political system.

1. Anti-corruption Agencies

Anti-corruption agencies (ACAs) are new institutional actors whose proliferation on a global scale has been observed in the three to four decades since their inception. ACAs first appeared in South-East Asia in the 1950s; since then, they have increased worldwide. Over 50 countries created versions of these organizations in the second part of the twentieth century. Even without a global treaty, ACAs were seen as an increasingly vital tool to combat corruption (UNODC, 2020, p. 3).

Nevertheless, ACA creation is merely the beginning, and there is a significant chasm between a government's dedication to ACA establishment and the actualization of its mission worldwide. The success of many, if not most, ACAs are hindered by limited resources, an insufficient mandate to fight corruption, and political meddling from governments and their agencies, and there is no global norm for an ideal ACA. To be more explicit, it is important to take note of many characteristics that all anti-corruption agencies share. Institutions can be public or receive public funding, operate to combat corruption, or have both preventative and repressive methods. Article 36 of the United Nations Convention against Corruption acknowledged that:

> Each State Party shall, in accordance with the fundamental principles of its legal system, ensure the existence of a body or bodies or persons specialized in combating corruption through law enforcement. Such body or bodies or persons shall be granted the necessary independence, in accordance with the fundamental principles of the legal system of the State Party, to be able to carry out their functions effectively and without any undue influence. Such persons or staff of such body or bodies should have the appropriate training and resources to carry out their tasks.

To promote and strengthen the independence and effectiveness of ACAs, current and former heads of ACAs, anti-corruption practitioners, and experts from around the world gathered in Jakarta on 26-27 November 2012 at the invitation of the Corruption Eradication Commission (KPK) Indonesia, the United Nations Development Programme, and the United Nations Office on Drugs and Crime (IAACA, 2012, p. 1). Hence, they concluded the Jakarta Statement on Principles for Anti-Corruption Agencies, where they decided what must be done to make ACAs truly independent and effective.

Numerous factors that can determine an anti-corruption agency's (ACA) success have been highlighted in the existing literature. Pope and Vogl (2000) emphasize that effective leadership, formal autonomy, and access to data are crucial prerequisites for an ACA's performance. De Sousa (2009) identifies three essential areas of independence for ensuring satisfactory performance: recruiting ACA staff members and resistance from political forces, cooperating with other anti-corruption authorities, and allocating adequate resources. Dionisie and Checchi (2008) assert that an ACA requires sufficient funding to be impactful. Camemer (2001) states that ACAs succeed when they possess strong leadership, ample financial resources, adequate powers, independence, and support from the media. De Speville (2008) concurs with this perspective, highlighting that insufficient funding and political will are frequent causes of failure. Additionally, de Speville mentions that ACAs may face challenges due to political interference, selectivity, and unrealistic expectations. Heller (2006) attributes ACAs failures to a hostile environment, particularly from civil society and the media.

1.1. Top of Form / Bottom of Form

In sum, according to the author Luis de Sousa (2009): "Anti-corruption agencies (ACAs) are public (funded) bodies of a durable nature, with a specific mission to fight corruption and reducing the opportunity

structures propitious for its occurrence in society through preventive and/or repressive measures" (p. 1).

Governments, donors, and international governmental organizations typically view ACAs as the ultimate institutional solution to corruption after the apparent failure of ordinary law enforcement actors (police, courts, prosecutors, etc.). Many ACAs have underperformed because they were established in an atmosphere of widespread corruption. Their institutional failure can be attributed to a wide range of causes. Some stem from the institutions' design or a lack of planning and administration, while others come from outside factors. There is a wide range of how these institutions are structured and how well they adapt to new types of corruption from nation to country.

On the one hand, ACAs were developed in response to particular legal and institutional change trends and unique issues. In that regard, every government institution is different. While some countries have given their authorities the mandate to investigate and prosecute; others have assigned greater emphasis on prevention, education, and information dissemination.

ACAs can be classified into two main categories based on their focus and scope of activities. Preventive ACAs primarily concentrate on citizen education, maintaining records, providing training, and disseminating information. On the other hand, suppressive ACAs possess the power to conduct investigations, prosecute offenders, and impose penalties on individuals who contravene regulations.

Author Slobodan Tomic categorizes ACAs into two primary types, which are differentiated based on the specific combination of their powers and competencies: "(i) preventive, and (ii) suppressive. The former pursues preventive tasks and does not have investigative and prosecutorial powers. Suppressive ACAs, on the other hand, do investigate corruption and command prosecutorial powers" (Tomic, 2016, p. 2). Tomic (2016) asserts that preventative ACAs offer greater potential for reaping reputational benefits while facing a lower risk of reputational setbacks. This is attributed to the ability of preventive ACAs to establish their legitimacy

by rigorously enforcing regulations and shifting the burden of responsibility for unintended consequences to traditional suppressive institutions such as the police, prosecutors, and judges. In contrast, suppressive ACAs encounter greater difficulties achieving policy success due to more stringent legal limitations on exercising their powers. They also face challenges coordinating with partner institutions during investigations and are more susceptible to political resistance.

2. The Case of the SCPC

This research will attempt to identify the place and role of the State Commission for the Prevention of Corruption (SCPC) in the Macedonian political system by addressing the following research question (RQ):
RQ: What is the relationship between the powers of the SCPC and its enforcement styles in addressing corruption and ensuring accountability of public officials in North Macedonia?

To comprehend the role and position of the State Commission for the Prevention of Corruption (SCPC) in the Macedonian political system, it is essential to delve into its nature. This includes elaborating on the SCPC's powers, competencies, and, thus, the enforcement styles (preventive, suppressive, or a combination of both).

In this study, a survey methodology was employed, specifically utilizing an online survey approach. An online questionnaire was developed using Google Forms and distributed to participants through email and social networks. The survey respondents comprised 58 carefully selected individuals, including faculty of law students, practitioners, legal experts, and political scientists. The gender distribution among the respondents was 56.9% female and 43.1% male, with a majority (51.7%) falling within the age group of 18-25 years. It is important to note that the findings of this research should be considered indicative and can serve as a foundation for conducting more comprehensive and intricate studies in the future.

Out of the 58 respondents, only 2 (two) individuals (3.4%) responded very positively to the question, "Do you think the State Commission for the Prevention of Corruption of North Macedonia is effective in the fight against corruption?" According to the data collected, these findings indicate a significant lack of confidence in the enforcement capabilities of the SCPC, reflecting an overwhelmingly low level of trust in its effectiveness.

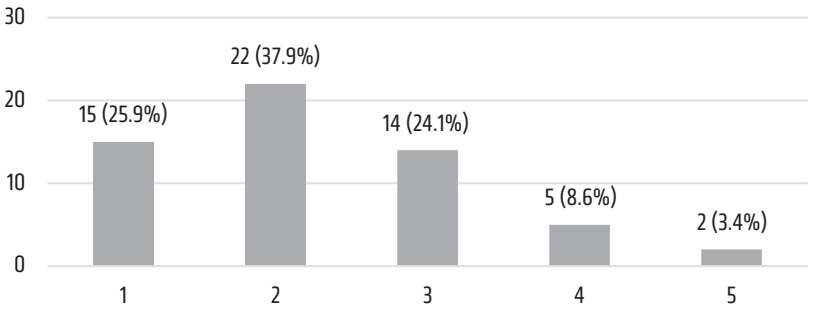

Chart 1: Do you think the State Commission for the Prevention of Corruption of North Macedonia is effective in the fight against corruption? (Source: Author's depiction based on the conducted online survey, 2023)

In light of these findings, among other factors, it is imperative to explore whether the SCPC's lack of effectiveness in combating corruption is attributed to its competencies or limitations, which may have hindered its ability to achieve its objectives more efficiently.

The online survey sought feedback on the need to improve the legislation and normative framework related to the powers and competencies of the SCPC in preventing corruption in North Macedonia. This is a crucial aspect that deserves emphasis in this context. Among all respondents, 72.4% agreed on improving the legislation and normative framework concerning the Commission's powers. Additionally, 22.4% stated that while the existing laws are adequate, consistent implementation is lacking.

Hence, this research aimed to examine the enforcement approaches of ACAs to assess the position of the SCPC in terms of its powers and competencies.

Author Slobodan Tomic (2016) identifies four distinct enforcement styles employed by ACAs: 1) Retreatist; 2) Aloof; 3) Entrepreneurial; and 4) Predatory (p. 69).

The *retreatist* approach is the "weakest" form of enforcement. It denotes a passive kind of enforcement during detection when the potential consequence is mild (Tomic, 2016, p. 69).

If severe repercussions are planned for a certain act of misconduct, but the ACAs do nothing to detect it or gather evidence against it, then it has an *aloof* style to enforcement. One example is when the ACAs fail to act promptly in response to raised suspicions (such as when informed about an official's misconduct by the media) or when it fails to search for evidence in places where it can be found (such as by applying special investigative measures or by demanding incriminating data from another institution) (Tomic, 2016, p. 70). The detached approach to enforcement is what McAllister refers to as an *inactive approach* (on the capacity dimension) (Tomic, 2016, p. 70).

In an *entrepreneurial* enforcement style, an ACA operates diligently even when aware that the maximum penalty available is relatively lenient. Despite the limited range of punitive measures, the ACA displays enthusiasm and proceeds without hesitation to gather evidence and impose sanctions on officials suspected of violating the Law (Tomic, 2016, p. 70).

A *predatory* enforcement strategy is when an SPCP "hunts" a government official with the threat of a significant punishment if the official does not comply with the law. For instance, the ACA's aggressive prosecution of a criminally culpable act of corruption would be considered predatory enforcement (Tomic, 2016, p. 70).

There are two dimensions to the architecture of ACA enforcement strategies: zealousness and *stringency* (Tomic, 2016, p. 73). Fines can be either harsh or mild. Research on crime deterrence shows that harsher penalties result in decreased crime rates.

Examples of mild sanctions are a) a warning; b) a pecuniary fine; or c) a recommendation for removal from office (Tomic, 2016, p. 75). The lack of criminal culpability associated with these fines indicates a very lenient approach. When the sanction carries criminal liability or takes harsh forms of non-criminal liability, such as a prohibition of performing office or a ban on a political career, the degree of stringency is much higher.

3. The SPCP's Status

The Law on Prevention of Corruption and Conflict of Interests (Official Gazette of the Republic of North Macedonia, no. 12, 19 January 2019) was introduced as part of an initiative to reform the system; more specifically, it was a regulation that took the place of the two regulations that came before it, which were titled 1) Law on Prevention of Corruption and 2) Law on Prevention of Conflict of Interests.

The purpose of the new law was to achieve the goal of boosting the power of the Commission while at the same time increasing the moral standing of its members so that this objective could be met. In particular, the previous law on the Prevention of Corruption only stated a total of four qualifications that an individual was required to achieve in order to be eligible for membership in the Commission, and those requirements were as follows:

1. the candidate must be a citizen of the Republic of Macedonia;
2. the candidate must hold a higher degree in the field of law, financial affairs, or anti-corruption;
3. the candidate must enjoy a reputation in the fulfillment of the office's tasks; and
4. the candidate must have at least eight years of professional experience.

When it came time for the members of the Commission to wrap up the work that had been delegated to them, the biggest problem that surfaced was the lack of removal criteria that had been established.

Specifically, the law on the Prevention of Corruption stipulated that a member of the Commission might be ceased in one of three circumstances: 1) the member himself makes the request; 2) the member dies; or 3) the member of the Commission is lawfully condemned to an unconditional jail sentence of at least six months. However, negligence was not cited as the reason for the member's dismissal. Although the media reported an illegal expenditure of budget funds and abuses of travel costs in the Commission, this legal solution made it impossible to remove the members of the Commission in 2018. This was the case even though the members of the Commission had abused their travel expense privileges.

These inconsistencies in the prior legal framework were rectified by the newly enacted Law on Prevention of Corruption and Conflict of Interest (LPCCI) in 2019, which was implemented to address the problem. Several novel approaches were implemented concerning choosing individuals to serve on the Commission.

To begin, there has been a huge increase in the level of organization throughout the selection process. It begins three months before the end of the current members' terms in office as their mandate is about to expire. The Assembly of the Republic of Macedonia publishes announcements in the "Official Gazette of the Republic of Macedonia" and in at least three daily newspapers issued on the entire territory of the Republic of Macedonia, at least two of which are newspapers that are issued in the Macedonian language, and one of which is in the language spoken by at least 20% of the citizens who speak an official language other than the Macedonian language. Both the website of the Assembly of the Republic of Macedonia and the website of the State Commission have been updated to include the notification as well (Article 12(4) LPCCI 2019).

Following the publication of the announcement, the Commission for Elections and Appointments within the Macedonian Assembly will establish a Selection Committee of candidates for president and members of the Commission. Following Article 12(7) of the new LPCCI, the Selection Committee is composed of seven members:

- One member nominated by the Ombudsman;
- representative of the NGOs appointed in the Council for cooperation between government and the civic sector in the field of democracy and the rule of law;
- representative of NGOs appointed for a member of the Council for cooperation between the government and civic sector in the field of Media and IT;
- two MPs from the ruling coalition and
- two MPs from the opposition.

The timeframe applicants have to submit their applications in response to the announcement made in the Official Gazette of the Republic of Macedonia, as stated in Article 12, and 10 (ten) days, beginning on the day the announcement was published.

Within 5 (five) days of establishing the candidate list, an interview shall be organized for the candidates who fulfill the required conditions. The Selection Committee conducts interviews with the candidates for president and members of the Commission. These interviews are then broadcast on the official channel of the Macedonian Assembly. Several other organizations, in addition to the media, take part in the interview. These organizations include the Ombudsman, the Macedonian Academy of Sciences and Arts, the Interuniversity Commission, citizens' groups and foundations, etc. If any candidates do not show up for the interview, it will be assumed that they have decided not to run for president or a member of the SCPC. This will be the case regardless of the reason given for their absence.

Despite that, the process and the criteria for choosing the president and members of the Commission have been made much more specific under the new law. According to Article 11(1), the one who satisfies the requirements listed below is eligible for appointment to the position of President of the Commission:

- to be a citizen of the Republic of Macedonia and have a permanent place of residence in the Republic of Macedonia
- to have legal capacity,

- to have a university degree with 300 ECTS credits obtained or VII/1 level of education in the field of legal sciences or university education with 240 ECTS credits obtained or VII/1 level of education in the area of political, communicology or economic sciences;
- to have at least ten years of working experience, out of which at least eight years of experience after graduation, in the field of detection or prevention of corruption, the rule of law or good governance
- to have at least ten years of working experience, out of which at least eight years of experience after graduation, in the field of detection or prevention of corruption, the rule of law or good governance
- not to be an MP, a member of the Government of the Republic of Macedonia, and not to be a donor or have performed a function in political party organs in the last ten years
- has not utilized the right to re-election.

The latter is stipulated in Article 10(1) of the LPCCI stating that:

> The president and the members of the State Commission shall be appointed by the Assembly of the Republic of Macedonia for five years without a right to repeated election. The person who performed the function of a President of the Commission or a member of the Commission in one term may not be elected as a President nor a member of the State Commission.

The election of the remaining members of the Commission is contingent upon the same requirements as described above.

Implementing such reforms to the law on the Prevention of Corruption and Conflict of Interest (LPCCI) should improve citizens' confidence in the Commission. This is especially significant when considering how low that confidence was during the time before the current one.

In this context, it is significant to note that the Macedonian citizens acknowledged the Commission as:

> An institution for dealing with corruption. Namely, half of the citizens knew that the Commission existed and were familiar with its competencies. Citizens recognized the Commission as one of the three institutions that contribute the most to the fight against corruption, and every third citizen would report corruption to the Commission. Despite this data, it is worth noting that the citizens' perception was that the Commission protects the individual and not the public interest. Related to this is the opinion of more than a third of the citizens that the Commission did its work ineffectively (Kamilovska-Trpkovska, 2019, 7).

It is important to highlight that the Commission experienced favourable improvements in various areas in 2017. To be more specific, the Commission's ability to collaborate with other state institutions and with the private sector, as well as with the general public, has been enhanced. The Commission successfully increased the degree to which it is transparent and opened out to other stakeholders. Furthermore, the SCPC's report for 2022 (published in March 2023) stated that:

> The public's increased trust in the work of the SCPC encouraged citizens to deliver reports using the mechanisms offered by the Whistleblower Protection Law. From the second in the middle of 2022, the application of the Law on Lobbying also began, with the SCPC as a competent body for the implementation of this law adopting the necessary by-laws and conducting training for employees to familiarize themselves with the competencies arising from this law (DKSK 2023, p. 2).

Considering the SCPC's opinion given in the report, it is stressed that together with the bodies of central government and local self-government, SCPC focused on sectoral, institutional, and personal integrity in 2022 as part of the implementation of the policies and actions outlined in the National Strategy for the Fight Against Corruption 2021-2025 (which was developed in 2021 and will run until 2025). As a direct consequence, an Integrity Policy was drafted and ratified, and integrity persons were subsequently appointed in 67 municipalities and 18 institutions at the central level (DKSK 2023, p. 1). At the same time, the SCPC emphasized that in the reported period, it has conducted many risk assessments and created an analysis-assessment of the vulnerability to corruption in public companies, municipalities, the City of Skopje, and Joint Stock Companies with dominating state capital. While doing so, the process of analyzing the threat of corruption in the justice field, where the objective was to improve the integrity of the judiciary and the public prosecution. Hence, the SCPC concluded that: "The process of the anti-corruption review of the legislation has also been improved by the fact that the SCPC began to apply a software solution for part of the proposed laws, with which the provisions that contain risks of corruption and conflict of interests are recognized more quickly" (DKSK 2023, p. 1). In the affirmation of its work, the SCPC indicated that the increased public confidence in its work encouraged citizens to deliver reports using the mechanisms offered by the Whistleblower Protection Law. While from the middle of 2022, the application of the Law on Lobbying also began, with the SCPC as a competent body for implementing this law, adopting the necessary by-laws and training employees to familiarize themselves with the competencies arising from it.

It is noteworthy to highlight that the claim made by the SCSP regarding increased public confidence contradicts the findings of the online survey conducted for this research. When respondents were asked about their confidence in the SPCP and its ability to address corruption, only 8.6% expressed a positive view, 29.3% responded very negatively, and 32.8% remained neutral.

Additionally, it is important to note that the actual implementation of planned activities for 2022 and the postponed activities from 2021 have been exceedingly modest, amounting to only 10%, according to SPCP (DKSK, 2023). This low level of realization is attributed to activities that were either not accomplished in 2021 or were initiated but postponed for implementation in 2022.

As a result, the following was mentioned in the report that the European Commission prepared on the progress that was made by the Republic of North Macedonia (2022): "[to] continue action to fight corruption by increasing support to the bodies responsible for implementing the national strategy for the prevention of corruption and conflict of interests and effectively enforce GRECO's recommendations" (p. 20).

It is good to point out that the European Commission, in its report (2022), concluded that the Republic of North Macedonia "has achieved some level of preparation / is moderately prepared" in the prevention and fight against corruption. Thus, it should be emphasized that the State Commission for the Prevention of Corruption was assessed as a "proactive in providing policy guidance to public institutions on preventing corruption" (European Commission, 2022, p. 20) and that it has opened several cases, some of which are even against high-level officials. Continued efforts to strengthen the SCPC's functionality are encouraged, and additional financial and human resources must be allocated for this purpose, urging that the authorities should make a greater effort to address the SCPC reports' conclusions fully.

4. The SCPC's Functions, Powers and Competencies

The new law on the Prevention of Corruption and Conflict of Interests has greatly expanded the range of the Commission's powers. It leads the procedure for controlling the financing of political parties and the Assembly and submits reports on the financing of political parties. The SCPC also monitors the legality of financing political parties and

election campaigns. Additionally, the SCPC undertakes activities to strengthen personal and institutional integrity, maintains a public catalogue of gifts, and conducts public opinion surveys to assess its work and the state of corruption in North Macedonia. The SCPC has gained the power to serve as a check on the authority of public officials and other institutions by monitoring and investigating suspected corruption cases.

4.1. Conceptual Framework

This research developed indicators of the SCPC's key competencies by synthesizing relevant provisions and research, including each component from the relevant regulation such as LPCCI (Official Gazette of the Republic of Macedonia, no. 12/2019), Whistleblower Protection Law (Official Gazette of the Republic of North Macedonia, no. 196/15 and 35/18) and the Law on Lobbying (Official Gazette of the Republic of North Macedonia, no. 106/08 and 135/11). The detailed synthesis of indicators of SCPC's key functions, powers and competencies based on the relevant provisions and research of each component from the relevant regulation is shown in Table 1. These indicators should identify the SCPC's nature and predict its role and position in the Macedonian political system.

Table 1: The SPCP'S Functions, Powers and Competences (Source: Author's depiction based on the relevant regulation analysis, 2023)

Functions	Key Indicators	Regulatory Indicators
		Law on Prevention of Corruption and Conflict of Interest (Article 17)
Development of anti-corruption policies and improvement of the anti-corruption climate	Adopting a national strategy signifies a proactive approach to preventing and tackling corruption, promoting good governance and fostering public trust.	• Adopts a national strategy for preventing corruption and conflicts of interest, with an action plan for its implementation (point 1).
	Corruption proofing demonstrates the SCPC's commitment to ensuring the integrity of its legal framework and reducing opportunities for corrupt practices. Public opinion surveys indicate a willingness to listen to citizens' concerns, improve governance, and strengthen anti-corruption efforts based on feedback received.	• Conducts corruption proofing of laws, by-laws and other general acts following the methodology it adopts (point 2). • Conducts public opinion surveys to assess its performance and corruption situation (point 23).
	Cooperation with stakeholders demonstrates a commitment to inclusivity, knowledge sharing, and collective action in the fight against corruption. It fosters a collaborative environment where diverse perspectives and expertise can contribute to developing and implementing effective anti-corruption strategies.	• Cooperates with associations, foundations, scientific institutions and the private sector to prevent corruption and conflicts of interest (point 16).
	Conducting sector-specific corruption risk analyses demonstrates a proactive and evidence-based approach to corruption prevention. It enables the SCPC to understand the underlying factors contributing to corruption, implement preventive measures, and strengthen transparency and integrity in key sectors of the economy and public administration.	• Prepares analyses of corruption risks in different sectors (point 17). • Prepares analyses of corruption risks in different sectors (point 18).

Functions	Key Indicators	Regulatory Indicators
	The SCPC's commitment to transparency and public engagement signifies a willingness to be accountable and responsive to citizens' expectations. By keeping the public informed, the SCPC enhances its credibility and ensures that anti-corruption efforts are aligned with societal needs. Education and awareness activities further empower individuals and organizations to recognize, prevent, and report corruption and conflicts of interest.	• Regularly inform the public about its work related to its competencies determined by this law and following the Rules of Procedure of the State Commission (point 28). • Undertaking activities in terms of education and raising awareness about corruption and conflict of interests (point 19).
Continuous monitoring and verification of the assets and interests of elected and appointed persons, financing of political parties and election campaigns and keeping appropriate registers	The recording and monitoring of assets and interests help identify potential conflicts and illicit enrichment while publishing gift catalogues increases public scrutiny and discourages bribery.	• Monitors the legality of the financing of the election campaigns (point 7). • Monitors the legality of the financing of the political parties (point 6). • Records and monitors the assets and interests in a procedure following this law (point 10). • Prescribes a form of declaration of assets and interests (point 11). • Checks the data from the declarations of assets and interests (point 12). • Keeps a register of elected and appointed persons (point 20). • Prepares a catalogue of gifts based on data obtained following Article 58 of this law and publishes it on its website (point 22).

Functions	Key Indicators	Regulatory Indicators
Launching initiatives before other competent authorities, determining situations of conflict of interest, misdemeanor procedures	The SCPC's responsiveness to reports of corruption, conflicts of interest, and financial irregularities.	• Acts upon reports from individuals and legal entities about suspicions of corruption and conflict of interest (point 3). • Instigates initiatives before the competent authorities for determining officials' liability (point 4). • Instigates initiatives for criminal prosecution in the cases in which it acts (point 5). • Instigates initiatives before the competent authorities based on reports from the State Audit Office (point 8).
	By initiating procedures and taking action, SCPC establishes a clear message that misconduct will not be tolerated, fostering public trust and deterring corrupt practices.	• Conducting misdemeanour proceedings for the offences established in articles 100 – 113 of the LPCCI (Article 144(2)).
Cooperation with state authorities, domestic and international bodies and organizations	Cooperation is vital for a comprehensive and coordinated approach to combating corruption and enhances the effectiveness and inclusiveness of preventive measures.	• Cooperates with other state authorities in providing the necessary information (point 13). • Cooperates with national bodies of other countries, as well as with international organizations, in preventing corruption (point 14). • Exchanges information with competent bodies of other states and international organizations based on obligations undertaken with international agreements ratified following the Constitution of the Republic of Macedonia (point 15). • Cooperates with associations, foundations, scientific institutions and the private sector to prevent corruption and conflicts of interest (point 16).

Functions	Key Indicators	Regulatory Indicators
Education and awareness raising about corruption and conflict of interest	By promoting understanding, knowledge, and ethical values, the SCPC can empower individuals and organizations to recognize, prevent, and report corrupt practices.	• Undertakes activities in education and awareness raising on corruption and conflict of interest (point 19).
Ensuring smooth functioning	Adopting these documents helps streamline internal processes, foster professionalism, and ensure the SCPC's effectiveness in preventing corruption and conflicts of interest.	• Adopts the annual working program of the State Commission (point 24). • Adopts a Code of Ethics of the State Commission and the Secretariat (point 25). • Adopts the Rules of Procedure of the State Commission (point 26). • Adopts acts for internal organization and systematization of the posts in the Secretariat (point 27).
		Whistleblower Protection Law
Whistleblower protection	This reflects the SCPC's commitment to creating an environment where whistleblowers feel secure and supported when reporting corruption.	• Protected internal reporting in institutions in the public sector is regulated by an act adopted by the Minister of Justice on the proposal of the State Commission for the Prevention of Corruption (Article 4(5)) • The whistleblower can also make a protected report by reporting to the Ministry of Internal Affairs, the competent public prosecutor's office, the State Commission for the Prevention of Corruption, the Ombudsman of the Republic of Macedonia or other competent institutions, i.e. legal entities (Article 5(1)). • If the protection of the whistleblower is not provided for this report to the State Commission for the Prevention of Corruption, the Ombudsman of the Republic of Macedonia, the Inspection Council, the Ministry of internal affairs and the Public Prosecutor's Office of the Republic of Macedonia, which, after the report, act without delay following their competences (Article 8(3)).

Functions	Key Indicators	Regulatory Indicators
Reporting on whistleblower reports	The government's commitment to collecting and analyzing data on whistleblowing activities can inform policy decisions, identify trends, and assess the effectiveness of anti-corruption measures.	• The authorized persons, i.e. the managers of the institutions, i.e. the legal persons in the public sector to whom it is reported, are obliged to submit to the State Commission for the Prevention of Corruption semi-annual reports on received reports from whistleblowers (Article 15(1)). • The State Commission for the Prevention of Corruption must submit an annual report to the Assembly of the Republic of Macedonia on reports received from whistleblowers as part of its annual work report (Article 10).
		Law on Lobbying
Maintenance and transparency of the Register	By maintaining a comprehensive Register, the government provides transparency, allowing stakeholders and the public to access information about lobbyists and their affiliations.	• The Register is maintained by the State Commission for the Prevention of Corruption (Article 8(2)). • The form and manner of keeping the Register is prescribed by the State Commission (Article 8(4)). • The Register is published on the State Commission's website, except for data protected according to Law (Article 8(4)). • The application for registration in the Register is submitted to the State Commission (Article 9(1)). • The form and content of the application form and statements from this article are prescribed by the State Commission (Article 9(7)). • The State Commission checks the completeness of the applications received for registration in the Register based on the data from the application and the data from the Register (Article 10(1)). • The State Commission adopts a decision to delete the lobbyist, that is, the lobby organization, from the Register (Article 13).

Functions	Key Indicators	Regulatory Indicators
	Ensuring compliance with reporting requirements and conducting effective inspections are vital to monitoring and evaluating the activities of lobbyists and lobby organizations.	• For the purposes of the inspection, lobby organizations, representatives of lobby organizations, lobbyists and state authorities are obliged to act on the request of the State Commission within 15 days of receiving the request (Article 13(3)). • The lobbyist, i.e. the lobby organization, is obliged to submit a written report on its activity to the State Commission no later than January 31 of the current year for the previous year and no later than 30 days from the day of deletion from the Register, regardless of the reasons for deletion (Article 16(1)). • The State Commission formally inspects the report upon receipt (Article 17(1)). • If the State Commission determines during the inspection that the report is incomplete, it will notify it and ask the lobbyist or lobby organization to submit a complete report within 15 days of receiving the notification (Article 17(2)). • For the purposes of the inspection, the State Commission can also request data from other state authorities (Article 18(3)).

Functions	Key Indicators	Regulatory Indicators
Compliance and oversight of lobbying activities	Establishing complaint mechanisms enhances awareness and provides guidance to foster a responsible and ethical lobbying environment.	• The person who was lobbied must forward a copy of the minutes to the State Commission within eight days from the day the contact was made for publication in the Register (Article 20(2)). • The State Commission formally inspects the record upon receipt (Article 21(2)). • For the purposes of the inspection, lobby organizations, representatives of lobby organizations, lobbyists and state authorities are obliged to act on the request of the State Commission within 15 days (Article 22(2)). • The person who is being lobbied is obliged to submit a complaint to the State Commission if the lobbyist or the lobby organization, i.e. the representative of the lobby the organization acted contrary to the provisions of this law within ten days of making contact with the lobbyist or the lobby organization, i.e. the representative of the lobby organization (Article 23(1)). • The State Commission implements activities to develop public and institutional awareness of lobbying and provides guidelines for the correct application of the provisions of this law at the request of the lobbying bodies (Article 26).
Supervisory function	The inclusion of supervision information in the annual work report enhances accountability and allows stakeholders to assess the SCPC's performance and impact.	• The State Commission performs supervision and informs about the supervision within its annual work report (Article 27).

Functions	Key Indicators	Regulatory Indicators
Misdemeanor procedure	A Misdemeanor Commission ensures a streamlined process for handling cases, promoting efficiency and consistency in addressing misdemeanors and, thus, upholding the rule of law and discouraging misconduct.	• For the misdemeanors established by this law, misdemeanor proceedings are conducted, and the Misdemeanor Commission imposes misdemeanor sanctions in the State Commission (Article 33)

Note: *SCPC has competencies also assigned by the Electoral Code of R. Macedonia (Official Gazette of the Republic of North Macedonia, no. 40/06…215/21), but for this research, only the powers and competencies established in the following regulations are processed: LPCCI (Official Gazette of the Republic of Macedonia, no. 12/2019), Whistleblower Protection Law (Official Gazette of the Republic of North Macedonia, no. 196/15 and 35/18) and the Law on Lobbying (Official Gazette of the Republic of North Macedonia, no. 106/08 and 135/11). The Law on Misdemeanors, the Law on Administrative Disputes, and the Law on General Administrative Procedure also play significant roles in the functioning of the SCPC.*

Since its establishment in 2002, the SCPC has been granted more "suppressive" authority for the first time. This pertains to the 2019 authorization to initiate misdemeanor proceedings and impose misdemeanor sentences for offences listed in the LPCCI (Table 2). The SCPC's powers and competencies in preventing corruption and conflict of interest have been expanded and strengthened by implementing the Law on Prevention of Corruption and Conflict of Interest. It also introduces mechanisms for sanctioning elected, appointed, and official individuals who act contrary to legal provisions.

Table 2: Proceedings of the Misdemeanor Committee in 2022 (Source: DKSK, 2023, p. 32)

The Basis for Misdemeanor Procedure	2022	2021
Failure to submit / untimely submission on Statement for the property condition and non-registration on the increase on property members 82 and 85 from LPCCI	375	87
Cumulating functions, failure to report on conflict of interests	28	35
In total, issued payment orders	*403*	*122*
Paid fines	243	82
Collected fines in RNM Budget in denars	**2,430,400**	**1,035,334**
Initiated misdemeanor proceedings	66	44
• Pronounced sanction – a fine	40	24
• Pronounced sanction – warning	3	1
• Liberation from responsibility	3	10
• Repeated request to start settlement procedure	3	7
• Termination of misdemeanor proceedings at the request of the SCPC	3	1
• Rejected request	2	1
• Submitted complaints to the secondary Commission		–
• Submitted lawsuits to Administrative court	14	4

According to Article 114 of the LPCCI, the SCPC's Misdemeanor Commission, comprised of authorized officials from the SCPC's Secretariat[1] with appropriate qualifications and relevant work experience, conducts misdemeanor procedures and imposes misdemeanor sanctions for determined violations of the law. At least one member of the Misdemeanor Commission is a law graduate who has passed the bar exam.

Misdemeanor proceedings follow the guidelines outlined in the Law on Misdemeanors. Prior to initiating the procedure, a settlement process is carried out, which involves issuing a misdemeanor payment order.

[1] The Secretariat of the SCPC is a professional service that performs administrative tasks under the authority of the Commission.

The authorized officials maintain records of issued delinquent payment orders and the outcomes of initiated procedures. The SCPC prescribes the form and content of the delinquent payment order.

Conclusion

Based on the research question, "What is the relationship between the powers of the SCPC and its enforcement styles in addressing corruption and ensuring accountability of public officials in North Macedonia?" it can be concluded that the SCPC has exhibited a proactive and comprehensive approach to combat corruption and uphold good governance.

The implementation of corruption proofing by the SCPC highlights its dedication to reducing opportunities for corrupt practices and ensuring the effectiveness of its anti-corruption measures. Public opinion surveys have shown a willingness to listen to citizens' concerns, improve governance, and strengthen anti-corruption efforts based on received feedback. This reflects the SCPC's responsiveness to public input and commitment to inclusivity.

The SCPC's collaboration with stakeholders has fostered a cooperative environment where diverse perspectives and expertise contribute to developing and implementing effective anti-corruption strategies. By conducting sector-specific corruption risk analyses, the SCPC takes a proactive and evidence-based approach to prevention, enabling a deeper understanding of underlying factors and facilitating the implementation of preventive measures in key sectors.

Transparency, public engagement, and education are core elements of the SCPC's approach. The commitment to public awareness activities empowers individuals and organizations to recognize, prevent, and report corruption and conflicts of interest. Recording and monitoring assets, as well as publishing gift catalogues, enhancing scrutiny and deterring bribery, while responsiveness to reports of corruption sends a clear message that misconduct will not be tolerated.

Cooperation and coordination are essential for an effective anti-corruption strategy, and the SCPC actively promotes understanding, knowledge, and ethical values to empower individuals and organizations in their fight against corruption. Adopting internal documents streamlines processes and ensures professionalism while establishing complaint mechanisms and guidance for responsible lobbying contributes to a responsible and ethical lobbying environment.

The SCPC's commitment to transparency, compliance, and accountability is evident through the maintenance of comprehensive registers, reporting requirements, and effective inspections. The inclusion of supervision information in annual reports enhances accountability and allows stakeholders to assess the SCPC's performance and impact.

Establishing a Misdemeanor Commission signifies a strong dedication to efficiently and consistently managing cases, thereby upholding the rule of law and deterring misconduct. This provision guarantees a streamlined procedure for addressing misdemeanors, thereby bolstering efficiency and ensuring uniformity in the enforcement of laws.

Analyzing the indicators presented in Table 1, a notable positive trend emerges in fortifying the role of the SCPC. Including misdemeanor proceedings stands out as its most potent "weapon" and is a robust measure for preventing and combatting corruption.

Considering the theory of ACAs enforcement styles, it can be said that DCSC has a combined nature. Namely, the SCPC has legal powers to act diligently and enthusiastically and collect evidence for the fight against corruption ("entrepreneurial style"), despite the limited range of appropriate punitive measures. What is further reinforced is the legal obligation of the SCPC to act in synergy and close cooperation with the judicial and law enforcement authorities through instigating initiatives before the competent authorities for the procedure for determining the liability of officials, instigating initiatives for criminal prosecution in the cases in which it acts, and instigating initiatives before the competent authorities based on reports from the State Audit Office. This synergy is especially encouraged by the European Commission's progress

reports for North Macedonia. In sum, the SCPC's "semi-predatory style" of action can be confirmed, which results from its enthusiasm for the fight against corruption, its power to initiate criminal prosecution initiatives before appropriate authorities, and its stimulus provided by the European Commission and other international bodies.

Hence, it is impossible to classify the SCPC as a "retreatist style" ACA. However, a minor flaw can be attributed to the "aloof style" of enforcement, but only if the SCPC does not diligently fulfill its fundamental function within its legal powers and competencies. This may occur if the SCPC neglects its responsibilities in corruption proofing, conducting sector-specific corruption risk analyses, adopting an evidence-based approach to corruption prevention, and maintaining accurate records and monitoring of assets and interests to identify potential conflicts and illicit enrichment. Nevertheless, with the introduction of the new law, the SCPC has gained a proactive role as a "watchdog" in the anti-corruption context.

It can be concluded that the fines imposed by the SCPC are mainly mild, such as pecuniary fines and warnings (Table 2). Nevertheless, the cooperation between SCPC and the judicial and prosecution authorities is crucial in fulfilling the objectives of combating corruption. Therefore, the success of the fight against corruption in North Macedonia primarily depends on the close collaboration between SCPC, the courts, the police, the public prosecutor's office, citizens, and international stakeholders. The key feature of the SCPC in the Macedonian political system is its zeal for enforcement of its powers and competencies rather than the severity (stringency) of the punishments it directly imposes, such as misdemeanor punishments.

Recommendations for the SCPC include continued efforts to strengthen collaboration with stakeholders, enhance public awareness and education initiatives, and streamline internal processes. Additionally, expanding the scope of corruption risk analyses to include emerging sectors and investing in advanced data analysis techniques can further enhance prevention efforts. The SCPC should also explore ways to

foster an environment where whistleblowers feel secure and supported, including robust protection mechanisms.

Limitations of the study include the reliance on self-reported data and the challenges inherent in measuring the impact of anti-corruption measures. Future research could focus on conducting comprehensive evaluations of the SCPC's initiatives, including the effectiveness of preventive measures and the long-term impact on corruption levels. Comparative studies with other countries' anti-corruption bodies can also provide valuable insights and best practices for enhancing the SCPC's performance and effectiveness in combating corruption.

MIROSLAV ĐORĐEVIĆ*

Structural Reform of the Public Prosecutor's Office in Serbian Constitutional and Legislative Framework

Introduction

The system of public prosecution is one of the essential elements for the proper functioning of a modern, democratic state. European standard on public prosecutors foresees that: "in all legal systems, public prosecutors contribute to ensuring that the rule of law is guaranteed, especially by the fair, impartial and efficient administration of justice in all cases and at all stages of the proceedings within their competence."[1] An adequate legal framework that takes into consideration the level of political and democratic culture in one country is the prerequisite for such a fair, impartial and efficient administration of justice.

The Republic of Serbia strategically and systematically strives to be a modern state of liberal and democratic constitutionality, which is impossible to achieve without an independent, fair and efficient judicial system ("the backbone of a democratic society"), including the autonomous system of public prosecution. However, because of its history and the lack of (developed) democratic tradition, there are severe obstacles

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[1] Consultative Council of European Prosecutors (CCPE), Opinion No. 9 (2014) of the Consultative Council of European Prosecutors on European norms and principles concerning prosecutor, Rome Charter, I.

that stand in the path of this goal. One could say that a high level of political and democratic culture in a modern society implies the perception of the state as a common good (*res publica*), awareness of the existence of a social contract; government as a public service to citizens and, finally – awareness of the need to respect human rights and other democratic values. In countries with the long tradition of democracy, the unwritten rules – constitutional customs (which political factors follow despite the apparent absence of their exact foundation in a written constitution and laws), have been formed over decades and even centuries in some cases. Certain things are not done simply "because one doesn't do it", while, on the other hand, in countries where democracy is still developing the principle that "everything that is not explicitly forbidden is hence "allowed" applies as a rule.[2]

The system of public prosecution, especially the ways how public prosecutors are being elected/appointed to function are also highly affected by this. The Venice Commission notices:

> Political interference in prosecution is probably as old as society itself. In early societies, indeed, the prosecution power would usually have been entirely in the control of princes who could use it to punish their enemies and reward their friends. History provides many examples of the use of prosecution for improper or political purposes. One need look no further than Tudor England or France both before and during the Revolution and the Soviet system in Eastern Europe. Modern Western Europe may have largely avoided this problem of abusive prosecution in recent times but if this is so it is largely because mechanisms have been adopted

[2] Miroslav Đorđević, Constitutional Boundaries of Presidential Power and General Level of Political Culture. The Case of Serbia, *Suprematia Dreptului*, 2/2021, 10.

> to ensure that improper political pressure is not brought to bear in the matter of criminal prosecution.[3]

Today, the Republic of Serbia is facing challenges on its path to developing democracy – the same or similar ones as those that were overcome decades or even centuries ago by the more developed countries of the West. Although Serbia has constitutional roots going all the way back to medieval times[4], the consequence of the more recent historical legacy and decades of authoritarian (communist) constitutionalism is, among other things, that the level of democratic culture and the quality of political culture are still relatively low. Due to these circumstances, there was a distortion of legal solutions that are successfully being implemented in countries with a longer democratic tradition. In parallel with the strengthening of the processes leading to maturation of political, democratic and constitutional culture in the country, Serbia hence had

[3] Venice Commission, *European Standards as Regards the Independence of the Judicial System, Part II The Prosecution Service*, CDL-AD(2010)040, VI.

[4] The provisions of Tsar Dušan's Code of 1349 (amended in 1354) on the independence of the judiciary were a kind of Serbian 'pre-constitution'. Art. 172 proclaimed that "Every judge shall judge according to the Code, justly, as written in the Code, and shall not judge by fear of me, the Tsar." Serbia may also be proud of its modern constitutionality roots – going back all the way to the beginning of the XIX century. During the XIX century and in the beginning of the XX century, the Princedom, later the Kingdom of Serbia continued to develop its liberal democratic constitutionality, with some ups and downs, but overall progressively. With the creation of the Kingdom of Yugoslavia, Serbia's constitutionality merged into the Yugoslavian one, but kept its basic political and ideological concept. However, with the end of WWII and the creation of the Socialist Yugoslav state, all the trends of striving towards liberal democratic values and principles ceased and the new communist ideals, as well as the one party authoritarian political system were put in place. – See more: V. Petrov, M. Đorđević, The Influence of Serbia's Historical Constitutions on its Modern Constitutional Identity – 30 Years Since the Return of Liberal Democratic Constitutionality, *Comparative Constitutionalism in Central Europe*, Miskolc – Budapest 2022. and S. Avramović, Sretenjski ustav – 175 godina posle, *Anali Pravnog fakulteta u Beogradu*, 1/2010.

to strive for constitutional and legal solutions that respect the reality of the current situation and pave the way for progress with their provisions.[5]

Socialist disintegration of the classical principle of the power division had its repercussions on the public prosecution system as well. A Soviet-like monocratic public prosecution was introduced – a highly centralized and strongly hierarchically organized system. After the fall of the communist one-party system, the Serbian constitution of 1990 (the so-called "Milošević Constitution") was enacted. It had its weaknesses, but also started the return to the values of liberal-democratic constitutionality and the follow-up Constitution of 2006 (still in power) pursued the same goal. Both of these constitutions however kept the system of monocratic public prosecution, without any structural changes. The democratic evolution of Serbian state and society, as well as progress on its path to full accession/integration into the European Union, demanded systemic changes which finally saw the light of day with the enacting of the Constitutional Amendments in 2022 and the set of new judicial laws in 2023.

1. Situation before the Constitutional Amendments of 2022

In the very first article of the Constitution, The Republic of Serbia is defined as "a state of Serbian people and all citizens who live in it, based on the rule of law and social justice, principles of civil democracy, human and minority rights and freedoms, and commitment to European principles and values". The last part, commitment to European principles and values, determines the necessity for harmonization of Serbian legal solutions with European standards in the relevant domain. Paradoxically, the status, functioning and the position of public prosecution remained the same as before and did not follow the recommendations of the highest relevant European and other international organizations.

[5] Miroslav Đorđević, Constitutional Boundaries of Presidential Power and General Level of Political Culture. The Case of Serbia, *Suprematia Dreptului*, 2/2021, 19.

The Venice Commission underlined in its opinion on the Serbian constitution that the provisions on the public prosecutors contain solutions that "create a risk of unduly politicizing the appointment process", as well as room for "political interference in prosecutions" which it had found to be "disturbing".[6] In its final remarks, the Opinion states: "the National Assembly elects, directly or indirectly, all members of the High Judicial Council proposing judges for appointment and in addition elects the judges. Combined with the general reappointment of all judges following the entry into force of the Constitution provided for in the Constitutional Law on Implementation of the Constitution; this creates a real threat of control of the judicial system by political parties". All of this can be applied to the State Prosecutors' Council, because this state body, envisaged as the protector of public prosecutors' autonomous, "closely followed the model of the High Judicial Council"[7]. The Venice Commission concludes that "the respective provisions of the Constitution will have to be amended".

In Serbian scholarly literature, the position of the public prosecution remains somewhat undefined. Authors argue that, by the very nature of its operation and function, one may come to the conclusion that it has to be a part of the judiciary in a broader sense, but the relation of public prosecution and courts still remains a bit vague. The analysis of the issue is a bit more difficult to comprehend in English, since the legal terminology is not entirely compatible to the Serbian one. Serbian legal terminology clearly differentiates judiciary (*pravosuđe*) as a cover term for both public prosecution (*javno tužilaštvo*) and the court system (*sudstvo*). In English this may sound confusing since the term "judiciary" is often being used both for public prosecution and courts, as well as for courts alone. Hence, in order to establish the position of public prosecutor's office, some terminology clarification has to be made. This paper uses

[6] Venice Commission, Opinion on the Constitution of Serbia adopted by the Commission at its 70th plenary session (Venice, 16-17 March 2007), CDL-AD(2007)004-e.

[7] *Ibid*.

the term "judiciary" to indicate both public prosecution and the court system, while for public prosecution the abbreviation "PP", and for court system "CS" are used in order to avoid confusion. This terminological issue probably came to be because of major differences between Anglo-American and European legal traditions.

There is a universal understanding in Serbian literature that both PP and CS come together under the term "judiciary". Problems come to light when the attempt is made to establish whether PP belongs to executive or judicial (CS) power, according to the theory of the separation of state powers. Some of the most famous scholars tend to define PP as a "quasi-CS power": "in the organizational sense, the Public Prosecutor's Office is a separate, autonomous state body, while in the functional sense it is the bearer of special powers related to the exercise of judicial (CS) power".

> Although it does not deal with the trial, the public prosecutor's office performs a function that is directly related to the trial. It is an expression of the democratic evolution of judicial power, because it was created in order to separate the function of criminal prosecution from the function of trial. The public prosecutor's office is entrusted with the function of prosecution, and the function of trial is performed by the court. In this way, the same persons, i.e. authorities, do not prosecute and judge criminal offenses at the same time. This is in the interest of an objective trial and creating greater opportunities for making a lawful court decision.[8]

Scholars of the Criminal law procedure emphasize that, according to the rule *nemo iudex sine actore*, there is no criminal procedure without an authorized prosecutor.

[8] R. Marković, *Ustavno pravo*, Beograd 2014, 528–529.

> What was once combined in the inquisitorial procedure now stays strictly separated – accusation, defense and trial. The prosecutor is allowed to bring the accusation (*thesis*), the accused opposes the defense (*antithesis*), and the court makes a final decision (*synthesis*).[9]

There is no doubt that by the nature and function of PP it stands close to courts. However, from the constitutional law and the tripartite division of power point of view, PP undoubtedly has to belong to the executive power, with the special, highly autonomous status. Because of all the aforementioned reasons it cannot be a part of CS power – it does not decide on the law dispute, but enforces laws, like the executive power.

> The Public Prosecutor's Office is not part of the judiciary (CS), but it is part of the judicial system in a broader sense. Given their function in the field of criminal justice, public prosecutors are required to act objectively and impartially, like judges.[10]

Finally, PP surely cannot be regarded as a part of the legislative branch of government; hence, within the tripartite division, leaving only the third one – the executive power. Consequently, the prevailing opinion in Serbian literature states that "the public prosecution cannot enjoy the independence of the same nature and quality as the judiciary, among other things, due to the fact that the judiciary is a separate state power, while the public prosecution is not."[11] PP is therefore considered to be "autonomous" and not "independent", which presents more of a doctrinal than practical difference, in a practical sense.

The nature of executive power in Serbia is such that it for the most part is (considered as) a political one – highly affected by the partisan

[9] M. Škulić, T. Bugarski, *Krivično procesno pravo*, Novi Sad 2015, 93.
[10] V. Petrov, *Ustavno pravo*, Beograd 2022, 253.
[11] V. Petrov, *Ustavno pravo*, Beograd 2022, 254.

politics, even in domains where it should not be the case. Therefore, strong guarantees for autonomous status and operation of PP had to be provided. "The public prosecutor must be impartial and, in order to be that, he must enjoy institutional guarantees that protect his position from the influence and pressure of political authorities."[12] Additionally, the system of election that included both the National Assembly and the Government in the process of election for the PP function holders could not stand the test of impartiality in the conditions of still developing a democratic and political culture.

Before the Constitutional Amendments of 2022, Serbia had a strongly centralized, monocratic system of PP. On the top of the hierarchy was the Republic Public Prosecutor, elected by the National Assembly, who was to perform the function of the Public Prosecutor's Office within the rights and duties of the Republic of Serbia. Lower PPs were presided over by public prosecutors, each in charge of a particular public prosecutor's office, for the large part legally and practically subordinated to the Republic Public Prosecutor, and assisted by a number of Deputy Public Prosecutors. In other words: public prosecutors were accountable for the work of the Public Prosecutor's Office and their own work to the Republic Public Prosecutor and the National Assembly, whereas (within hierarchy) lower prosecutors were to account for their work to their immediately superior public prosecutor as well. Deputy public prosecutors were held responsible for their work to their Public Prosecutor.[13]

An immediately higher public prosecutor was allowed to issue a mandatory instruction for acting in a concrete case to the lower public prosecutor, if he or she had doubts about the efficiency and legality of the actions of the subordinated public prosecutor. Public prosecutors, on the other hand, could issue such instructions to their deputies. The Republic Public Prosecutor, being on the top of the hierarchy, could issue mandatory instructions to any public prosecutor. All these mandatory

[12] V. Petrov, *Ustavno pravo*, Beograd 2022, 253.
[13] Constitution of the Republic of Serbia, *Official Gazette of the Republic of Serbia,* 98/2006, Art. 160 (subsequently amended).

instructions had to be acted upon. There were indeed remedies and means to dispute such instructions, but they were not efficient, since the deciding on their foundation was to be carried out by the hierarchy itself, and not the autonomous organ that stands outside of it. This was one of the main concerns of the public prosecutors and deputy public prosecutors, as well as scholars who have dealt with these issues. All of this had led to the strong pyramid-like hierarchical structure with the Republic Public Prosecutor on the top.

Serbian Constitution stipulated that a "Public Prosecutor shall be elected by the National Assembly, on the Government proposal" and that "a Deputy Public Prosecutor, who is being elected to this function for the first time, shall be elected on proposal of the State Prosecutors Council, by the National Assembly".[14] The members of the State Prosecutors Council were either *ex officio* members (the Republic Public Prosecutor, the Minister responsible for justice and the President of the authorized committee of the National Assembly) or the members elected by the National Assembly (six public prosecutors or deputy public prosecutors and two prominent lawyers – one solicitor and one professor of law).[15]

The overly present National Assembly, which presents a state organ to represent the political thinking of the people, in the process of PP function holders' election, as well as those who are expected to take part in the election process themselves (State Prosecutors Council members), led to the conclusion that partisan influence is jeopardizing the impartially of public prosecutors and PP the system as a whole. The normative solutions foreseen by the Serbian Constitution of 2006, according to the overwhelming majority of scholarly assessments, Venice Commission reports, as well as testimonies of Serbian judges and public prosecutors themselves, were far from optimal and also not in accordance with European principles and standards.

[14] *Ibid.*, art. 159.
[15] *Ibid.*, art. 164.

After almost a decade of unsuccessful attempts and failed drafts, in January 2022 the long-expected change finally came to life – after the successful referendum and the promulgation of the Constitutional Amendments, the Republic of Serbia fundamentally reshaped the position and role of the judiciary – the court system (CS) and especially the public prosecution (PP).

2. Constitutional Amendments of 2022

On the 4th of December 2020 the Government of Serbia submitted a proposal to the National Assembly to amend the Constitution of Serbia. The Serbian constitution stipulates that in order to change most of its provisions (almost all) one has to ensure the support of 2/3 majority of all MPs – first to adopt the proposal for constitutional revision, then to adopt the text of amendments – and finally the adopted version of the text (Act on the Amendment of the Constitution) has to be confirmed by the voters in a republic referendum. After the adoption of the proposal to amend the judiciary part of the Constitution, a Working group was founded by the National Assembly in order to provide the best possible solutions that would respond to justifiable criticism of public prosecutors and scholars, as well as steer the country further on its path to implementing European standards and fulfill the requirement for EU accession. The Working group consisted of National Assembly and Government representatives, as well as judges, prosecutors, scholars and law professors. It upheld frequent consultations with the Venice Commission and tried to adjust relevant standards to the situation and circumstances of Serbia's legal culture, in order for the solutions to be fully and successfully implemented without any distortions in practice.

The Act on the Amendment of the Constitution was finalized and adopted by National Assembly on November 30 2021, a couple of days after receiving the favorable Opinion of the Venice Commission. After the confirmation of the Act on the Amendment of the Constitution

in the republic referendum on January 16 2022, constitutional revision came into force.

Major changes of the judicial constitutional framework include: the reform of the way how the judges and public prosecutors are being elected, evaluated and how their independence/autonomy is being protected; the rise of the guarantees for impartiality; the total reform of the PP (the first major one after the WWII), with the modification of the very nature of the public prosecutor's position and function; the reform of the High Judicial Council and High Prosecutorial Council (former State Prosecutors' Council) whose authority and composition were severely changed with much broader competences and more balanced composition; the changed role of the "prominent lawyers" – non-judicial members of judicial councils that serve, *inter alia*, to provide more legitimacy to these state bodies and create balance; new legal remedies, broader competences of the Constitutional court, introduction of more transparent procedures etc.

The PP organization went through in-depth changes in order to achieve de-politization and create a system with much more integrity. The structure of public prosecutors and their deputies was abolished – all the deputes became public prosecutors themselves, holders of the public prosecutor's function. Apart from terminology, this has brought some significant changes in everyday functioning of PP – much more responsibility and transparency when it comes to their accountability. Deputies are the function holders themselves now; they have more integrity but also cannot "hide" behind their former prosecutor anymore. Also, the probationary period of three years for the first deputies' election is abolished and the permanent tenure of public prosecutors is set as an absolute principle by the Constitutional Amendments. Former public prosecutors are now called chief public prosecutors and the highest public prosecutor's office in the Republic of Serbia is the Supreme Public Prosecutor's office, headed by the Supreme Public Prosecutor.

Hierarchy is still preserved but its harsh subordination has been severely lessened. In general, hierarchy should guarantee security and

uniformity in the application of regulations and to reduce discretionary decision-making, though the probability of abuse increases with the higher degree of hierarchy, so it is necessary to establish balance control as risk protection.[16] This idea was followed. The function of the public prosecutor's office is performed by the Supreme Public Prosecutor, Chief Public Prosecutors and public prosecutors. The Supreme Public Prosecutor's office, headed by the Supreme Public Prosecutor, is the highest public prosecutor's office in the Republic of Serbia. The Supreme Public Prosecutor and Chief Public Prosecutor have hierarchical powers over the lower Chief Public Prosecutors and public prosecutors in regard to their acting in a concrete case.[17] One of the major differences is that legal remedies against hierarchal powers are much more efficient, deciding upon them improved in the context of impartiality and the overall guarantees for autonomous work and professionalism within the PP are brought to a much higher, constitutional level. The Constitution now stipulates that a "lower Chief Public Prosecutor who considers that the mandatory instruction is unlawful or ill-founded shall have the right to complain, according to the law". The formulation "unlawful *or* ill-founded" gives an important space for the receiver of such instruction to question it.

The State Prosecutors Council became the High Prosecutorial Council, an autonomous body that serves to "guarantee the autonomy of the public prosecutors' offices, the Supreme Public Prosecutor, Chief Public Prosecutors and public prosecutors".[18] Competences and jurisdiction are severely expanded, because, for the first time in Serbian history, the National Assembly is (almost fully) excluded from the process of the public prosecutors' election. Only the Supreme Public Prosecutor is

[16] M. Matić Bošković, G. Ilić, *Javno tužilaštvo u Srbiji – istorijski razvoj, međunarodni standardi, uporedni modeli i izazovi modernog društva*, Beograd 2019, 99.
[17] Constitution of the Republic of Serbia, *Official Gazette of the Republic of Serbia,* 16/2022, Amd. XVII.
[18] *Ibid.*, Amd. XXIV.

still being elected by the National Assembly, while the election of all the others now falls under the jurisdiction of the High Prosecutorial Council. Apart from that major task, the High Prosecutorial Council serves to decide on a wide variety of issues that substantially deal with the impartial status of public prosecutors – such as questions of PP budget, objections on the mandatory instructions, disciplinary violations etc.

The composition of the High Prosecutorial Council, as well as the ways for its members' election have also been changed. This body now consists of two *ex officio* members (the Supreme Public Prosecutor and the Minister of Justice), five public prosecutors elected by their fellow colleagues from the PP ranks, and four prominent lawyers – elected by a very high 2/3 majority in the National Assembly.[19] The idea of keeping four members that are being elected by the parliament was to ensure that the sovereignty of the people is maintained. No power elects itself and if the authority to elect public prosecutors does not belong to the representatives of the people in the National Assembly, some link, even an indirect one had to remain. The very high qualified majority for the election of prominent lawyers served to ensure partisan compromise. Apart from having relevant experience, prominent lawyers also must not be members of a political party.

Scholarly, expert-like and the wider public mostly welcomed the solutions contained in the Constitutional Amendments. There were also some opposing opinions which were highly diverse in their essence – some parties and NGOs were arguing that the reform should have gone even further, while some others thought that the National Assembly should remain in charge when it comes to the issue of the public prosecutors' election.[20] But, as one author concludes: "Despite opposing views and disagreements related to the quality and reach of constitutional

[19] *Ibid.*, Amd. XXV

[20] For a highly critical view on the Constitutional Amendments see: D. Simović, Ustavni amandmani iz nužde – kritički osvrt na ustavnu reformu sudske vlasti, *Zbornik radova Pravnog fakulteta u Novom Sadu*, 1/2022, 85 – 119.

amendments in the field of justice, it seems that the authors and NGOs agree that constitutional amendments were necessary and that they managed to (to a greater or lesser extent) remove all those omissions that undoubtedly burdened the Serbian constitution of 2006".[21]

Solid foundation for improvements in PP were firmly set in the Constitutional Amendments, but naturally, the majority of the novelties in this domain had to be concretized by relevant laws.

3. New prosecutorial laws

Significant changes of the constitutional text consequently created the need for enacting and adapting the whole series of laws regarding the judiciary, as well as a large list of laws that indirectly stand in connection with judicial laws. Laws on CS and PPS belong to the group of so-called "system laws" – the ones of the highest importance for the legal order. The set of new judicial laws that serves to harmonize legislative solutions with the new constitutional ones consists of five laws, out of which two relate to PP: the Law on the Public Prosecutor's Office and the Law on the High Prosecutorial Council.

The Law on Public Prosecutor's Office[22] regulates a wide range of issues, for the most part those that have already been addressed in the constitutional text, this time in more detail. The election process is regulated in detail, as well as reasons and procedure for dismissal. A list of topics that were present in the previous list has been improved in the context of increased protection of impartiality, and some new ones were introduced. For example, the new legal remedy, an appeal to the Constitutional court, now stands at disposal for a variety of decisions of the

[21] A. Nikolić, Teze i antiteze ustavnih amandmana u oblasti ravosuđa, *Zbornik radova kopaoničke škole prirodnog prava – Slobodan Perović*, Beograd 2022, 693.

[22] The Law on Public Prosecutor's Office, *Official Gazette of the Republic of Serbia*, 10/2023.

High Prosecutorial Council. Disciplinary liability is stipulated in more detail. Heavily criticized practice of misuse of temporary assignment was addressed as well. It was quite common to overuse this possibility in order to avoid regular competitions/elections for public prosecutors. The new Law states that "the public prosecutor may, with his or her written consent, be temporarily assigned to another public prosecutor's office of the same or lower level for a maximum of one year, without the possibility of re-assignment to the same public prosecutor's office"[23]. This serves to ensure that the temporary assignment is to be used only exceptionally and not as a rule anymore.

The aforementioned mandatory instructions and the procedure for submitting objections (which was in the center of the aspiration to somewhat weaken the hierarchy structure of PP) are arranged in detail. The High Prosecutorial Council and the special, dedicated Commission within the Council are authorized to reach the decision whether the mandatory instruction in question was illegal or inexpedient and, if yes – to put the instruction in question out of power. The same goes for the institutes of devolution ("the immediately higher public prosecutor's office may, in order to conduct the procedure more efficiently or for other important reasons, in a specific case, undertake all actions for which the lower public prosecutor's office is authorised, on the basis of a reasoned decision of the immediately higher chief public prosecutor"[24]) and substitution ("the immediately higher chief public prosecutor may, by a reasoned decision, authorise a lower public prosecutor's office to proceed in matters under the competence of another lower public prosecutor's office when the competent public prosecutor's office is prevented through legal or factual reasons to act in the case"[25]).

Regarding the management of the administration in the Public Prosecutor's Office, the Supreme Public Prosecutor and the chief public prosecutor determine the organization and work of the public prosecutor's

[23] *Ibid.,* Art. 69.
[24] *Ibid.*, Art. 20.
[25] *Ibid.*, Art. 21.

office, decide on the rights based on the work of public prosecutors and on the labor relations of civil servants and officers in the public prosecutor's office, remove irregularities in the work of the public prosecutor's office, take care of the autonomous status, reputation and efficiency of the public prosecutor's office, provide for impartial allocation of cases to public prosecutors and perform other tasks for which they are authorized by law or other regulations.[26]

The Law on the High Prosecutorial Council[27] arranges in more detail the organization and operation of this high state body, dedicated to protection and preservation of PP and its autonomous status. The wide range of competences (much broader in comparison with the former State Prosecutors' Council) is listed in the Law. For example, the Council now: proposes the election and termination of the function of the Supreme public prosecutor to the National Assembly; elects the chief public prosecutors and public prosecutors and decides on the termination of their functions; proposes candidates for judges of the Constitutional Court to the Supreme Court; decides on the permanent relocation of chief public prosecutors and public prosecutors and temporary assignment of public prosecutors; decides on the incompatibility of other functions, services and jobs with the public prosecutor's function; decides in the process of evaluating the work of chief public prosecutors and public prosecutors; determines the composition and termination of the term of mandate of the members of the disciplinary bodies, appoints the members of the disciplinary bodies and regulates the work and decision-making in the disciplinary bodies; decides on the existence of undue influence on the work of holders of the public prosecutor's function and the public prosecutor's offices and measures to prevent such undue influences etc.[28]

[26] M. Đorđević, M. Stanić, *Serbian Steps towards European Judiciary*, Belgrade 2022, 17.
[27] The Law on the High Prosecutorial Council, *Official Gazette of the Republic of Serbia*, 10/2023.
[28] *Ibid.*, Art. 17.

The high quorum requirement for reaching the decisions (eight out of eleven votes are required, with just a few exceptions) serves to ensure the creation of "a melting-pot" between members from the prosecutorial ranks and prominent lawyers. In this way, all the fear of corporatism in decision making became redundant. The Council has a reasonable independence when it comes to its own budget – it may submit its own budget proposal and, once granted, the budget cannot be changed and the resources withdrawn by the Government. From the ranks of its members, the Council elects the President (from within the public prosecutorial members) and the Vice President (a prominent lawyer) of the High Prosecutorial Council. The President represents the Council, convenes and presides over the Council sessions, coordinates the work of the Council, ensures the implementation of the acts of the Council, and performs other duties in accordance with the law and acts of the Council. In the case of President's absence or incapacity, the Vice President performs all the aforementioned duties.

The Law stipulates in detail all the conditions and procedure for the election of its members from the public prosecutors' ranks (the procedure for the election of prominent lawyers found its place in the Constitution), rules about member's dismissal, operation of the Administrative office, staff etc.

Conclusion

On May 10 2023, according to the transitional and final provisions, the application of the new public prosecutorial laws started – with the election of the prominent lawyers and the constitution of the High Prosecutorial Council. At the time of writing this paper, wearying but equally important work on the list of public prosecutorial bylaws is underway. With their completion, the reform of the public prosecution system in Serbia will be complete.

Constitutional Amendments of 2022 and the follow-up set of laws brought the long-awaited changes that may serve as a step forward on the Serbian path towards the EU. Even more importantly, they will hopefully present an important milestone in pursuit of the rule of law and strengthening of democracy. All these systematic (sometimes even described as "tectonic") shifts are expected to provide significant mid and long-term benefits for the Republic of Serbia and its citizens, but they also set a list of serious, difficult challenges, in the first place – for public prosecutors themselves. One must be aware of the fact that any kind of innovation and change will not be welcomed by everyone, even if they were aimed for their own benefit. People are often inherently inert, which can be severely amplified when it comes to the state organization and functions. Challenges are to be expected especially in smaller communities and with a bit older PP function holders, who are strongly accustomed to the old system and principles with which they have dealt their whole careers, sometimes decades long. The grasp of the reform undertaking was, however, well measured, with all these challenges in mind as well. Still, some patience as well as persistence, education and training are required, because it will certainly take some time for all the new solutions to fully come to life, especially when it comes to embracing new potentials and responsibilities.

DEJAN
VUČETIĆ

Safeguarding Media Pluralism and Electronic Media Users' Rights in Serbia: Examining the Role of Regulatory Bodies

Introduction

The intricacies of media regulation and the preservation of media pluralism are of paramount importance in modern democracies. It is imperative to understand that the notion of media pluralism transcends the concept of media ownership (Karppinen, 2009; Collins & Cave, 2013; Karppinen, 2013). In the media domain, pluralism encapsulates the heterogeneity of information sources and media content. The arena of electronic media, in particular, has grown in prominence due to technological advancements and the increasing ubiquity of digital platforms (Czepek & Klinger, 2010; Llorens & Costache, 2014; Mazzoli, 2021; Smith, Tambini, & Morisi, 2012; Valcke, 2011). This paper embarks on an exploration of this vital domain within the specific context of Serbia, a country that presents a complex and informative case study.

The study is organized around five interrelated research questions. Firstly, we probe the legal framework governing electronic media in Serbia. Understanding this legal landscape provides a critical foundation for examining how media pluralism and electronic media users' rights are upheld. Secondly, we identify and describe the main regulatory bodies entrusted with overseeing media pluralism and electronic media users' rights in Serbia, highlighting their specific roles and functions. As these bodies are pivotal actors in the media landscape, comprehending

their responsibilities offers valuable insights into the mechanisms for media regulation and protection of user rights. The third question concerns the effectiveness of these regulatory bodies. We evaluate their performance in terms of ensuring media pluralism and safeguarding the rights of users in the electronic media landscape. This analysis offers a measure of the success of current regulatory strategies and mechanisms in Serbia. The fourth research question addresses the major challenges and obstacles these regulatory bodies encounter in their mission to safeguard media pluralism and users' rights. By understanding these hurdles, we can better comprehend the complexities and difficulties inherent in media regulation. Lastly, we assess the current state of media pluralism and electronic media users' rights in Serbia. This will enable us to gauge the overall health of the media landscape in Serbia and understand the outcomes of the existing legal and regulatory framework.

In addressing these questions, this paper aims to present a comprehensive understanding of the electronic media landscape in Serbia, offering valuable insights for policymakers, media professionals, and scholars alike. As we navigate the ever-evolving media environment of the 21st century, such analysis becomes increasingly vital to ensure the preservation of media pluralism and protection of users' rights.

1. The Legal Framework of Electronic Media

1.1. Public Information and Media Law (2014)

The Public Information and Media Law, whose last version was enacted in 2014, sets the foundation for the functioning of media within the Republic of Serbia (Vučković, 2021; Prica, 2022). It places a strong emphasis on the principles of timely, truthful, complete, and impartial information, thus guaranteeing the public's right to be accurately informed. Moreover, the law envisions the withdrawal of the state from media ownership, a significant step towards ensuring the independence and impartiality of the media (Article 4).

The Law on Public Information and Media applies to all media types, including electronic media. It specifically regulates that everybody is obliged to respect that the rights of publishers/providers of audio and audiovisual services (Article 11). Similar provisions are found in the section concerning public interest in the public information domain (Articles 15-16). The law also includes a chapter on co-financing projects in the public information domain to achieve public interest. This chapter, encompassing Articles 17-28, delineates the conditions for announcing and conducting competitions, as well as granting individual grants. This applies to all media, thereby ensuring equal opportunities for various media types to contribute to public interest.

In terms of defining media, the law describes it as a means of public communication that conveys editorially shaped information, ideas, opinions, and other content intended for public distribution and an indefinite number of users. This definition includes radio programs, television programs, and electronic editions of these media (Article 29). The law explicitly lists what is not considered media and states that each radio or television program represents a separate media entity. In the context of changes in media publishers, the law refers to the Electronic Media Law (Articles 29-33), thereby ensuring a comprehensive and inclusive definition of media. To protect media pluralism, the law prohibits consolidating ownership shares in electronic media if the combined audience exceeds 35% (Articles 45-46). The law also restricts the majority of capital acquisition for significant daily newspaper publishers and audio/visual service providers. Electronic media regulations (Chapter 10) impose an obligation to temporarily store media recordings for 30 days after a radio or TV broadcast (Article 68). The law establishes liability for pornographic audio and audiovisual media content under the Electronic Media Law (Article 78).

The Law also stipulates corrections and responsibility for information, with the same deadlines for electronic media as for other media types. Legal protection, information on the outcome of criminal

proceedings, compensation, and other aspects are also applicable to electronic media.

In the context of Serbian media legislation, according to the law, the enforcement of media pluralism is ascertained via monitoring the share of listening and viewing ratings, a regulation absent from prior legal frameworks. Yet the legislation falls short of delineating explicit methodologies for gauging and quantifying these shares, and for validating data pertaining to media audience preferences. The process of ascertaining media concentration further relies on unverified statements from media publishers, thus potentially compromising the accuracy of the data obtained. The extant rules addressing media concentration fail to provide comprehensive criteria for evaluating concurrent media ownership across different sectors. A distinct void exists concerning platform-neutral regulations capable of assessing the pluralism of media content across various distribution forms, including the internet, cable, over-the-top (OTT) platforms, and other mediums (Rokša-Zubčević A., 2021).

1.2. A Dissection of the Serbian Law on Electronic Media

The Law on Electronic Media, enacted in Serbia in 2014, is a comprehensive legislative document composed of three essential sections, namely the Regulatory Authority for Electronic Media (REM), the provision of media services, and the protection of media pluralism.

Within the definitions segment of the Law on Electronic Media, "electronic media" encapsulates radio and television programs, alongside on-demand program content accessible through electronic communications networks and electronic edition content. The law also elucidates a series of related terms, including media service, audiovisual media service, on-demand audiovisual media service, operator, and media service provider, along with television broadcasting and advertising. The influence of the Audiovisual Media Services Directive is discernible within the law, specifically noted in Article 4 (Blagojević 2020: 123).

The Regulatory Authority for Electronic Media (REM) is elaborated in the second segment of the law. REM is portrayed as an autonomous, independent entity exercising public authority within the media sector. Its objectives span the enhancement of the quality and diversity of electronic media services, preservation, protection, and development of freedom of thought and expression, protection of public interests in electronic media, and protection of service users (Article 5). REM's independence from all legal entities is guaranteed, both functionally and financially. Notably, REM is accountable to the National Assembly for its operations (Article 5). According to Prica, REM is an independent organization with extensive regulatory, supervisory and quasi-judicial tasks (Prica 2022:166).

The organs of REM, as stipulated in the law, comprise the Council and the Council President (Andonović, 2017). The Council is the principal organ, comprised of nine expert members relevant to REM (Andonović, 2017: 4). The National Assembly elects and oversees the Council members who are proposed by authorized nominators and administer REM via decision-making (Andonović, 2017: 5). The Serbian Assembly proposes two members, while other authorized nominators, each suggesting one member, include the Assembly of Vojvodina, accredited universities, electronic media publishers' associations, artists and composers' associations, associations for freedom of speech and child protection, and minority councils and churches/religious communities (Andonović, 2017: 5). Articles 10 and 11 of the Law elucidate the nomination procedure, spanning from public calls for candidates to voting on their election in the Assembly. Council members' mandates, incompatible with public or political functions, span five years with the potential for one re-election. Members operate independently, and mandates terminate upon expiry, death, or dismissal (Articles 12-16). The operations of the Council members are public, necessitating a quorum of five members. Decisions are made based on an absolute majority or occasionally a two-thirds majority (Article 19). The Council President represents REM and is accountable for its operation (Article 21). This

intricate structure ensures a robust governance model for the regulation of electronic media in Serbia.

The Law on Electronic Media, therefore, plays a crucial role in ensuring the regulation, oversight, and improvement of media services while preserving freedom of expression and thought. However, the implementation and effectiveness of these regulations, as well as their impact on media pluralism, require further analysis and discussion.

1.2.1. THE SCOPE OF WORK AND FINANCIAL FRAMEWORK OF THE REGULATORY AUTHORITY FOR ELECTRONIC MEDIA (REM)

The Law on Electronic Media delineates a comprehensive set of responsibilities for the Regulatory Authority for Electronic Media (REM). As specified in Article 22 of the law, REM's scope of work encompasses 23 key aspects, including:

1. Determining the Proposal of Media Services Development Strategy,
2. Adopting statutes, regulations, guidelines, and recommendations,
3. Issuing permits and approvals for providing media services and overseeing the permit issuance process,
4. Administering the Media Services Registry,
5. Supervising the operation of media service providers and implementing measures against them,
6. Instituting binding instructions for broadcasters,
7. Collaborating with other bodies and organizations,
8. Deciding on complaints against broadcasters and executing other assigned duties or tasks within its original jurisdiction.

Andonović believes that the scope of work of REM (Regulatory Body for Electronic Media) should be clearly defined. The author states that the main goal of REM is to support media freedoms in an independent manner and to regulate the functioning of electronic media (Andonović, 2017: 12-14).

Regarding REM's financial framework, the organization's funding is obtained through its business operations, particularly fees paid by media service providers. The financing is contingent on an annual financial plan approved by the Council. Potential expenses and revenues fall under the jurisdiction of the Republic of Serbia's budget (Articles 34-37). REM is mandated to make all data from its scope of work publicly accessible and submit annual reports on its operations to the National Assembly (Articles 38-39). Andonović notes that a potential problem arises when a financial plan for the current year is not adopted, in which case the previous year's plan is applied, which may not be synchronized with the current market and REM's needs (Andonović, 2017: 10).

With respect to control mechanisms, an administrative dispute before the Administrative Court can be initiated against REM's decisions. However, the court is not authorized to directly resolve administrative matters through judgment if they pertain to the issuance or revocation of permits or the imposition of sanctions. In such instances, a dispute of full jurisdiction is precluded (Article 42).

1.2.2. APPROVAL AND LICENSING OF ELECTRONIC MEDIA SERVICES

Electronic media services can be provided in three ways: without approval or a license, with approval, and with a license (Article 73). Providing media services without prior approval or a license primarily refers to public media services, providers of media services via information networks, and foreign media service providers that retransmit programs based on the Convention on Transfrontier Television (Article 74). Providing media services based on approval applies to on-demand media service providers, with REM issuing the approval upon request (Article 75).

The primary mode of providing media services is based on a license for broadcasting programs issued by the Regulatory Authority for Electronic Media (REM), either upon request or through a public competition (Article 77). This license can be awarded to a natural or legal person under the jurisdiction of the Republic of Serbia, with the exception

of state entities, legal entities owned by the state, and political parties (Articles 79-80). The law provides detailed procedures for issuing and using licenses, specifying the requirements for requests, REM's handling process, and the obligation to maintain a media services register (Articles 82-86). Licenses are issued for a period of eight years and can be extended only once if issued through a public competition (Article 88). The Law also specifies cases of license expiration and revocation procedures (Articles 89-91).

For broadcasting radio and television media services, REM announces a public competition where potential providers submit applications with content prescribed by REM, which then decides and potentially issues such licenses (Articles 92-96).

1.2.3. PROTECTION OF ELECTRONIC MEDIA PLURALISM AND ELECTRONIC MEDIA REGULATIONS

The subsequent chapter of the Law on Electronic Media pertains explicitly to the protection of media pluralism. As per the law, the Regulatory Authority for Electronic Media (REM) is tasked with determining violations of media pluralism as prescribed by the Public Information and Media Law. Should a violation occur, REM is authorized to issue an official warning to the media service provider (Articles 103-104). Furthermore, media service providers are required to report any changes in their ownership structure in the main capital to REM (Article 105). This provision ensures that the authority maintains an up-to-date understanding of the ownership landscape of media service providers, contributing to the protection of media pluralism. Additionally, the law includes the obligation to transmit programs of public interest, as determined by REM, as another measure for protecting media pluralism (Article 106). This obligation ensures that a diversity of viewpoints and information is accessible to the public, which is a key aspect of media pluralism.

The Regulatory Authority for Electronic Media (REM) stands as Serbia's principal regulatory entity for electronic media. REM is entrusted

with the responsibility of ensuring media pluralism and safeguarding user rights. However, its institutional and operational efficacy has been questioned. Critics argue that REM's approach is characterized by passivity and a lack of transparency in its decision-making procedures. Furthermore, the regulatory body has been accused of inadequate enforcement of its authority to hold media entities accountable for their programming obligations, especially those displaying a pro-government bias (Prica, 2022).

2. Commission for Protection of Competition of Serbia

The Commission for Protection of Competition of Serbia is an independent organization responsible for implementing the Law on Protection of Competition (2009). As the highest antitrust national body, it operates within a policy framework and follows certain practices as analyzed by Mitrovic (2013). Recent amendments to the Law on Protection of Competition have been suggested in order to strike a balance between the powers and obligations of this Commission, as highlighted by Begović and Ilić (2022). Its main responsibilities include:

1. Investigating and preventing anti-competitive practices such as abuse of a dominant position and restrictive agreements,
2. Investigating and approving concentrations (mergers and acquisitions) between companies,
3. Conducting sectoral analyses of market conditions,
4. Providing opinions on draft laws and regulations related to competition,
5. Promoting competition rules and raising public awareness about the importance of competition,
6. Cooperating with other national and international competition authorities.

The Commission is composed of a Council and professional services. The Council is the decision-making body of the Commission

and consists of a President and four members appointed by the National Assembly of the Republic of Serbia for a period of five years. The professional services of the Commission are responsible for carrying out the tasks within the scope of the Commission's work, as well as providing professional and administrative support to the Council.

The Commission for Protection of Competition of Serbia plays a smaller role in protecting media pluralism by ensuring that mergers and acquisitions in the media sector do not result in a concentration of ownership that would harm competition and diversity of media content. The Commission assesses the permissibility of concentrations in the media sector in accordance with the provisions of the Law on Protection of Competition.

3. The Efficiency of Media Regulatory Bodies and Present Condition of Media Pluralism and Electronic Media User Rights in Serbia

One of the prominent challenges and hindrances encountered by media regulatory authorities, such as the Regulatory Authority for Electronic Media (REM), in preserving media pluralism and safeguarding the rights of users incorporates several elements, such as political influence and intervention, lack of robust legal protection, scarcity of resources and limited enforcement capabilities.

In view of the current condition of media pluralism and the rights of electronic media users in Serbia, it is worth noting that, according to a report by the 2022 Media Pluralism Monitor (MPM) published by the European University Institute (EUI), Serbia is confronted with a moderate risk (49%) concerning the fundamental safeguarding of media pluralism. Furthermore, it faces substantial risks in terms of market plurality (68%) and political independence (75%). Social inclusiveness also stands at moderate risk (64%) (Milutinović, 2022). An article from The New York Times articulates that Serbia is employing novel forms of

censorship to narrow the arena accessible to dissenting voices and skew public sentiment in favor of those in power (Higgins, 2022).

A critical analysis of the current state of media pluralism and electronic media user rights in Serbia reveals notable challenges. The high-risk score in the Market Plurality domain indicates that media pluralism is especially endangered by substantial commercial influence and proprietary control over editorial content. This risk is further exacerbated by a high degree of news media concentration, encompassing even the digital sphere. Additionally, there is a discernible decline in media freedom, journalistic quality, and investigative journalism. The efficacy of regulatory bodies in Serbia has come under scrutiny due to these trends. The high-risk score in the Market Plurality domain corroborates that media pluralism is particularly threatened by large-scale commercial entities and proprietary influences on editorial content, coupled with a high concentration of news media, including in the online realm. The area of political independence is the most jeopardized, presenting high risks to media pluralism and freedom. Authorities, political parties, and state-owned corporations often exploit their financial strength to sway editorial policies, whereas media outlets lack the political or financial leverage to resist such pressure. Therefore, it is critical that robust and effective legal safeguards against corruption and clientelism are stipulated by law and enforced in practice. The procedure for electing Public Electronic Service Media (PESM) Managing boards and directors should proceed without political pressure. Furthermore, the co-financing of media through state funds should be transparent, equitable, and governed by explicit criteria. Regrettably, provisions that would alleviate the obstacles to the political independence of PESM have not yet been implemented. This highlights the urgency for reforms that uphold the integrity and independence of media in Serbia. The current state of affairs underscores the necessity for further investigation and strategic interventions to enhance media pluralism and user rights in the country. As already noted, an examination of the prevailing status of media pluralism and the rights of electronic media users in Serbia reveals

a high-risk score within the domain of Market Plurality (Milutinović, 2022: 14). This underscores a pervasive threat to media pluralism, predominantly attributed to the influential presence of commercial entities and proprietors within the sector. The landscape is further challenged by a considerable concentration of news media, which extends into the digital sphere. This, in conjunction with the influence of commercial and owner interests, is indicative of a potential hindrance to a diverse and balanced media environment. A concerning trajectory is observable in terms of a decline in media freedom, the quality of journalism, and the capacity for investigative journalism. These factors, in combination, amplify concerns regarding the state of media pluralism and user rights in Serbia. In response to these challenges, a working group in 2021 embarked on efforts to amend the Law on Public Information and Media. However, despite these attempts, the final draft of the revised law has yet to be published, contributing to an atmosphere of uncertainty and potential regulatory shortcomings (Milutinović, 2022: 31). Moreover, the deadlines for the intended activities relating to the revision of this law have been surpassed, further complicating the situation. Despite the passage of a year since these efforts were initiated, no significant transformations have been realized within the media landscape.

Davidović notes that Serbia has a high level of media concentration, especially in the domain of media ownership, public media funding, and political influence. For instance, Mitrović's Pink International Company, with three national channels in Serbia, sixty cable channels that dominate the region's viewership, and film and music production, demonstrates a dominant media influence. After analyzing two other researches (Matić, Valić-Nedeljković, 2013: 333; Balkan Investigative Reporting Network-BIRN, 2017), the author concludes that even though Serbia's media legislation protects media pluralism, it does not provide adequate protection against media domination (Davidović, 2022: 118). Thus, the regulation did not prevent monopoly in the media market, resulting in a high level of media concentration. Furthermore, state

influence on media in Serbia imposes a risk of "economic censorship," where the media content predominantly meets the interests of primary funders.

In order to uphold media freedom and pluralism, it is crucial to prescribe and implement adequate and efficient legal safeguards against corruption and clientelism. These measures need to be ingrained in a legal framework and executed in practice to ensure their effectiveness. Furthermore, the co-financing of media through state funds should adhere to principles of transparency, fairness, and clear criteria. Such practices can help to insulate media outlets from potential political interference and promote the integrity of the media landscape.

Conclusion

This comprehensive analysis of the regulatory landscape of electronic media in Serbia paints a concerning picture. Despite the existence of a legal framework designed to uphold media pluralism and user rights, the country faces significant challenges in this area. The high-risk score in the Market Plurality domain, indicated by the 2022 Media Pluralism Monitor, suggests that the media sector is severely impacted by commercial interests and a high concentration of media ownership. This situation presents a potential threat to the diversity and balance of the media environment, undermining the principles of media pluralism.

The Regulatory Authority for Electronic Media (REM) and, to a lesser extent, the Commission for Protection of Competition are key regulatory bodies that have been instituted to safeguard media pluralism. However, their effectiveness is impeded by political interference, resource scarcity, and limitations in enforcement capabilities. The procedural vulnerabilities in appointments to these bodies, REM in particular, coupled with inadequate legal protection for their independence, further undermine their efficacy. Therefore, it is vital to address these structural and operational inadequacies to enhance the resilience and effectiveness

of this regulatory body. The domain of political independence is of particular concern, with the country presenting high risks to media pluralism and freedom. The unchecked financial strength of authorities, political parties, and state-owned corporations is often wielded to influence editorial policies, threatening media independence. Without political or financial resistance from media outlets, these pressures are likely to persist.

The unrevised Law on Public Information and Media and the tardiness in proposing its amendments raise questions about the state's commitment to media pluralism and the rights of electronic media users. Furthermore, the increase in unconventional forms of censorship, as highlighted by The New York Times, signifies an alarming development in the media landscape of Serbia. The issue of media concentration, especially in terms of ownership, public media funding, and political influence, is a significant challenge that Serbia faces, as reflected in the case of Mitrović's Pink International Company. Despite legislative protections for media pluralism, the regulation does not sufficiently protect against media domination.

In conclusion, the situation of media pluralism and electronic media user rights in Serbia is precarious. Reforms that reinforce legal safeguards against corruption, ensure the independence of media, and curtail undue influence from commercial and political entities are urgently needed. The role of regulatory bodies like REM needs to be strengthened, with assured independence from political intervention. These changes, coupled with greater transparency in state co-financing of media, are critical to improving the condition of media pluralism and user rights in Serbia. The responsibility for these improvements lies not only with the regulatory bodies and the state but also with media entities, journalists, and citizens, who must all actively participate in promoting and defending these principles.

VLADIMIR
BOZINOVSKI

Macedonian Media System
-Traditional and New Media-

Seeking for more information on different topics was always essential for human development. Throughout history, the advancement of new means of communication which will provide more information in a shorter timeframe were often the turning points in societal growth. In contemporary societies, the role of Mass Media is crucial in providing information which shape the public opinion and thus influence the decision-making process of the political elites. Recognizing this importance of the Mass Media, the majority of the European Media systems are regulated in order to provide an uninterrupted flow of information, with quality journalism, editorial independence, media pluralism and protection of media freedoms.

However, during the last three decades there were two big leaps forward considering the media and information. The first is the introduction of the internet during the last decade of the 20th century and the second is the creation and spreading of the social networks during the first decade of the 21 century. In addition, during the last 10 years the influence on information systems of both internet and social networks were enhanced with the development of the smart mobile devices technology which, furthermore, ease the accessibility of the internet and social networks as a means of communication. Thus, due to the impact of the new internet-based media, when we spoke today about media systems we must make a distinction between traditional media (TV and radio) and new online-based media (news websites and social networks).

The Macedonian Media System is regulated, but regarding regulations, a clear distinction should be made between the traditional and the new online media, since the Macedonian Media are no exception to the contemporary global media developments. While the traditional Media are regulated, the online media are not, although the self-regulatory body SEMM (the Media Ethics Council) has introduced a Register of Professional Online Media as a criteria for membership.[1]

The traditional regulated Media sector has three segments. The first segment is the national public broadcasting service (Macedonian Radio and Television), second are commercial television and radio stations, and third are the non-profit radios. The broadcasting could be performed only through a license issued by the official regulatory body (the Agency for Audio and Audiovisual Media Services-AVMS). At present, there are a total of 107 broadcasters, 44 of which are televisions and 63 are radio stations. Out of 44 television stations, 11 broadcast programs at the state level (5 via multiplex, 4 via cable operators and 2 via satellite), 18 at the regional level (6 via multiplex and 12 via cable operators), while 15 are local television stations (via cable operators).Out of 63 radio stations, 4 broadcast programs at the state level, 16 at the regional level (of which 1 is a non-profit radio station), and 43 at the local level (3 are non-profit ones).[2]

1. Regulatory bodies (AVMS and CMEM)

As mentioned above, the official regulatory body is the Agency for Audio and Audiovisual Media Services. The Agency is an independent, non-profit regulatory body with the status of a legal entity with public competencies. It conducts supervision over the broadcasters, supervising

[1] Vibrant Information Barometer (VIBE) 2022; https://www.irex.org/VIBE_2022_North_Macedonia pp10, accessed: 22.04.2023.
[2] The Agency for Audio and Audiovisual Media Services https://avmu.mk/en/broadcasters/?print=print, accessed: 22.04.2023.

several aspects of their work: protection of juvenile audiences, advertising, sponsorship, product placement, obligations to air music and originally created programs, etc.[3] The establishment, financing and the responsibilities of the Agency are in accordance with the Law on audio and audiovisual media services.[4]

In addition to the official regulatory body, the media outlets established a self-regulatory body, the Council of media Ethics of Macedonia (CMEM). CMEM is a non-governmental, non-political and non-profit organization focused on building and advancing professional and ethical standards in the media through self-regulation, with moral sanctions applied on those who do not observe professional standards and the Code of Journalists.[5] Among other aims, CMEM seeks to ensure protection of media freedom and the right of public to be informed; prevention of influence of the state, political parties and other centers of power over the media; protection of the public interests by providing an independent, efficient and fair process of resolving complaints about the media contents; promotion of quality in the media contents, by adopting clear and practical guidelines in the work of editors and journalists; development of an environment conducive to self-criticism, self-awareness and transparency of the media towards the audience.[6] CMEM has around 200 members including both traditional and new online media.

Regarding the new media, there is no precise data on the number of online new media in the country. The estimation is that there are more than 200 online media outlets, with around 150 as the approximate number of online media which are members of CMEM and 195 online media which were registered at the State Election Commission before the

[3] The Agency for Audio and Audiovisual Media Services https://avmu.mk/en/home-en, accessed: 22.04.2023.
[4] Law on audio and audio-visual media services, (Official Gazette of the Republic of Macedonia No. 184/13).
[5] Council of media Ethics of Macedonia https://semm.mk/en/sovet-za-etika-3/za-nas, accessed: 24.04.2023.
[6] CIMUSEE *(Coalition Of Information And Media Users In South East Europe)* https://cimusee.org/north-macedonia/, accessed: 25.04.2023.

local elections in 2021, which is a precondition for media to be able to offer a pay political advertisement for the Elections.[7] The online media are not covered by the existing media laws (the Law on Media and the Law on Audio and Audiovisual Media Services) and, therefore, they are not regulated. Furthermore, at least considering the Law, there is not a precise definition of what is an online media. Nevertheless, there are some provisions that indirectly regulates the online media, concerning their content and online distribution to the audience, although due to the lack of legal definition of online media or "internet portals", there are controversies in implementing those provisions. As an example, in the amendments of the Electoral Code (2016) in the part related to the media coverage of the election campaign (article 75), the Internet media are also included, beside traditional electronic media. Thus, the Agency for Audio and Audiovisual Media Services has a legal obligation to monitor election media coverage and program services of broadcasters and electronic media (internet portals) in Macedonia from the day of announcing the election to the day of voting. Nevertheless the regulatory body decided not to monitor the internet portals in the election campaign, stating that "the Code does not define the term 'internet portals' or its scope, and such a definition is not found in other laws.[8] However, in relation to the content they create and distribute to the audience, the Internet media are not excluded from the legislation. The provisions relating to some sensitive issues, such as hate speech, defamation, insults, copyright, privacy, juvenile protection, etc. are equally valid and applicable to both traditional and online media.[9]

[7] State Election Commission (2022), "Decision for entry in the Register of broadcasters, print media and electronic media and internet portals" https://drive.google.com/file/d/1PkrKW7s8pHuuadurcgcldgLIGM6TirXs/view, accessed: 25.04.2023.

[8] Self-Regulation Or Regulation of Internet Media in Macedonia, Skopje, 2017, pp5. https://semm.mk/attachments/SELF-REGULATION-OR-REGULATION-OF-INTERNET-MEDIA.pdf, accessed: 28.04.2023.

[9] *Ibid.*

There are several reports and indexes on the state of the media and the Macedonian media system which will be analyzed on the following pages.

2. European Commission report 2022[10]

Each year the European Commission issues a yearly report on the progress made by the candidate countries, concerning the developments on the ongoing reform process for each EU aspirant country. North Macedonia became a candidate country in 2005 and, since then, the Commission presents its yearly progress reports on Macedonian reforms. In these reports, the Commission services present their detailed annual assessment of the state of play of the reform progress in each candidate country and potential candidate over the last year. These assessments are accompanied by recommendations and guidance on the reform priorities.[11]

In the last report, presented in October 2022, the state of the media are assessed in two chapters, *Judiciary and fundamental rights, in subchapter Freedom of expression* and in *Digital transformation and Media.*

In the summary concerning the media and the freedom of expression, the Commission noted that

> the general context is favourable to media freedom and allows for critical media reporting although there were some tensions during the 2021 local elections. Action on

[10] European Commission "*North Macedonia Report 2022*"; DG NEAR; Brussels, 2022 https://neighbourhood-enlargement.ec.europa.eu/north-macedonia-report-2022_en, accessed: 29.04.2023.

[11] European Commission; Strategy and Reports; *DG NEAR*; https://neighbourhood-enlargement.ec.europa.eu/enlargement-policy/strategy-and-reports_en, accessed: 29.04.2023.

> self-regulation of the media should resume and produce practical results in advancing professional standards of journalism.[12]

In addition, it is pinpointed that there is a need for "greater transparency regarding media advertising by state institutions and political parties" and also greater "efforts to reform the public service broadcaster, ensuring its independence, professional standards and financial sustainability. The reform process of the public service broadcaster is constrained by delays in appointing members of its programming council,"[13] The Report noted as well the delays in appointing the council of the Agency for Audio and Audiovisual Media Services.

The main challenges concerning the Macedonian media, according to the Report is the weak financial conditions of the Media, additionally deteriorating during the last couple of years due to the Covid outbreak. This creates concerns for a possibility of enhanced political influence over the Media by the state and governing political actors. The report noted that

> The practice of providing paid political advertising in media funded from the state budget continues to be a concern among media associations, due to the risk of political influence on media independence. Affected by a declining media market and the pandemic, some media outlets have lobbied actively to remove the ban on government advertising in the private media, in order to increase their revenues.[14]

The media associations have criticized this proposal, "highlighting the risk that it could undermine the independence of the media and disrupt the media market."[15]

[12] European Commission, 2022, pp. 27.
[13] *Ibid.*
[14] *Ibid.*, pp. 28.
[15] *Ibid.*, pp. 29.

Concerning the new media, the report notices the problem that those media are not governed by a specific law, something which was already mentioned above in this paper. It is noted that "there are differing views on the need for regulation, especially in view of the growing threats from disinformation. Online media and social media platforms are the main source of disinformation, misinformation, hate speech, breaches of professional standards and intellectual property rights infringements."[16]

The insufficient reforms, delays, inconsistencies and underestimation of the growing influence of online media on the public opinion in addressing the problems concerning the regulation of the digital media segment are also noted in the summary of the *Digital transformation and Media* chapter. According to the report "North Macedonia is moderately prepared in the area of digital transformation and media. Limited progress was made during the reporting period."[17] The additional threats in this segment is also the low media literacy of the public, a problem which will be addressed in the concluding chapter of this essay.

3. The Media Pluralism Monitor (MPM) 2022

The MPM is a

> holistic tool geared at assessing the risks to media pluralism in EU member states and selected candidate countries (32 European countries in total, including Albania, Montenegro, the Republic of North Macedonia, Serbia, and Turkey). The MPM takes into account legal, political and economic variables that are relevant to analysing the levels of plurality of media systems in a democratic society.

[16] *Ibid.*, pp. 30.
[17] *Ibid.*, pp. 79.

> This report presents the results of the implementation of the Media Pluralism Monitor for the year 2021 (MPM 2022).[18]

Starting from 2021 the MPM provides a general ranking of the countries included in the Report, presented in *figure 1*.[19] It should be noted that the rankings are taking into consideration both the current state of the Media and the threats which could lead towards decline of the media plurality in a given country. As explained,

> the focus of the MPM is not just on finding out what the deficiencies of a media system are, but also whether there are structural conditions that can lead to a deterioration in the freedom of expression and media pluralism in a given context. The rationale behind the Media Pluralism Monitor is that it is a systematic analytical process, based on predetermined risk criteria, professional judgement and experience, to determine the probability that an adverse condition will occur.[20]

[18] Centre for Media Pluralism and Media Freedom, Monitoring media pluralism in the digital era : application of the Media Pluralism Monitor in the European Union, Albania, Montenegro, the Republic of North Macedonia, Serbia and Turkey in the year 2021, Centre for Media Pluralism and Media Freedom (CMPF), Media Pluralism Monitor (MPM), 2022, https://hdl.handle.net/1814/74712 accessed: 2.05.2023.

[19] CMPF media pluralism monitor 2022; General Ranking, https://cmpf.eui.eu/mpm2022-general-ranking/ accessed: 2.05.2023.

[20] *Ibid.*

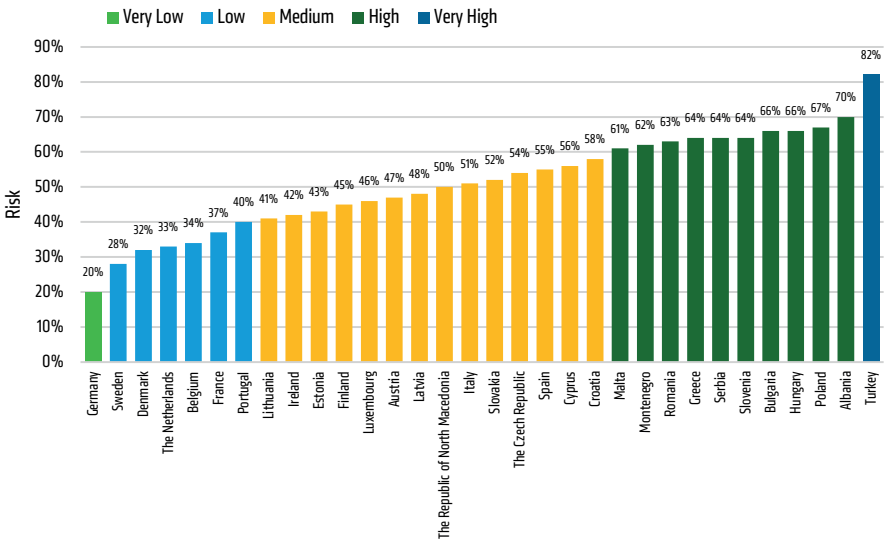

Figure 1; Risks to media pluralism in EU member states and selected candidate countries 2022

In the MPM reports, the risks to media pluralism are examined in four areas: Fundamental Protection, Market Plurality, Political Independence and Social Inclusiveness. Each area has a certain number of indicators which are evaluated in order to provide the risk assessment for the given area and the final ranking is weighed with inclusion of all areas and indicators. The Macedonian report is following the general methodology in evaluation of the media plurality and the freedom of expression in the county. The assessment is including both traditional and online media although the report includes a specific risks assessment analysis considering only the new media environment. The general assessment considering the state of media in the Macedonian case is shown in *figure 2*.[21] Out of the four evaluation areas, the lowest risk is

[21] Micevski, Igor and Trpevska, Snezana. Monitoring Media Pluralism in the Digital Era 2021; Country Report: North Macedonia; Centre for Media Pluralism and Media Freedom; Robert Schuman Centre for Advanced Studies; European University Institute; 2022, pp. 8, https://cadmus.eui.eu/

given to the fundamental protection area which is on the borderline between low and medium risk, while other areas are all assessed as medium risk to media plurality and freedom of expression, although the market plurality which has the lowest score is close to the high risk assessment range.

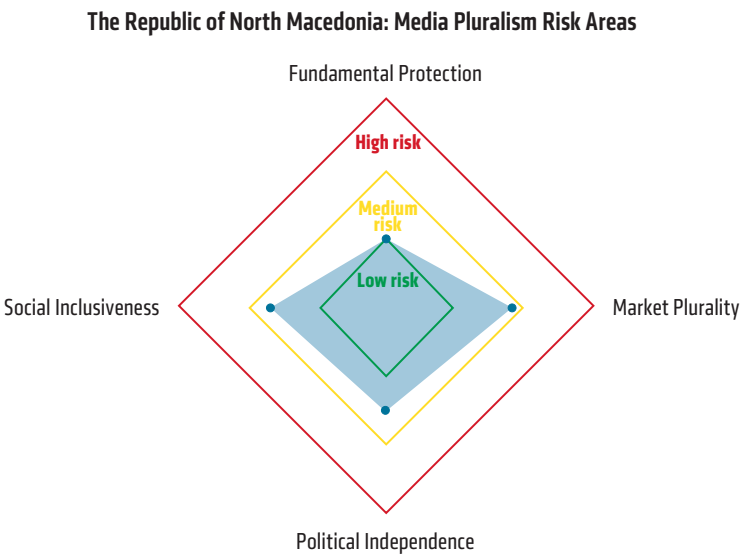

Figure 2; Media Pluralism Risk Areas

In the *Fundamental protection* area which has, according to the report, the highest score in the Macedonian media plurality assessment, the general conclusion is that the legal framework considering the media freedoms is satisfactory and that provisions guaranteed by the Law are mostly implemented in practice. It is noticed that "there has been some weakening in practicing freedom of expression, but simultaneously there have been improvements in the domain of actual protection of the right to information" and "The media authority enjoys greater

bitstream/handle/1814/74710/CMPF_MPM2021_final-report_QM-07-22-569-EN-N.pdf?sequence=1&isAllowed=y accessed: 5.05.2023.

independence in comparison to the period prior to 2017."[22] In the *Market plurality* area which has the lowest score, the main concerns are towards the online media market, noticing, as in many other reports and indexes, the lack of regulation concerning concentration of ownership as well as the general transparency of online platforms. In addition

> Vulnerabilities in the domain of online platforms concentration and competition enforcement have witnessed a significant increase, due to relevant institution's lack of ability to monitor the online media sector for possible instances of media concentration and to enable enforcing of legally binding competition rules.[23]

Considering the *Political independence,* the political influence is rather indirect, through certain incentives of the political elites towards the media outlets and the informal ties of the media and political elites.

> Existing self-regulation tools are insufficient to counteract clientelistic trends. There are apparent vulnerabilities in the legislation and practice concerning party-political advertising in the media that is paid with funds from the state budget and the lack of transparency of political campaigns party spending's for online platforms.[24]

In the area of *Social inclusiveness,* the main worries are towards restricted opportunities of smaller cultural groups to access the main media outlets, as well the quality of the coverage of local and regional news outside the capital, due to the financial issues of the local and regional media and, thus, lower quality programs.

[22] *Ibid.*
[23] *Ibid.*
[24] *Ibid.*, pp. 9.

The specific risk assessment analysis of the state of the Macedonian media in the online sphere shows that this segment is more vulnerable than the traditional media, as shown in *figure 3*,[25] which compares the general and digital media pluralism risk areas. In the online media evaluation, it could be noticed that all areas, except for *Fundamental protection*, which is with medium risk, are assessed with the high risk to the pluralism of the media.

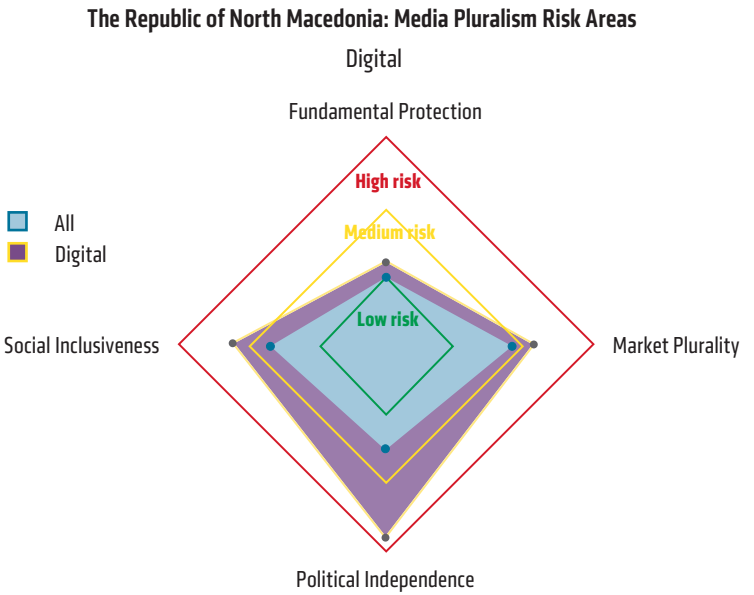

Figure 3; Media Pluralism risk areas – digital media

The main vulnerabilities in this sector, according to the analysis, are "the proliferation of misinformation, disinformation, and harmful content, *(which)* have not been met with audience's reciprocal capability to judge and deconstruct. This, in turn, has increased the risks of destabilization of the entire political system…the regulatory policies and (critically) its educational system have not created an appropriate response to these

[25] *Ibid*., pp. 18.

changes, and this past year has not seen improvements in this regard"[26] Although "the risks to media pluralism in the digital sphere critically affect the overall state of the media system,"[27] the main difference in the risk assesment can be noticed in the area of *Political independence*. As noted, while "The overall risk for political independence of media is estimated at 49%, the digital-related risks in this area score at a high 91%. The vulnerabilities within the online domain of this area continue to pose a reason for future concern, having in mind the importance of this domain for future political communication"[28]

In the general remarks of the Macedonian report for the Media Pluralism Monitor is noted that

> after the rapid undeniable improvement of the state of media pluralism in North Macedonia, induced by the post-2017 overall democratic transformation – it is now evident that reformist processes have become stagnant, and in some segments even in slight decline. Reform fatigue, clientelistic pressures from the political domain towards media (and vice versa) and party-political confrontations, coupled with structural pressures not exclusive to North Macedonia – such as the disinformation and misinformation flooding of the public sphere… have all partaken in the assessment that the media system in this country needs a new impetus for constructive change.[29]

[26] *Ibid.*
[27] *Ibid.*
[28] *Ibid.*
[29] *Ibid.*, pp. 8.

4. Reporters without borders press freedom index 2023

The Reporters without borders, as an international non-governmental organization which aims to protect the rights for freedom of expression and freedom of media and information, publishes its annual *press freedom index* in order to compare the level of freedom of the press among 180 countries worldwide. The index is a useful instrument for detection of the conditions and environment in general, in which journalists and media operate. The last *index* was published at the beginning of May, 2023.

The methodological approach for the press freedom index was changed for the last two annual indexes and the new methodology was devised based on a *definition of press freedom as "the ability of journalists as individuals and collectives to select, produce, and disseminate news in the public interest independent of political, economic, legal, and social interference and in the absence of threats to their physical and mental safety"*[30]*. The Index uses five new indicators "that shape the Index and provide a vision of press freedom in all its complexity: political context, legal framework, economic context, sociocultural context and safety."*[31]

The new Index 2023 ranks Macedonia as 38 out of 180 countries which is an improvement of 19 places compared with the last year's ranking, which uses the same methodological approach, as shown in *figure 4*.[32]

[30] Reporters sans frontiers; World Press Freedom index-journalism threatened by fake content industry, 2023 https://rsf.org/en/2023-world-press-freedom-index-journalism-threatened-fake-content-industry accessed: 10.05.2023.
[31] *Ibid.*
[32] Reporters sans frontiers; *World Press Freedom Index*; North Macedonia; 2023, https://rsf.org/en/country/north-macedonia accessed: 11.05.2023.

INDEX 2023 38/180 Score: 74.35		INDEX 2022 ▲57/180 Score: 68.44	
POLITICAL INDICATOR	36 72.33	POLITICAL INDICATOR	56 66.16
ECONOMIC INDICATOR	53 54.95	ECONOMIC INDICATOR	83 43.71
LEGISLATIVE INDICATOR	10 84.99	LEGISLATIVE INDICATOR	28 81.29
SOCIAL INDICATOR	50 78.20	SOCIAL INDICATOR	74 73.17
SECURITY INDICATOR	64 81.27	SECURITY INDICATOR	53 77.85

Figure 4; Press Freedom Index 2023-North Macedonia

According to the 2023 press freedom index's general conclusion, Macedonian journalists don't work in intimidating settings, but the

> widespread misinformation and lack of professionalism contribute to society's declining trust in the media, which exposes independent outlets to threats and attacks. Furthermore, government officials tend to have poor and demeaning attitudes towards journalists.[33]

Considering the five areas which comprise the new methodology of the press freedom index, the results tend to complement the general conclusion above and they are also in line with the general finding of the other reports and indexes comprised in the Macedonian media system. In the *media landscape area,* the index notes that "although television is the dominant source of information, online media play an important role. Yet, a distinction must be made between professional online newsrooms

[33] *Ibid.*

that employ professional journalists and publish original content, and individual portals that plagiarise and copy-paste such content."[34]

The main obstacles in the *political context* are the lack of transparency of the institutions, the lack of editorial and financial independence of the Macedonian Radio Television and "due to strong political polarisation, the media can be subjected to pressure by the authorities, politicians and businessmen. The two largest parties have created parallel media systems over which they exert their political and economic influence."[35] In the *Legal framework* are the Index notes that the legislation is still not harmonized within the EU standards, although it provides the guarantees for the freedom of speech and prohibits censorship. The main problem, however, is "judicial abuse of the Law on Civil Responsibility for Defamation, (which) incites self-censorship in the media. Lawsuits are used as a tool for intimidation and pressure on independent media."[36]

The *economic context* notices that "although certain types of media concentration are prohibited by law, the editorial staff of some of the major TV channels are exposed to economic pressures from their owners. State funding is limited and non-transparent, and independent media rely heavily on donors"[37] In the Sociocultural context is pinpointed the problem with fake news and misinformation. "Social networks and the digital sphere generally favor the spread of disinformation and cyber threats. Combined with low professional standards, they contribute to the decline of public trust in the media."[38]

The press freedom index 2023 notices improvement of the Macedonian media system in general, although there are several serious threats towards the general environment in which media works. The main challenges for quality journalism and development of the Macedonian media are connected with the lack of financing, political pressure,

[34] *Ibid.*
[35] *Ibid.*
[36] *Ibid.*
[37] *Ibid.*
[38] *Ibid.*

self-censorship and the damage caused by the spread of disinformation and fake news.

5. Freedom House in the World Report

The annual Freedom House Report is encompassing a variety of indicators considering civil liberties and political rights worldwide, creating an index which is based on annual scores for each surveyed country. Macedonian general scores for 2023 were 68 out of 100, which is one point higher than last year, as shown in *figure 5*.[39] Among other indicators, under the *civil liberties* the report takes into consideration *the freedom of media* indicator. Assessed as "a partially free" country in general rankings, Macedonia scores 3 out of 4 points for the media freedom indicator. The general conclusion on media in the report is that "The media landscape is deeply polarized along political lines, and private media outlets are often tied to political or business interests that influence their content. However, a wide collection of critical and independent outlets operates, mainly online."[40] This summary on the Macedonian media landscape only confirms the findings of the other reports and indexes. This situation is triggered mostly by the fragmentation of the already small market, which as a consequence doesn't provide satisfactory financial means for the normal operation of the media outlets. Therefore, many media, especially local and regional traditional media, as well as the majority of online media are susceptible to to the political influence and the influence from the business sector, which from the other side enhance the polarization among them, depending of on their favorability towards some of the political entities in the country.

[39] Freedom House; *Freedom in the World 2023*; North Macedonia; 2023 https://freedomhouse.org/country/north-macedonia/freedom-world/2023 accessed: 11.05.2023.
[40] *Ibid.*

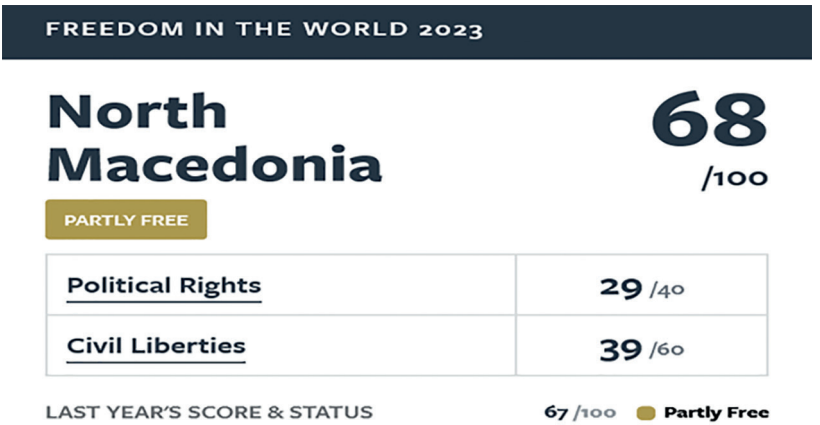

Figure 5; Freedom in the World 2023; country ranking; North Macedonia

6. Media literacy

If the pursuit for more available information due to its scarcity, was the main problem in past human societies, with the developments of the new means of communication during the last few decades, the main problem in contemporary societies shifted from looking for information to selecting the right information. The media, especially the new online media (including both internet portals and social networks) created the hyper production of content coming from many sources, which offers a large quantity of information, imposing challenges to the audience of how to digest that information. The selection of the right information, the analysis and evaluation of the news presented and the skills to determine its accuracy and credibility is a broad definition of media literacy. As Potter suggests, it is all about the code programed in a person's mind by a constant flow of mass media messages and to be able to analyze those messages, a person needs knowledge and a set of particular skills and the willingness to use that knowledge and skills; in other words,

the ability to increase the level of media literacy[41]. The interconnection and interdependence between media literacy and the Mass media system, or even precondition for a certain level of media literacy in order to use the abundancy of content of the mass media as an advantage for gaining knowledge rather than be "swept away in a tide of harmful messages,"[42] is crucial in our contemporary society. The regulation and self-regulation of media, especially concerning the new online media, is not enough as a safeguard for delivering the quality and useful information and, thus, improving the media literacy is a necessity for exploring the media content in search for information.

In the Macedonian case, during the last decade, media literacy has gradually arisen as a subject and, in 2017, 35 subjects, including the Agency for Audio and Audio-visual Media Services created the media literacy network. In 2022, the number of members reached 67, including public and educational institutions and broadcasters.[43] In addition, The Law on Audio and Audio-visual Media Services "vests the AVMS with competencies and responsibilities "to encourage media literacy through cooperation with NGOs, civil associations, educational institutions and other stakeholders, to provide visibility of such activities on its website and to inform about them on a regular basis in annual reports" (Article 26). The Republic of North Macedonia is part of the group of 14 European countries which have included media literacy in their legal provisions."[44] Media literacy is starting to be gradually involved in the educational system from elementary and up to higher educational institutions, although "the Republic of North Macedonia lags far behind the European countries when it comes to the implementation of media

[41] Potter, James W. *"Media Literacy"*, 6th edition, SAGE publications; London, 2013; pp. 10.
[42] *Ibid.*
[43] Shopar, Vesna and Dzigal, Sead *"Media Literacy in the University study programs in RN Macedonia"*, Institute for Communication Studies; Skopje, 2022; pp. 19.
[44] *Ibid.*

literacy in the education system, so it is very difficult to recognize the importance of media education for the democratization of society."[45]

According to the MPM report,

> the state of Media Literacy still poses a high risk for pluralism in the Macedonian media environment. This indicator for 2021 poses a high risk of 68%, which is still slightly lower than in the 2020 estimation when it was 71%. This adjustment is mostly due to the, not insignificant, attempts by state institutions, media, the broadcast media regulator and the CSO sector alike, to work on programs to increase media literacy…however the assessment remains that there is still no comprehensive media literacy policy at state level… The last available research data we have suggests that media and digital literacy skills among the population are at an extremely low level.[46]

* * *

Concerning the traditional media, Macedonian Media System is regulated, with one formal regulatory body, the Agency for Audio and Audiovisual Media Services-AVMS, and one self-regulated body, Council of media Ethics of Macedonia (CMEM). The traditional media market is small and very fragmented with 44 TV outlets and 67 radio stations. The new online media are not regulated and there is no precise data on their number, although there are some provisions that indirectly regulates the online media, concerning their content and online distribution to the audience. The estimate is that there are more than 200 online media outlets, with around 150 as the approximate number of

[45] *Ibid*, pp. 39.
[46] (MPM), 2022, pp. 16–17.

online media which are members of CMEM. There are several reports and indexes which assess the state of the Macedonian Media system.

The European Commission report noted that the general context is favorable to media freedom and allows for critical media reporting, although greater transparency regarding media advertising by state institutions and political parties and greater efforts to reform the public service broadcaster is needed. The main challenges concerning the Macedonian media, according to the Report, is the weak financial conditions of the Media and that there is need for more consistent and thorough reforms concerning the new digital media. The Media Pluralism Monitor report noted that after the rapid improvement of the state of media pluralism in North Macedonia, induced by the post-2017 overall democratic transformation, now it is evident that reformist processes have become stagnant, and in some segments even in slight decline. In the press freedom index 2023, there are improvements of the Macedonian media system in general, although there are several serious threats towards the general environment in which media works. The Freedom House report in the media section pinpoints that the media landscape is deeply polarized along political lines and this situation is triggered mostly by the fragmentation of the already small market.

The media literacy has steadily arisen as a subject, the country is part of the group of 14 European countries which have included media literacy in their legal provisions and Media literacy is starting to be gradually involved in the educational system, although the media literacy skills of the population is still at a low level compared to the general EU standards.

In general, Macedonian media operates in a free environment which allows critical reporting. The Laws concerning the traditional media are in line with European standards and there are formal and informal bodies which regulate its work. The main obstacles are fragmentation of the market and a lack of substantial financial resources. The digital media market is still largely unregulated which poses a threat in creating an environment for spreading fake news and disinformation in the online sphere, especially concerning the low level of media literacy among the general population.

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Resolving Electoral Disputes: Case of Serbia*

Introduction

Starting with the fact that the democratic constitution of political orders and fundamental constitutional institutions is founded on elections, there is no doubt that they appear to be the most meaningful participation of citizens in the process of political decision-making in a country. With elections, the political participation of all citizens, holders of sovereignty, is made possible, and the elections thus become a "mechanism which allows all voters to choose to be integrated into the joint decision of the whole community" (Vasović, Goati, 1993: 167).

An effective electoral system is not dependent solely on the tasks of registering voters, qualifying candidates, printing and distributing ballots, but also on the efficient means of discussing objections and appeals in due course. The electoral system must contain mechanisms to prevent electoral theft and punish all observed electoral irregularities. The development of a well-organized system for investigating and resolving complaints promptly is essential to resolving electoral disputes. Elections as a struggle for power are challenged by their very essence. Resolving electoral disputes is, therefore, the culmination of the electoral process:

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the legitimacy of the electoral process depends on the objectivity and independence of the dispute-settlement mechanisms. That leads us to so-called electoral fairness. Electoral justice mechanisms include any means to prevent electoral disputes, formal mechanisms for their institutional resolution, as well as informal mechanisms and alternative means of resolution (Nastić, 2017:169). Electoral justice is not merely a process of applying electoral rules; it is an integral part of the design and implementation of the electoral process, influence and actions undertaken by all participants. The electoral process and electoral justice are influenced by the law and the legal framework, but the sociocultural and political context in which they are implemented is also strongly influenced. There are, therefore, various electoral justice systems, according to the national and regional context in which they are implemented. The electoral justice system must operate in an efficient, independent and transparent manner and foster justice. That achieved its credibility and secured the legitimacy of the electoral process (Orozco-Henriques, 2010:2).

The right to vote is a fundamental political right that allows the most direct participation of citizens in decision-making. It is an integral part of democracy. Free and fair elections should be a cornerstone of any democratic state. The crucial part of any electoral system is resolving electoral conflicts. Electoral disputes are a natural part of voting. The electoral dispute refers to a dispute between two or more participants in the electoral process in which a decision is taken about the breach of the election procedure by the authorities responsible for the conduct of the election. Electoral conflicts arise during the electoral process and have a very broad scope, based on the delimitation of electoral units, through the registration of voters, the registration of candidates, how the electoral campaign is carried out, how the elections are held and the composition of the bodies which conduct them, to the determination of the results of the vote and the distribution mandate.

Challenging an election, its conduct or its results, should not be seen as a sign of systematic weakness; they could be considered proof of the strength and vitality of the political system. An effective electoral system

should have an adequate system to deal with electoral disputes. Developing a well-organized system for the effective handling of complaints is crucial for the achievement of electoral justice and the effective resolution of electoral disputes. Effective dispute resolution is considered essential to the success of the electoral process and the acceptance of its results.

The purpose of resolving these disputes is to protect the subjective electoral right and to ensure the integrity of the electoral process, which would result in the legal makeup of Parliament. The resolution of electoral conflicts is not specifically covered in international legal instruments and there is no clear consensus in the international community on common standards for a fair, effective, impartial and timely settlement of electoral disputes. However, we have to look at the rules laid down in paragraph 5. 19 of the Document of the Copenhagen Meeting of the Conference on the Human Dimension, in paragraph 13. 9. of the CSCE Concluding Document in Vienna, as well as Article 6 of the European Convention on Human Rights (Petit, 2000:9). Recently, we have highlighted the Code of good pratice in electoral matters adopted by the Venice Commission.

We could recognize certain general principles regarding the settlement of electoral disputes. Every person and political party should be entitled to legal protection as well as the right to seek redress for violations of their political and electoral rights. Any person or political party whose candidacy, party or campaign rights are contested is entitled to file a complaint to a competent court. In cases where a violation has been discovered, the body responsible for the relevant jurisdiction should quickly offer remedies throughout the electoral process. Effectiveness, impartiality and independence of the judiciary, including the prosecutor's office, and election bodies are the prerequisite for the fair, efficient and impartial treatment of electoral disputes. Decisions taken by independent and impartial bodies charged with overseeing the conduct of elections and other public consultations, including the creation and periodic review of the list of electors, shall be appealed to an independent and impartial judicial body. To avoid the courts or the electoral authorities receiving

duplicate or simultaneous complaints on the same question, electoral legislation must ensure a clear delineation of the different competencies of the courts and the electoral bodies (Petit, 2000: 10). Compliance with the above principles should not always be a guarantee for resolving electoral disputes, but their failure or lack of compliance is certainly not effective in their resolving.

1. Electoral disputes

Bearing in mind that the elections start with the announcement of the relevant state body, and end with the verification of the mandate, electoral disputes can occur at any time within the specified period. So, as far as the timing of the election is concerned, we can distinguish the electoral disputes that arise in the preparatory phase of the elections, the electoral disputes that concern the voting and election results, and electoral disputes that arise in connection with parliamentary mandates.

In the preparatory phase, there are disputes concerning changes and entries in the list of electors and disputes in the candidature phase. These disputes should be settled before the elections take place, so as not to compromise the legitimacy of the elections. Disputes concerning the lists of electors are, in the first instance, to be resolved by the authorities responsible for their management. Namely, most often it is a question of technical defects that lead to changes in the data of voters lists. These disputes can be efficiently resolved through appropriate solutions in electoral legislation. The electoral law should allow modifications of the electoral list in strict conditions and according to the presiding procedure.

When it comes to electoral disputes concerning the accuracy of the nominations submitted, the competent administrative bodies which receive these nominations are responsible for resolving them. Courts, including the constitutional courts, are called to an appeal. The rejection of a candidate or the cancellation of a successful candidate should

be used as a last resort and under extremely justified conditions, which should be set out in the election law. Candidates must be validated by the start of the election campaign (Code of good practice in electoral matters, 16).

In the election process, the focus is on resolving disputes that arise during voting. Voting is the most important act in the electoral process and is subject to detailed regulation in electoral systems. The vote raises several issues of importance to the exercise of the right to vote, including the location of polling stations, their accessibility to citizens, the presence of qualified personnel for voting, the presence of representatives of political parties at polling stations, the secrecy of the vote, the integrity of the vote counting process. During the voting, and immediately after, when determining the results of the election, many irregularities are possible with the aim of favoring a certain candidate or a certain list. Such events should be avoided by all means because they do not reflect the voter's will. Voting can only be allowed only for those registered on the list of electors, with prior identification to prevent multiple voting. Voting shall take place using official ballots and, generally, during the day. A fair and correct accounting of votes is the cornerstone of democratic elections (Goodwin-Gill S. Guy, 2006:152-157). All relevant election materials, including minutes, must be made available to all interested parties, in order to prevent electoral theft.

The mandates of parliamentarians are the final product of the election, and two types of disputes may arise: disputes concerning the acquittal and disputes concerning the termination of the mandate. Disputes concerning the discharge of a warrant are disputes in which the correctness of the election of MPs is challenged for subjective reasons, that exist on the side of MPs or because of irregular elections. If, during the examination of the fairness of the election, it is established that the mandate acquittal of the mandate is invalid, it shall lead to re-election or by-elections. The legally-acquired parliamentary mandate must be protected from arbitrary deprivation, which is emptied in the Copenhagen

Document[1]. It corresponds to the essence of the right to vote, the protection of which covers the entire duration of the mandate (Stojanović, 1989:129). The parliamentary mandate is protected by precise reasons for its end and by a precise procedure, which is carried out at that time. Without this protection, the passive right to vote would remain *nudum ius*, in other words, a bare and unenforced right. Disputes relating to the end of the mandate have an objective nature and are intended to protect the legal composition of Parliament, as well as the right of Members to exercise their mandate freely. These cases are often far from elections, so we can't classify them as electoral conflicts. The end of the mandate is linked to the area of parliamentary autonomy. It is limited by the general premises of parliamentary democracy and the principles of a free parliamentary mandate.

1.1. Specificities of electoral disputes

Keeping in mind the types of electoral conflicts mentioned, we can observe their specific characteristics. The specificities of election disputes are highlighted in the field of jurisdiction, in terms of electoral appeals, in the application of specialized procedural rights, the particular powers of judges and the peculiarities of bilateralism. In the area of competence, the specificity of electoral conflicts refers to the participation of several different bodies, depending on the stage of the electoral process in which they occur (Masclet,1989:313). Disputes related to the electoral lists will be resolved by the body in charge of managing them. Disputes in the candidacy phase shall be settled by the authority in charge of their reception.

[1] (7) To ensure that the will of the people serves as the basis of the authority of government, the participating States will
(7.9). ensure the candidates who obtain the necessary number of votes required by law are duly installed in office and are permitted to remain in office until their term expires or is otherwise brought to an end in a manner that is regulated by law in conformity with democratic parliamentary and constitutional procedures.

Disputes that arise during the election campaign may be resolved through procedures before a special regulatory body. The aforementioned disputes precede the holding of elections, and their resolution should ensure the regular conduct of elections. Disputes arising during the voting and related to the results of the voting are entrusted to electoral enforcement bodies and the courts. Disputes regarding the confirmation of the mandate may also fall under the jurisdiction of Parliament. The specificity of electoral appeals implies that they protect not only a person but also the integrity of the electoral process and act in the interest of all. At election time, the protection of electoral rights is linked to the resolution of electoral disputes, but not only can a person's subjective right be protected, but also the rights of others participating in the electoral process. In that case, the objective interest dominates and sublimates the subjective interests of the individual (Czarnota, 2007:568-571). In electoral disputes, the time component is of the utmost importance. That is, the reasonable time frame for resolving civil, commercial, and administrative disputes depends on the circumstances of the case itself, its complexity, and the importance of the parties and the authorities. However, concerning electoral conflicts, the Elections Act and the regulations that go with it should ensure that decisions are made quickly, that is, within a set time frame. This will reduce delays and simplify the appeal procedure (Petit, 200:10-11). It is particularly important to resolve electoral disputes within a short period if the outcome of the election is challenged. A credible system for resolving electoral disputes implies the implementation of the decision taken on that occasion.

The most special feature of electoral conflicts is reflected in their specific nature. They are inevitably at the border of law and politics, and, therefore, they must be resolved in a short time by independent and impartial authorities. Having regard to the fact that the principles of impartiality and independence are the basic principles underlying the work of the courts, it is assumed that they can resist possible political pressures that may arise in the resolution of electoral disputes.

1.2. Resolving electoral disputes: institutional guarantees

One of the special features of electoral conflicts is the participation of several different authorities in resolving them. They are bodies for the management of elections, courts, constitutional courts and even parliaments. The authorities responsible for the implementation of elections (electoral commissions) are responsible for ensuring that the elections are conducted following procedure laid down by law. Their involvement can be recognized in the preparatory actions that preceded the elections; at elections when they bear the greatest responsibility for their proper implementation, but also after the elections, when they announce the results or disputes associated with the elections. Electoral commissions must exhibit three fundamental characteristics: independence, impartiality and competence.

The electoral commission should be accepted by all participants in the election race; it should be free and act in the interests of all voters, not certain parties or candidates. Building trust is key to participants respecting the electoral process and the results of the election. Due to the importance of these issues, the electoral law should ensure a clear and transparent procedure for appointing the members of the electoral commission.

Parliament's involvement in the resolution of electoral disputes is carried out as part of the mandate verification process. By verifying the mandate, Parliament is bound by the Constitution and the legislation. It is not called upon to determine the election of its members for reasons of convenience, but of legality. While the protection of some parts of the electoral law is entrusted to the electoral commissions and Parliament, judicial engagement refers to all aspects of the election law and all electoral disputes.

The courts exercise the protection of electoral rights in the procedure of appeal against the decisions of electoral bodies. The resolution of electoral disputes may be entrusted to all courts of general jurisdiction directed by the Supreme Court, or only to the highest court, whose

decisions are final. Some systems have electoral tribunals, which specialize in the resolution of electoral disputes.

The judicial settlement of electoral disputes occurred in England, modifying the traditional system of electoral law protection. The starting point for this resolution of electoral disputes is that the court is in a position to make a more coherent decision than Parliament. The settlement of electoral disputes by the Constitutional Court was initially introduced in Austria. The resolution of electoral disputes and the constitutional protection of electoral rights are accepted and further developed in the German constitutional system, under the supervision of the Federal Constitutional Court. The Federal Constitutional Court participated in the resolution of electoral disputes concerning appeals against the decisions of the Bundestag. In this model for resolving electoral conflicts, we can also include the participation of the Constitutional Council of France, which acts as an electoral court in matters of presidential and parliamentary elections.

2. Resolving electoral disputes in Serbia

The first multi-party elections in Serbia were held in 1990, after the adoption of the Constitution which broke with the previous concept of socialist constitutionalism. Since that time, the dynamic development of the election law has begun, followed by frequent changes to the electoral law, made under the "dictation" of the ruling party, in the absence of the consent of the other, opposition parties. Contrary to democratic rules, such amendments are often applied immediately before the elections. Electoral irregularities, such as double voting, the organized insertion of pre-filed ballots, the modifications of election results by electoral commissions, and the falsification of electoral records, accompany the elections in Serbia.

The resolution of electoral disputes was, arguably, one of the most topical issues in our country. Past experiences in the conduct of elections

show that electoral conflicts are an unavoidable part of each electoral process, but also that the existing mechanism for dealing with them has not always delivered the expected results.

Fundamental electoral principles and electoral law are governed by the Constitution, as the supreme legal act, that protects them against frequent changes. That is, Article 2 of the Constitution states that sovereignty is vested in citizens who exercise it through referendums, people's initiative and freely-elected representatives. No state body, political organisation, group or individual must usurp the sovereignty of citizens, nor establish government against the freely-expressed will of the citizens. The rule of law is one of the basic constitutional principles. The rule of law should be exercised through free and direct elections, constitutional guarantees of human and minority rights, separation of powers, an independent judiciary, and the observance of the Constitutional and Law by the authorities.

Electoral right, as a fundamental political right, is contained in the second part of the Constitution, in the catalogue of human rights and freedoms. Every citizen of age and working ability of the Republic of Serbia has the right to vote and to be elected[2]. The Serbian Constitution does not specify the type of electoral system but implicitly defines the proportional electoral system. It identifies the following principles of the electoral system: universal suffrage, equal suffrage, free suffrage, secret suffrage and direct suffrage. These principles constitute common denominators for every electoral system. They represent a specific aspect of the European constitutional heritage namely "the European electoral heritage". The principles of European electoral systems can only be guaranteed if certain general conditions are fulfilled: respect for fundamental rights, regulatory levels and stability of electoral law and procedural safeguards.

Election dispute resolution rules are primarily found in election laws. It should be mentioned that electoral legislation is not homogeneous

[2] Article 52 of the Constitution of Serbia.

and that is contained in several legislative acts. Parliamentary elections are mainly regulated by the 2022 Law on Election of Members of the Parliament, the 2009 Act on Unified Voter Roll, and the Decisions and Instruction of the Republic Electoral Commission. Presidential elections are primarily regulated by the 2022 Law on the Election of the President.

The legal framework was substantially revised in early 2022, following two inter-party dialogue process between the ruling parties and the oppositions. The legislative amendments regulated the work of middle-level electoral commissions, increased the representation of the opposition in electoral commissions for these elections, extended the time frames for dispute resolution, improved disclosure of political party and campaign financing, provided for post-election checks of electoral lists and the examination of election material and amended certain regulations on the media coverage of the campaign and the media monitoring mechanism. While introducing fundamental changes shortly before the elections is at odds with international good practice, these amendments were adopted following inclusive consultations. There was broad consensus on most of the proposed changes, although it was noted that Serbia needs unified electoral legislation.

Resolving electoral disputes involves the activities of different bodies: electoral commission, courts, constitutional courts and Parliament. In Serbia, the Administrative Court plays a central role in the settlement of electoral disputes at the national level. The Constitutional Court of Serbia has subsidiary competence to resolve electoral disputes. This Court resolves electoral disputes that do not come under the jurisdiction of the Administrative Court. However, this jurisdiction is marginalized in practice, especially because there is no clear division of powers between the Constitutional and Administrative Court. The Constitutional Court is also called upon to ensure the protection of electoral rights in the proceedings on constitutional complaints. It is an opportunity to state the attitudes of the Administrative Court and to adjust them under the constitutional interpretation of electoral law.

The new electoral law maintains patterns of political influence on the composition, and, therefore, the decision-making process of electoral commissions. Concerning the protection of the electoral right, the existing two-tier system was enhanced by the introduction of a new legal instrument: a request for annulment of voting at the polling station. Appeals against the decision to appoint a member and a substitute member of the Electoral Commission constitute another step forward. When it comes to affirmative action measures, they come to the fore, especially concerning members of national minorities. The national minority electoral list is favoured in the distribution phase of mandates and appointments. A further encouraging development is the very first regulation of the electoral law on local and international observers.

Electoral laws do not explicitly address the resolution of electoral disputes, but they do take this issue into account in the broader concept of protecting electoral law. The protection of electoral rights, and therefore the settlement of electoral disputes, is entrusted to the Republic Election Commission, local election commissions, and to the Administrative Court. However, the term "electoral dispute" is written into the Constitution of Serbia, which establishes the subsidiary competence of the Constitutional Court for their resolution.

2.1. Electoral administration

The implementation of the elections for Members of Parliament and the President of the Republic, following the decisions of the new electoral legislation, is entrusted to the electoral administration at three levels: the Republic Electoral Commission (REC), local election commissions and polling boards. With the introduction of the local electoral commission, a middle-level administration was created, thus fulfilling one of the oldest recommendations of the OSCE dating back to 2000. Such a solution reduces logistical problems and enables a higher degree of political pluralism by providing multi-party representation at all levels

of the electoral administration. The new electoral law retains the core competence of the REC in the implementing of elections at the republic level, from their announcement until the election results and the number of terms on each list of electors.

The legal framework was given to the normative activities of the REC, which refers to the issuance of instructions for the conduct of elections, the publication of schedules for the conduct of election actions, prescribing forms for conducting electoral actions, as well as monitoring and providing advice on the implementation of this law.

Regarding the composition of the REC, the existing rules were retained. The standing composition of the REC consists of the chairperson, 16 members, the Vice-Chairperson and 16 deputy members appointed by the National Assembly.[3] Only a person with a bachelor's degree in law can be appointed a member or deputy member of the Republic Electoral Commission. Members and deputy members of the REC in the standing composition are appointed on the proposal of the parliamentary groups in proportion to their representation among the total number of members belonging to parliamentary groups. No parliamentary group may nominate more than half of the members of the REC in the standing composition.[4] Such a solution should ensure that no political organisation or coalition of parties can have more than half of its members, to ensure an adequate political balance. Against the decision on the appointment of a member and a deputy member of the REC in standing composition, every submitter of the proclaimed electoral list that has won seats in the current parliamentary term of the National Assembly and every voter may file an appeal with the Administrative Court, within seven days of its publication.[5]

In the extended composition, the REC consists of the members appointed on the proposal of the submitter of the proclaimed electoral list. The novelty is against the decision on the appointment of a member

[3] Article 17 Law on Election of Members of Parliament.
[4] Article 18.
[5] Aricle 20.

and a deputy member of the REC in the extended composition, a complaint may be submitted within 48 hours of the decision being published on the REC website. The submitter of the proclaimed electoral list, the registered political party and a voter are actively legitimized to file the complaint. At the same time, the law establishes that the decision of the electoral management body may not be challenged on the basis that the body did not decide with the prescribed composition if the alleged appeal contesting its composition was not filed within the time limits.[6] These legal remedies are also available for appointing other bodies for the implementation of elections, local electoral commissions and electoral boards. The local electoral commissions, as new entities for the conduct of elections, are the municipal electoral commissions, city electoral commissions and electoral commissions of city municipalities of the City of Belgrade. An important authority that LEC is associated with is the cancellation of voting at the polling station *ex officio*. Against this decision of the LEC, the applicant for the announced electoral list and the voter who is registered in the excerpt from the voter's list at the polling station can submit an objection to the REC within 72 hours of the publication of that decision. The REC can supervise the work of the local electoral commissions' *ex officio* and annul their decision taken in breach of the provisions of the law. Furthermore, during local elections, any role of the REC is excluded and the main responsibility lies with the local electoral commissions. This means that local elections are always taking place without a central body. This could lead to uneven application of electoral rules, and this also indicates a lack of control over the process for conducting local elections (OSCE, 2002).

[6] Article 14 paragraph 3.

2.2. Protection of electoral rights

Legal remedies in the conduct of elections, represented by the new Law on Election of Members of Parliament, are requests for the annulment of voting at the polling stations, complaints and appeals. The request for the annulment of voting at the polling station constitutes a new legal remedy. It may be filed by the submitter of the proclaimed electoral list and the voter. A voter can submit such a request only with regard to voting at the polling station where he or she is registered in the excerpt from the electoral roll if the polling board has unreasonably prevented him/her from voting or if his/her right to free and secret voting has been violated.[7] As regards the submitter of the proclaimed electoral lists, these restrictions do not apply, and they request for the annulment of voting at the polling station because of irregularities in the conduct of the vote. The law regulates the content of this request, and the local electoral commission decides on it. Against the decision of the request which was dismissed or rejected the requester may file a complaint with the REC.

The complaint may be lodged against the decision taken, action taken or failure to take a decision or take action in the conduct of elections, unless otherwise stipulated by the Law. The submitter of the electoral list, a political party, a parliamentary group, a candidate for a Member of Parliament, a voter and a person whose name is in the name of the electoral list or the submitter of the electoral list may make a complaint under the Law. A complaint may be submitted within 72 hours of the decision being published. A complaint because no decision or action has been taken within the period prescribed by the law or a bylaw of the Republic Electoral Commission may be filed within 72 hours after the expiration of the period during which the decision should have been issued. The Republic Electoral Commission can annul the decision taken in the conduct of the election: the REC can issue another decision instead of that annulled. A significant novelty is that the time

[7] Article 148 paragraph 2 Law on the Election of Members of Parliament.

limit for handling complaints has been increased to 72 hours from the announcement of the decision or the taking of the action that is considered inappropriate. The competence of the REC to deal with complaints is retained but within an extended period of 72 hours from the receipt of the complaint. Consequently, the time limit for filing complaints has been extended; in addition, new solutions should contribute to a more transparent work of the electoral commissions.

The content of the complaint is now subject to legal regulation, and, in that sense, the rule that is free of formality and sufficient to contain an allegation of irregularities does not apply to the complaint. If the complaint is incomprehensible or incomplete, the REC issues a decision rejecting it. When deciding on the request to cancel voting at a polling station and deciding on the complaint, the provisions of the law regulating the general administrative procedure shall be applied accordingly.

If REC approves the objection, it annuls the decision made or action taken in the conduct of the election. The REC has the right to decide competently and instead of the contested and overturned decision, it can make another decision. Likewise, where it considers that the decision on the request for annulment on the polling board should be annulled, the REC may rule on the merits of that request. The REC will decide so if the nature of the case allows it and if the established factual situation provides a reliable basis for it.

Complaints sent to the REC can be classified into three categories, depending on the course of the electoral process. Firstly, complaints lodged during the preparation phase of the elections (before the elections); relate to the nomination process and the determination of electoral lists of registered parties or objections related to the composition of electoral task forces and committees. Second, complaints related to irregularities at polling stations (on election day), and third, complaints related to post-election activities of REC, i.e. regarding the General report on election results. Against the general report on the election results, the submitter of the proclaimed electoral list and a voter may file

a complaint with the REC within 72 hours of the release of the general report on the website.

Given the aforementioned legislative solutions, it is clear that they are not familiar with a permanent professional electoral administration that would carry out all actions in the elections process, beginning with voter registration, organization and implementation of the electoral process, funding, media monitoring and finalization of the electoral process (Dimitrijević, 2020,7). Therefore, it is entirely justified to ask whether the newly-adopted solutions ensure legal certainty, and equality of all electoral participants and contribute to fair and proportionate representation (Pastor, 2020:18).

During the elections held last year, the LECs and the RECs rejected most of the complaints on technical grounds, including lack of authorization, incomplete personal information of the submitter and lack of evidence. Dismissing complaints on technical grounds constituted a formalist approach contrary to international good practice, as declared by the ODHIR in its final report on the elections in Serbia.

2.3. Electoral disputes resolution and the role of the Administrative Court

The Administrative Court plays a central role in settling electoral disputes. The procedural rules for the Administrative Court proceedings are only partially contained in the Electoral Law, while the Law on Administrative Disputes is enforced as a subsidiary source. However, electoral disputes have certain specificities concerning administrative disputes, and the Administrative Court must take this into account. Unlike the "classic" administrative dispute, which is initiated by a lawsuit, the electoral dispute is initiated by an appeal. The appeal may be filed against the REC's decision rejecting or dismissing the complaint, or because the decision on the complaint was not made within the required timeframe. The issue of active procedural identification in response to the appeal

is regulated depending on whether the appeal is dismissed, rejected or accepted. The complainant can file the appeal against the REC's decision to dismiss or reject the complaint. The submitter of the proclaimed list, a submitter of the electoral list, a political party, a parliamentary group, a candidate for MP, a voter and a person whose name is in the name of the electoral list or of the submitter of the electoral list may file an appeal with the Administrative Court; however, on the condition that their legal interest was directly breached by the fact that the complaint was accepted. The appeal period is 72 hours and the Administrative Court is expected to issue a decision on the appeal within 72 hours.[8]

If the Administrative Court approves the appeal, it will set aside the decision taken in the conduct of the election, that is, the action taken in the conduct of the election. If the Administrative Court considers that the decision against which the appeal has been lodged must be annulled, it can rule on the merits of the complaint if the nature of the case so permits and if the established factual situation provides a reliable basis in that regard.

At the time of ruling on the appeal, the Administrative Court therefore applies the provision of the Act to determine the administrative dispute. The decision on the appeal is legally binding and the imposition of extraordinary legal remedies under the Administrative Dispute Act is excluded. If the Administrative Court approves the appeal and cancels the decision or action taken in the conduct of the election, the appropriate decision should be made, or the appropriate action should be taken no later than ten days following the receipt of the decision by the REC.

In the administrative dispute, the Court shall rule on the lawfulness of the final administrative acts which determine a right, obligation or interest based on the law; in electoral disputes the Court decides on the appeal against the decisions of the Electoral Commission, which is not the administrative body *stricto sensu*. If we consider the functioning of the electoral commission and its role in the electoral process, it can

[8] Article 157 Law on local elections.

be considered an administrative body *sui generis*. After all, the election procedure as a whole is specific in relation to the general administrative procedure, because it is not initiated by the proposal or request of the party. The electoral process begins at the time of the announcement of the election, that is, the action of the state.

The legal remedies for protecting the electoral law in conducting local elections are complaints and appeals. There is no provision for a request for annulment of voting at the polling stations, but it is established when the electoral commission decides its motion to cancel the vote at a polling station.[9] The rules on the complaint are identical to those contained in the law regulating parliamentary elections. The time limit to submit and decide on a complaint is also 72 hours. But the greatest novelty is that the High Court decides on appeals against the decisions of the electoral commission. With this decision, the jurisdiction of the Administrative Court is excluded, and the issue is how the Higher Court will adjust to this new role (Nastić, 2022:50).

Above all, we have a judicial system to resolve electoral disputes. By engaging the Administrative Court, some specialization in the settlement of electoral disputes was achieved. The administrative judicial mechanism proved to be available and effective, but the main objection refers to insufficient transparency in the workplace. The work of the Administrative Court takes place behind closed doors and in closed sessions, in the absence of opposing parties. The lack of publicity and transparency in the conduct of appeal hearings remains a concern. It is inconsistent with the OSCE's determination, other international standards and examples of good practice around the world (OSCE, 2012).

[9] Article 56 Law on local elections.

2.4. The role of the Constitutional Court in dealing with electoral disputes

The Constitutional Court, according to the Serbian Constitution, decides on electoral disputes for which the Court's jurisdiction has not been specified by the law. The procedure for resolving electoral disputes is governed by the Constitutional Court Act. The motion for deciding on the electoral dispute for which the jurisdiction of a court is not defined by law may be submitted by any elector, candidates for President of the Republic, Member of Parliament or council member, as well as those who nominate candidates. The motion contains the reasons for seeking a decision on the electoral dispute and the appropriate evidence. Requests may be submitted no later than 15 days after the date on which the contested electoral procedure is concluded. When an irregularity in the electoral procedure has been proven and has had a significant influence on the voting result, the Constitutional Court renders a decision annulling all or some of the electoral procedure, which must be specifically designated. The whole or part of the electoral procedure will be repeated within ten days of the notification of the decision of the Constitutional Court to the competent authority. The Constitutional Court has subsidiary jurisdiction in the resolution of electoral disputes, which means that it re-examines electoral disputes that do not fall within the jurisdiction of the Administrative Court. However, this competence is marginalised in practice, notably because there is no clear division of powers between the Constitutional Court and the Administrative Court.

The Constitutional Court decides on appeals against the decision concerning the confirmation of the mandate of members of parliament filed by the candidate and by those who proposed the candidate. The Constitutional Court shall give judgment within 72 hours of the submission of the appeal. Thus, the Constitutional Court is involved in making the final decision on the verification of the parliamentary mandate. That prevented the National Assembly from being a judge in its own case and "took away" the right of the parliamentary majority

to take the final decision to the legality of the elections. In the appeal proceedings against the decision taken to confirm the parliamentary mandate, the provisions of the Constitutional Court Act that refer to the decision-making procedure for electoral disputes are applied accordingly.

The engagement of the Constitutional Court in resolving constitutional appeals also has an impact on the electoral sphere. Bearing in mind the electoral right enshrined in Article 52 of the Constitution, the Constitutional Court considers that the holder of this right can only be a person. Therefore, the constitutional appeal of the coalition of political parties or political parties due to the violation of the electoral right is inadmissible *ratione personae*. Within the framework of constitutional appeals, the Constitutional Court has the task of investigating the violation of a right guaranteed by the Constitution. Before the Constitutional Court, there is a "subjective" request from a person who seeks protection of his or her right. Such involvement of the Constitutional Court should be distinguished from its settlement of electoral disputes. In resolving electoral disputes, the Constitutional Court must evaluate the appropriateness of the electoral procedure and protect the electoral rights of all citizens.

3. Concluding remarks

Serbia's first multi-party election took place in 1990. Then, elections were neither free nor fair. Nevertheless, over the past 23 years, the electoral process has been improved and enhanced in accordance with international standards and principles to democratise society in the framework of Serbia's effort to join the European mainstream. Despite these efforts, electoral theory and law have not yet overcome all the shortcomings of this process that are often highlighted by domestic and foreign observers and election stakeholders. One of the major deficiencies in this process is the lack of fairness, efficiency and transparency in electoral justice.

The legal framework was significantly revised in early 2022, as a result of a dialogue process between the ruling parties and the opposition. The protection of electoral rights, although normatively improved, in the last elections showed its bad side. The (un)expected multiple reruns of (only) parliamentary elections at one polling station have significantly extended the announcement of the final election results. The integrity of the electoral process as a whole was impacted. However, the main barriers to implementing electoral laws remain the lack of a democratic political culture, the lack of accountability on the part of the electoral administration and the voter's lack of understanding.

The mechanism established to resolve electoral disputes within Serbia's legal system generally complies with the OSCE standards. The electoral justice system could be improved by introducing professional electoral administration, defining specific rules and procedures, and increasing the transparency of Courts, primarily the Administrative Court. To reduce or eliminate the need for repeated elections, amendments to the legislation may be considered. It should be prescribed that the vote be repeated only in the event of serious irregularities which could affect the outcome of the election result, after exhausting all other measures, such as the examination of the electoral documents and the official counting of ballots.

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State Electoral Commissions in North Macedonia and Serbia as an Instrument for Fighting Against Irregularities in the Electoral Processes

Introduction

The Republic of North Macedonia and the Republic of Serbia are part of the geographic-political construct called the Western Balkans. One of their crucial strategic goals is membership of the European Union. On the way to the realization of this goal, there are a large number of standards and criteria, and their fulfillment brings numerous challenges, obstacles and problems.

The political criteria for membership of the European Union are an immanent part of the Copenhagen Criteria, inaugurated at the EU Summit in Copenhagen, Denmark, in 1993. One of the striking segments of the political criteria are the electoral processes; that is, the implementation of fair, free and democratic elections in each of the states that claim to enter the European Union. Also closely related to these criteria are the Madrid criteria, established at the Madrid Summit in 1995, which refer to the need to establish a functional public administration and well-organized and independent judicial institutions, as one of the main prerequisites for the acceleration of accession processes in the European Union.

For those reasons, the main focus of this paper will be the electoral processes in the Republic of North Macedonia and the Republic of Serbia, regulated by specialized institutions in both countries, and seen through a comparative prism.

So, the subject of this paper will actually be the analysis of the state election commissions in the Republic of North Macedonia and in the Republic of Serbia not only in the institutional-administrative sense, but also in the sense of considering them as an instrument to fight against electoral irregularities which are an integral part of the pre-election, the election and post-election processes in almost every country, regardless of the degree of democratic development.

The main methodological tools that will be used in the preparation of the paper fully correspond and convene to the character of the paper. That is, the comparative method, descriptive method, document content analysis method, analytical method, and synthetic method will be used most frequently.

The final results that should emerge from this paper should not only determine the role, authority and competences of the state election commissions in the Republic of North Macedonia and in the Republic of Serbia, but also suggest additional modalities for dealing with electoral irregularities of a different kind, by these state "sponsored and organized" bodies, which would improve their professional, work and operational capacities that could in the future guarantee the implementation of peaceful, transparent, fair, legal, legitimate, free and democratic elections.

1. State Election Commission in North Macedonia: Organization, Mission and Activities

The State Election Commission has been an integral part of the institutional order in the Republic of North Macedonia since the very foundation of the state.

The State Election Commission (SEC) is an expert, professional, and independent institution that is governed in its work in accordance with the Constitution, laws, and generally-accepted international standards and conventions. Following world trends, the SEC also introduces new

technologies for the electoral process, all with the aim of providing equal access to all stakeholders in the electoral process in exercising their right to vote, but also for the successful conduct of the elections.

The State Electoral Commission guarantees equal, general and direct suffrage, which is exercised in free elections by secret ballot and provides equal conditions for all participants in the electoral process. Through the successful implementation of the elections, the State Election Commission lays the foundations of democracy and contributes to increased confidence in the electoral process and democratization of the institutions of the Republic of North Macedonia.

In its operations, the SEC applies the Constitution, laws and by-laws of the Republic of North Macedonia and respects international standards and good election practices.

The State Election Commission is composed of a president, a vice president and five members. The President and the Vice President are members of the State Election Commission. The president, vice president and members of the State Election Commission perform their duties professionally. The mandate of the President, the Vice President and the members of the State Election Commission lasts for five years from the day of election by the Assembly of the Republic of North Macedonia until the election of a new composition of the State Election Commission. The State Election Commission has a general secretary and their deputy. The State Election Commission has the capacity of a legal entity. The funds for the work of the State Election Commission are provided by the Budget of the Republic of North Macedonia. As a rule, the session of the State Election Commission is convened and managed by the President of the State Election Commission. In case of absence or incapacity of the President of the State Election Commission, the session of the State Election Commission is convened and chaired by the vice-president of the State Election Commission. The State Election Commission will hold a session on the proposal of a member of the State

Election Commission, if the proposal is supported by the majority of the total number of members of the State Election Commission.[1]

There are many criteria for the selection of the members of the State Election Commission. All these criteria are very important for the integrity, professional capacity and legitimacy of this state-specialized body.

A person who fulfills the following conditions can be elected as president, vice president and members of the State Election Commission: to be a citizen of the Republic of North Macedonia with a permanent place of residence in the Republic of North Macedonia; to have completed higher education, with at least eight years of work experience; not to be a member of a body of a political party. Within 30 days before the end of the mandate, the Assembly announces the election of the president, vice president and members of the State Election Commission in the "Official Gazette of the Republic of North Macedonia" and in the daily press. The advertisement lasts eight days from the day of publication in the "Official Gazette of the Republic of North Macedonia". The Committee on Elections and Appointments of the Assembly prepares a proposal for a list of registered candidates and submits it to the Assembly. From the candidates on the proposal list, the political parties in opposition propose a president and two members of the State Election Commission, and the parties in power propose a vice president and three members of the State Election Commission. The President, Vice President and members of the State Electoral Commission elects the Assembly with a two-thirds majority of votes from the total number of deputies. The president, vice-president and members of the State Election Commission have their employment suspended from the day of the election. The office of the president, vice-president and member of the State Election Commission ends before the end of the mandate: by force of law, at their personal request, due to unprofessional and negligent performance of the function, due to fulfillment of conditions for old-age pension established by law, due to death and – if he/she was

[1] Electoral Code, 2021, art. 26.

sentenced by a final court decision to a prison sentence of more than six months. The State Election Commission with a two-thirds majority of votes from the total number of members can make a proposal to the Commission on Elections and Appointments of the Assembly, for the dismissal of its member due to unprofessional and negligent performance of the function.[2]

The professional service is managed by the general secretary of the State Election Commission. The General Secretary is elected by the State Election Commission with a majority of votes for a period of five years. In the event of a change in the composition of the State Electoral Commission, within 30 days from the harmonization of the composition of the State Electoral Commission, a new general secretary will be elected for the remaining period of time. A person who: is a citizen of the Republic of North Macedonia with a permanent place of residence in the Republic of North Macedonia; has completed higher education in the field of management, public administration and other social sciences; is not a member of a body of a political party; has professional knowledge and experience in the field of management in the public sector; belongs to category B administrative officers, i.e. from the ranks of managerial employees in accordance with the Law on Administrative Officers. The Secretary General is not part of the State Election Commission and does not have the right to vote. The General Secretary performs his/her work professionally. The General Secretary is responsible for his/her work to the president, vice president and members of the State Election Commission. To perform the professional-administrative and organizational-technical work of the State Election Commission, a professional service of the State Election Commission is established. The Secretary General and the employees of the professional service of the State Election Commission have the status of civil servants.[3]

[2] *Ibid.*, art. 27 and 28.
[3] *Ibid.*, art. 30.

The State Election Commission takes care of the legality in the preparation and implementation of the elections in accordance with the Electoral Code and supervises the work of the electoral bodies. The State Electoral Commission requests data from the competent authorities for employees in the state, municipal and administration of the city of Skopje, as well as for the public administration, and appoints the composition of the municipal election commissions and the Electoral Commission of the City of Skopje; provides instructions, clarifications and recommendations for the application of the provisions of the Electoral Code and other laws relating to issues related to elections; dismisses each member of the electoral body in case of illegal activity; controls the legality in the work of the electoral bodies and takes measures when a violation of the legality is ascertained in the preparations, the procedure of candidacy, the implementation and determination of the results of the elections, as well as in the implementation of the instructions and recommendations given by it; requests data from the competent institutions for the purpose of checking whether the candidates meet the conditions established by the Constitution and the Electoral Code; confirms and publishes the list on candidates for the election of the president and for the election of deputies and determines their order by lot; determines the order of the single list of candidates for council members or mayor by drawing lots; adopts a program and establishes standards for mandatory continuous education of all electoral bodies and coordinates it; carries out mandatory education of the members of the municipal election commissions; that is, the Election Commission of the city of Skopje, before each election and issues them certificates in the manner and within the deadlines prescribed by the program; prescribes the form of the certificates for attending the training of the members of the electoral bodies; determines unique standards for the election material, takes care of its provision and prescribes the type of means used to mark and check the persons who voted (UV lamps, spray and graphite pad); prescribes forms for conducting the elections and forms for collecting signatures from voters and MPs for proposing

candidates and publishes them in the "Official Journal of the Republic of North Macedonia"; determines the method of handling and keeping the election material; determines the quality, shape, size, color and serial numbers of the ballots; organizes the printing of ballots and lists of candidates and procurement of the voter identification system; hands over, receives and keeps the election material from and to the municipal election commissions, i.e. the Election Commission of the city of Skopje; keeps the electoral material from the elections for the President of the Republic, for deputies in the Assembly of the Republic of North Macedonia and referendum at the state level; informs and educates the public about the method of voting and exercising the right to vote; adopts a code of rules for observing the elections of domestic and foreign observers in accordance with international standards and provides them with identification documents; performs control of the polling stations on the day of the elections where irregularities have been reported during the voting; confirms with a decision the adopted lists of candidates or rejects them if they are not compiled in accordance with the provisions of the Electoral Code; adopts a rulebook that establishes the criteria for the method and procedure for the election and dismissal of the president, his deputy, members and their deputies in the electoral bodies; provides data on the response of voters during voting, in a time interval not longer than 2 hours; summarizes and determines the results of the voting for the lists of candidates at the level of the electoral unit; publishes the initial results of the conducted elections for the President of the Republic, for deputies, for councilors and for mayor based on the data from the minutes of the electoral authorities; announces the final results of the conducted elections; issues certificates to the candidate elected as President of the Republic and the candidates elected as deputies; adopts rules and guidelines for compensation of members of the electoral bodies and the electoral administration, based on the number of voters, the type, the complexity and scope of the works and the duration of their execution; submits a report on the conducted elections to the Assembly within 45 days from the day of publication of the final results of the elections

at the level of the municipality, the city of Skopje, i.e. electoral unit where the election and financial review is carried out, and publishes it on its website; distributes the compensation of expenses to the selected candidates after the submitted financial report and publishes it on its website; adopts the act for the organization and systematization of the professional service of the State Election Commission within which the legal service is organized and systematized and forms auxiliary bodies; publishes the descriptions of polling stations in the daily press; establishes an electronic system for managing cases and objections; is solely responsible for managing the Electoral List; provides electronic access to the Electoral List in accordance with the Electoral Code and in the manner prescribed by the regulations adopted on the basis of the Code; the State Election Commission publishes the Electoral List on its website with the following data: name, surname and address of the voters. Every citizen has the right to submit a request to the State Election Commission that his address not be published in the Electoral List for security reasons. Once a month, the State Election Commission updates the Electoral List based on notifications of changes to citizens' data. The state Election Commission publicly invites citizens to inspect their data and, if they deem it necessary, to request changes to it. Each member of the State Election Commission, for the purpose of determining inconsistencies in the data of the Electoral List and checking its reliability, has the right to ask the State Electoral Commission to authorize and the legal service to inspect the records of the Ministry of the Interior for the issuance of biometric documents, as well as the databases and records of citizens of other state bodies and institutions, in a procedure determined by a legal, i.e. by-law act and within 5 working days to receive a written notification from it about the performed checks. The State Electoral Commission shall adopt a Rulebook on the methodology for maintaining and updating the Voters' List based on checks and statistical analyses, cross-checks of various databases and records, unlimited field checks and other appropriate recognized methods of checking. The State Election Commission adopts the rulebook after the prior consent of the

four largest political parties in the Assembly of the Republic of North Macedonia. The State Election Commission adopts a Rulebook on methodology for full access, making changes and deleting data in the Electoral List, as well as a procedure for conducting field checks in order to update it. It records the right to vote and takes care of the protection of the personal data of the citizens contained in the Voter's List; checks the integrity of the database of the Electoral List; signs the Electoral List, i.e. the extracts from the Electoral List on which votes are cast no later than 15 days before the day of holding the elections; makes contacts with international associations and organizations that have the authority to observe the elections, that is, a referendum at the state level, on issues related to the Electoral List; submits data to the public media about the number of voters registered in the signed Voter's List, i.e. the extracts; adopts Rules of Procedure regulating the way of work and decision-making of the members of the State Election Commission; the State Election Commission works in sessions if the majority of the total number of members attend them; the State Election Commission makes decisions with a majority of votes from the total number of members of the commission. When deciding, the members of the State Election Commission will declare themselves "for" or "against". Abstentions are not permitted and, in the event of such a vote, such vote will be considered a vote against. SEC decides on objections based on inspection of election material and other evidence; in cooperation with the Ministry of Internal Affairs introduced a rulebook on the way the police act during the conduct of the elections; adopts instructions for resolving objections and complaints; monitors the start and end of the election campaign and takes measures provided by the Electoral Code; prescribes the application form for voting in the DCP, that is, the consular offices; elects and forms the electoral boards for voting in the DCP, i.e. the consular offices, and the electoral board for voting of the members of the electoral boards in the DCP in relation to the consular offices; adopts the Instruction for organizing the voting of the members of the election boards in the DCP in relation to the consular offices hands over and

receives the election material to and from the election boards for voting in the DCP, that is, the consular offices, through the Ministry of Foreign Affairs; summarizes and determines the voting results for the list of candidates for the election of three MPs from the electoral unit covering Europe, Africa, North and South America, Australia and Asia; fills in and submits statistical data for the needs of the State Statistics Office of the Republic of North Macedonia; publishes the price lists of broadcasters and print media on its website; keeps minutes for its sessions and publishes the adopted minutes on its website within 48 hours from the day of adoption and performs other tasks determined by the Electoral Code. Sessions of the State Election Commission are public. The State Election Commission initiates a disciplinary procedure, submits a request to initiate a misdemeanor procedure, or submits a criminal report to the competent authority, when there are grounds for suspicion that a violation of the provisions of the Electoral Code has been committed. The forms and the overall election material for the municipalities in which at least 20% of the citizens speak an official language other than the Macedonian language, are printed in the Macedonian language and its Cyrillic script and in the official language and the script spoken by at least 20% of the citizens in that municipality. The authorized representatives of the submitters of lists, whose objections are decided upon, have the right to attend the work and decision-making of the State Election Commission. The State Election Commission submits a request to the state administration body responsible for keeping records of state and public officials and the competent authorities for providing data on employees in the state and municipal administration, the administration of the city of Skopje, as well as the public administration, systematized by municipalities according to the address of the place of residence. The authorities submit the data to the State Election Commission within five days from the day of the received request for the establishment of the Municipal Election Commissions and Election Boards.[4]

[4] *Ibid.*, art. 31.

2. State Election Commission in Serbia: Organization, Mission and Activities

The commission works in permanent and expanded composition. The permanent composition of the Commission consists of: the President of the Commission, 16 members, Committees and their deputies. The extended commission consists of one member and one deputy member each appointed on the proposal of the submitters of electoral lists of candidates for deputies, that is, the proposer of the candidate for the President of the Republic. When conducting a republican referendum announced at the request of the authorized person, the proposer, the extended composition of the Commission also includes representatives of the applicant on the basis of which the decision was made to call a republican referendum.

The commission works and makes decisions in an expanded composition from the day the person is appointed which become members of the Commission in an expanded composition, while the overall report on the results of the election, that is, the republican referendum, does not become final. A member or a deputy member of the Commission in the extended composition has the same rights and duties as well as a member or deputy member of the permanent composition of the Commission. Deputy members of the Commission have the same rights and duties as members which they replace, unless otherwise determined by the rules of procedure.

Participants in the work of the Commission without decision-making rights are the secretary of the Commission, the deputy secretary of the Commission and two participants in charge of statistics. For the purpose of studying certain issues within its scope, harmonization draft acts prepared by the National Assembly Service for the needs of the Commission, reports and other documents, as well as the performance of certain election activities, the Commission can form working groups from among its members and participants in the work of the Commission without the right to decide. Representatives may be included in the composition and work of working groups state bodies and organizations, in order to

provide professional assistance. All members of the Commission may participate in the work of working groups. The decision on the formation of working groups determines the tasks and appoints them chairmen and members of working groups. Working groups have secretaries and deputy secretaries appointed by the Secretary of the Commission, from among the employees of the Service of the National Assembly.[5]

The Service of the National Assembly ensures and provides the necessary professional, administrative and technical assistance in the performance of tasks within the competence of the Commission I of its working groups, in accordance with the law and the decision of the National Assembly organization and work of that service. The secretary of the Commission takes care of ensuring the conditions for the work of the Commission.[6]

President of the Commission: represents the Commission; convenes and presides over Commission sessions; signs the acts of the Commission; approves official trips in the country and abroad; makes sure that the Commission performs its tasks in a timely manner and in accordance with regulations; takes care of the application of these rules of procedure and performs other tasks established by law and these rules of procedure.

The President of the Commission may authorize the Secretary of the Commission to sign Acts of the Commission that refer to issues of an operational nature.[7]

The Deputy President of the Commission performs the duties of the President of the Commission in case of his absence or inability to perform his function, and he can perform tasks for which the President of the Commission authorizes him.[8]

Members of the Commission have the right and duty to: regularly attend Commission sessions; to participate in the discussion of issues that are on the agenda of the session Committees and vote on each

[5] Rules of Procedure of the State Election Commission, 2022, art. 5.
[6] *Ibid.*, art. 6.
[7] *Ibid.*, art. 9
[8] *Ibid.*, art. 10

proposal that is decided at the session; to perform all duties and tasks determined by the Commission.[9]

Secretary of the Commission: preparation of the Commission session; coordinates the work of members and deputy members of the Commission; assists the President of the Commission in performing his judicary tasks; takes care of the preparation of draft acts adopted by the Commission and performs other tasks in accordance with the law, these rules of procedure and orders of the president Commission.[10]

Participants in the work of the Commission in charge of statistics have the right and duty: to regularly attend Commission sessions; to participate in the discussion of issues that are on the agenda of the session commissions; to perform all duties and tasks determined by the Commission. The commission works at a session attended by the majority of the total number of members of the Commission in the permanent or extended composition. Sessions of the Commission are, as a rule, held at the headquarters of the Commission. Commission sessions, as a rule, are held using software platforms for electronic sessions. Exceptionally, when in justified cases, the Commission is unable to meet in order to hold a session, the session of the Commission can be held using a software platform for video conferencing.[11]

The session of the Commission is convened by the President of the Commission. The session of the Commission shall be convened no later than 48 hours in advance determined for the beginning of the session. The convening of the session of the Commission contains the day, time and place of the session and agenda proposal. The proposal of the agenda of the session of the Commission is determined by the President of the Commission, except in the case of convening a meeting at the request of at least one third of the members of the Commission.

The President of the Commission may postpone the meeting, i.e. the day of the start of sessions of the Commission, about which they inform

[9] *Ibid.*, art. 11.
[10] *Ibid.*, art. 12.
[11] *Ibid.*, art. 13.

the members of the Commission in a timely manner, with the fact they are obliged to explain such a procedure at the beginning of the session.[12]

Pursuant to Article 6 of the Law on the Election of Members of Parliament, the Republican Election Commission is, along with the electoral committees, the body for conducting elections for members of the National Assembly of the Republic of Serbia. Based on Article 7 of the Law on the Election of the President of the Republic, the Republican Electoral Commission is responsible for conducting elections for the President of the Republic. Namely, the aforementioned article stipulates that the elections for the President of the Republic are conducted by the authorities that conduct the elections for deputies. Based on Article 60 of the Law on National Councils of National Minorities, the Republican Election Commission is responsible for conducting direct elections for members of national councils of national minorities. Based on Article 106 of the Law on National Councils of National Minorities, the Republican Electoral Commission is responsible for appointing members of the board that conducts elections for members of national councils of national minorities through electoral assemblies. Although it is not explicitly mentioned in the Law on Referendum and People's Initiative, the Republican Electoral Commission can be entrusted with the implementation of the republican referendum. Namely, in Article 13 of the aforementioned law, it was established that the authorities for the implementation of the referendum are the commission and the voting board, with the fact that the commission is formed by the body that announced the referendum, while that commission forms the voting boards. Thus, in the Decision of September 30, 2006, on calling a republican referendum for the purpose of confirming the new Constitution of the Republic of Serbia, the National Assembly determined that the implementation of that referendum will be managed by the Republic Election Commission.[13]

[12] *Ibid.*, art. 15.
[13] https://www.rik.parlament.gov.rs/tekst/166/nadleznost-obaveze-i-ovlascenja.php (accessed on September 19, 2023).

3. Comparative Overview of the State Electoral Commissions Obligations and Challenges in North Macedonia and Serbia

Both state electoral commissions in North Macedonia and in Serbia are faced with a lot of challenges and obstacles during the pre-election, election and post-election period. There is a big variety of these challenges and obstacles which will be analyzed in the following part.

There are several categories of irregularities which are characteristic in the pre-election period. The first category is the financing of the political parties, the second category is the regularity and punctuality of the electoral list and the third category is the representation of the political parties and their programs in the media (electronic and written).

The highest number of recorded categories of irregularities are noticed in the election period. In the framework of this period are included: pressure on the voters, bribery, breaking of electoral boxes and destroying the electoral materials, disturbing the period of electoral silence, organized transport for the voters by the political parties, the so-called family voting, armed incidents, propaganda and political advertisement, using of the "Bulgarian train" technique for fraud, etc.

Also, there are some categories of irregularities noted in the post-election period, like postponement of the election results (preliminary and official), unbalanced representation by the political parties, internal and external monitoring representatives in the electoral departments, manipulation in the process of counting and summarizing the results from the elections, etc.

Regarding the financing of the political parties, we should emphasize that both North Macedonia and Serbia have special laws related to these issues. The difference is that the Macedonian law is named as a Law for financing of the political parties and the Serbian law is wider in the title and it is named as a Law for financing of the political activities. Both laws determine that all the public finances given for the political parties should be transparent and the general public should be informed of all

the details regarding the financing of the political campaign. The difference is that in the Macedonian Law,[14] the finances are planned in the Ministry of justice budget, and in the Serbian Law,[15] the public finances can derive from the state budget, the budget of the autonomous regions and the budget of the units of the local self-government. The real problems arise when it comes to the finances of the political parties from the part called 'donations' from private subjects. Namely, each of the private incomes for the political parties is stipulated in both laws, but what happens in practice is that the political parties in both countries in their reports show less a amount of finances than the real one received by the private donors. It means that the bigger political parties are privileged in this case and the state has no real control of the money deriving from the private donors. An additional problem is that part of these finances is used as a bribe for the voters. Although the police and other relevant institutions and bodies in both countries are involved in the prevention and sanctioning of these illegal activities, still, they don't possess the capacity for the total control of all these activities.

Regularity and punctuality of the Electoral list is the second important segment in the pre-election period. During the last decade, there was a big political debate in North Macedonia regarding the regular update of the Electoral list, because there was a certain discrepancy between the number of voters noted in the list and the number of adult persons registered in the census.

The updating of the Electoral List, according to the changes is, carried out by the SEC and implies, in fact, any change that occurred in the part of the citizens' data contained in the Electoral List that includes: writing, adding and deleting data in the Electoral List. The update can be performed *ex officio* on the basis of data from registers, records of residence and citizenship of the Republic of North Macedonia, other official records, immediate verification. The registration of the citizens

[14] Zakon za finansiranje na politickite partii, art. 9.
[15] Zakon o finansiranju politickih aktivnosti, art. 4.

of the Republic of North Macedonia who are of temporary work or stay abroad is also carried out on the basis of an application submitted to diplomatic-consular missions (DCP), that is, consular offices. With the new legal amendments, the Electoral List, in addition to the basic ones, will be included information of the citizens, as a new section and a novelty that has been introduced is the personal photo in the format of ID card or travel document that will be integrated in the Electoral List.[16]

In Serbia, The Electoral list is defined as a public document that keeps a single record of citizens of the Republic of Serbia who have the right to vote. It is managed using modern technologies, as an electronic database and updated according to a unique methodology. It was created by the unification of voter lists in 2011, which until the passing of the Law on the Unified Voter List were maintained by municipal and city administrations in accordance with the provisions of the Law on the Election of People's Representatives. It was used for the first time for the 2012 elections. Citizens of the Republic of Serbia who are of legal age and capable of doing business, that is, persons who have the right to vote – according to their place of residence, are entered in the voter list. The voter list is maintained by the Ministry of State Administration and Local Self-Government by analyzing data, taking measures for their compliance and accuracy, and making changes after the voter list is closed. Part of the voter list for the area of the local self-government unit is updated by the municipal or city administration as an entrusted task. Updating part of the voter list for the area of the local self-government unit by the municipal or city administration includes: registration, deletion, changes, additions or corrections *ex officio* or at the request of citizens, on which a corresponding decision is made.[17]

Any change in the voter list is based on data from registers, other official records and public documents. The appropriate decision on changes until the closing of the voter list (15 days before the day of the elections)

[16] Transparency International, p. 18.
[17] https://mduls.gov.rs/registri/jedinstveni-biracki-spisak/?script=lat (accessed on September 19, 2023).

is made by the municipal or city administration, and from the closing of the voter list until 72 hours before the election day; the decision is made by the Ministry. The applicant can file an appeal against the decision of the municipal or city administration to the Ministry of State Administration and Local Self-Government within 24 hours from the day the decision was received, and against the decision of the Ministry, a lawsuit can be filed with the Administrative Court within 24 hours from the day the decision was received. In order to check the personal data entered in the voter list, every citizen has the right to inspect the voter list and can do so directly in the municipal or city administration where he resides, as well as electronically at the address on the public portal.

What are the concrete problems connected to the Electoral List in both countries? First, the regular update of the List is problematic because of the law responsiveness of the state servants involved in the process. Second, very often technical problems occur, due to cyber-attacks, overloading of the system, lack of a stable Internet connection in rural areas, etc. Third, a very low citizens are interested in check and update of the relevant information for the Electoral List.

The representation of the political parties and their programs in the media (electronic and written) is probably the most important issue in the pre-election period, because it has concrete implications on the final result on the elections. Here, the main problem is the misbalance in the political parties' representation and advertisement at the media space during the election campaign. Generally, the governing parties in North Macedonia and Serbia are given a bigger space for representation during the political campaign and it is done in an explicit, or more often in an implicit way. Unfortunately, the dependence of the media by the state sponsorship disables them to create a completely balanced and correct system for information during the electoral campaign.

During the day of the elections, there are also numerous irregularities and anomalies which are registered by the domestic and international observers. One of these irregularities is the bribe of the voters, which can be done in the offices of the political parties, at the voter's home,

or even in front of the place where the elections are organized. This is common characteristic both in North Macedonia and in Serbia, although during the last two decades there is a significant reduction of this kind of activity. Connected with this problem is the organized transport for the voters by the political parties (of course, unofficially), which means persuasive activities and pressure on the voters of how to vote. Another irregularity is the so-called 'family voting' which is very rare in Serbia, but is more common in North Macedonia, especially in the parts of the country where ethnic Albanians live and vote. The main characteristic of the 'family voting' is the misuse of the right to vote by one of the family members who votes in the name of the whole family (of course, this is a serious breaking of the electoral rules).

Family voting is one of the most common remarks during the conduct of the elections in North Macedonia, but there are no sanctions for those who vote for a family member. To overcome this phenomenon, it is necessary to influence women, especially from rural areas – to strengthen them economically and educationally.[18]

Disturbing the time of electoral silence is another anomaly, which fortunately, is rarely made in North Macedonia and Serbia, i.e. it is usually done on social media, by the supporters of the political parties, who use the power and the influence of social media to impose their political attitude and to convince the other users of social media to follow and share their opinion.

One of the most dramatic incidents is the breaking of the electoral, electoral ballot boxes, which usually happens at the end of the voting. These incidents are typical both for North Macedonia and Serbia, and they can be committed by political activists, voters under the influence of alcohol or drugs, and even by the politicians.

One of the examples is Srdjan Nogo, a former Serbian MP, who "broke the ballot box after casting his ballot at polling station 35, municipality of

[18] https://www.bbc.co.uk/macedonian/news/story/2008/12/081203_mac_family_vote.shtml (accessed on September 19, 2023).

Savski Venac. As confirmed, he was detained and remanded in custody for up to 48 hours".[19]

The same can occur with the electoral materials which could be destroyed, hidden, or taken away from the place where the elections are realized. Although there is a police patrol in many of the electoral locations, still, physically it is not possible to prevent such incidents in each of the locations, especially if they occur at the same time or approximately at the same period during the day of the election.

"Bulgarian train" is a voters-fraud phenomenon used both in North Macedonia and in Serbia. Bulgarian train – a political term denoting the abuse of the right to vote in order to obtain election results in one's own favor. A characteristic of "Bulgarian train" voting is that one person votes in several polling stations in favor of his option, thus creating a result that does not correspond to the true mood of the electorate. This term is mostly used partly in the Balkans and is inspired by the undemocratic elections in Bulgaria at the end of the 20th century. The locomotive (the organizer) somehow takes a blank slip and circles the ordinal number of the desired party on it. Then, he/she hands the ballot to a voter, who takes a blank ballot, puts it in his pocket, and drops the circled one into the ballot box. The empty slip is handed over to the locomotive, which circles the desired serial number again, then passes the slip to another voter. The procedure continues in the same way further, so that it is known with certainty that voters will "vote" for the desired party.

In Bulgaria, this political term is considered to be offensive to the country, and, in that context, in 2006, the Bulgarian embassy in North Macedonia asked political parties, non-governmental organizations and the media for certain electoral malpractices to stop using this term, although it was not invented in North Macedonia and is not only used in North Macedonia, but also in Serbia and all the Balkan countries.

[19] https://lokalno.mk/poraneshen-srpski-pratenik-skrshi-glasachka-kutija-ova-go-mislam-za-referendumot/ (accessed on September 19, 2023).

Minor irregularities occur in the post-election period when actually the results are summarized. Actually, these anomalies are often connected with manipulation of the election results, mainly by the communication centers of the political parties, although this type of manipulation can cause post-electoral incidents on the streets. Fortunately, both in North Macedonia and in Serbia these situations are very rare, especially in the several election cycles in the last decade.

Another problem is the late announcement of the election results by the State Election Commission, which is not such a serious anomaly, but is still considered as a post-election irregularity and it is noted in the reports of the domestic and international observers. This can be caused by the lack of staff in the state election commissions and departments, the low level of effectiveness and efficiency, but also by the fact that the state election commissions have to be careful and very precise when they publish the election results. Of course, the political parties' analytical and communication centers are 'free of such responsibility' and this is the main reason why they publish the election results earlier than the official state institutions.

To summarize, the pre-election, election and post-election irregularities have their specific features both in North Macedonia and in Serbia. However, we consider the irregularities noticed on the day of the elections as the most serious and influential factors on the election result, which should be severely treated by the state institutions, i.e. the state election commissions, the police, the public prosecutors and by the courts. In this way, many irregularities and anomalies in the future election cycles will be prevented.

Conclusion

Despite the fact that state, i.e. central and republican election commissions are an integral part of all types of elections (local, regional, parliamentary, presidential, etc.) in all democratic states, it must be stated

that electoral irregularities as a phenomenon are present despite the well-organized institutional-administrative structure in charge of maintaining the regularity and propriety of the electoral processes.

There are numerous factors that influence the level and intensity of electoral irregularities, as well as the variety of forms in which those irregularities appear. Part of those factors are: the specific state in which the elections are conducted, the mentality of the population, the cultural-civilizational portfolio of the state, the institutional functionality in the state, external and internal monitoring of the electoral processes, etc.

Seen from the point of view of the type of irregularities, quite heterogeneous modalities can be noted, starting from the phenomenon of family voting, stuffing boxes, agitation during election silence, irregular counting of votes, continuing with the manifestation of physical violence, threats to members of election boards, destruction of election materials, breaking of ballot boxes, pressure, agitation and persuasion on voters, as well as members of election boards, ending with sophisticated forms of election crime, such as cyber attacks, hacking, data falsification, signature forgery, etc.

The Republic of North Macedonia and the Republic of Serbia, from a formal and legal point of view, have a solidly established system for the preparation, organization and implementation of every form of elections, both regular and extraordinary, but a problem often arises in terms of the functionality and effectiveness of the institutions, especially on and around election day itself.

We can conclude that in the last two decades great steps have been taken in the development of the electoral legislation both in the Republic of North Macedonia and in the Republic of Serbia. However, there are certain segments that need to be improved and advanced in order to approximate the electoral standards that are characteristic of most of the member states of the European Union.

CARMEN
MOLDOVAN

The legal framework of anti-corruption authorities in Romania

Introduction

Corruption poses a grave threat to societies, economies, and democratic institutions worldwide and it represents a serious threat to good governance, democracy and economic stability. Corruption knows no bounds, affects countries at various stages of development and has a pervasive effect. Corruption undermines trust, distorts market mechanisms, and erodes public confidence in government institutions. The opposite values are represented by promoting transparency, accountability and integrity, that international and European mechanisms recognize and wish to implement.

The aim of this paper is to highlight the features of the anticorruption institutions and mechanism in Romania in the European and international context.

Firstly, the features, objectives, and implications of International Convention on Corruption, a landmark in this field will be presented, highlighting its role in promoting transparency, accountability, and good governance on an international scale. Secondly, the framework established within the European Union will be analyzed, stressing the development, implementation, and impact of anticorruption policies and regulations within the European Union (EU). And thirdly, the Romanian legal framework and its evolution, which cannot be separated by those above-mentioned, will be examined.

Corruption kills! (*Corupția ucide!)* was the message of protest that followed the tragedy of the Colectiv Club in Bucharest where, due to a fire breaking out during a concert on October 30, 2015, 64 young people died. Poorly-implemented security measures were the cause of the fire; they were determined by the inaction or corruption of public officials in this field. Politicians and public officials were investigated and prosecuted; therefore, the interest in this subject is not purely theoretical and holds a special value in Romania and makes a direct link to the violation of fundamental rights and the rule of law.[1]

1. Universal and European symmetry in combating corruption

1.1. The universal dimension: the United Nations International Convention on Corruption

Recognizing the urgent need for collective action, the United Nations embarked on a mission to address corruption comprehensively. This led to the adoption of the United Nations Convention against Corruption in 2003.[2] The UN Convention stands as the most comprehensive global legal framework for preventing and combating corruption, promoting asset recovery, and fostering international cooperation. Addressing the

[1] A. Peters, *Corruption as a Violation of International Human Rights*, The European Journal of International Law Vol. 29 no. 4, 2018), pp. 1251–1287 doi:10.1093/ejil/chy070; D. M. Santana Vega, *The fight against corruption in Europe: lights and shadows,* CRIMEN: Casopis za Krivicne Nauke, vol. 2017, no. 3, 2017, pp. 242-267.

[2] The Convention was adopted by the General Assembly of the United Nations (by Resolution 58/4) on October 31, 2003 at United Nations Headquarters in New York and entered into force on December 14, 2005. Currently, there are 189 States parties to the Convention (https://www.unodc.org/unodc/en/corruption/ratification-status.html, accessed on May 30, 2023). Romania is a party of the Convention: Law 365/2004 for the ratification of the United Nations Convention against Corruption, adopted in New York on October 31, 2003, published in the Official Gazette number 903 of October 5, 2004.

main objectives of the Convention, it aims to achieve several crucial objectives, including: preventing and combating corruption, enhancing international cooperation, asset recovery, technical assistance and capacity building.

As concerns the preventing and combating of corruption, the UN Convention establishes a robust legal framework of preventing measures that criminalizes corruption and related offenses, including bribery, embezzlement, and money laundering. It emphasizes the importance of prevention measures and the prosecution of offenders, promoting a culture of integrity and ethics.[3] Regarding the enhancing of international cooperation, the UN Convention recognizes the transnational nature of corruption, and emphasizes the significance of international cooperation among states in investigating, prosecuting, and extraditing offenders. It facilitates the sharing of information, best practices, and technical assistance to strengthen anti-corruption efforts globally.[4]

Recognizing the diverse capacities of countries in combating corruption, the convention emphasizes the need for technical assistance and capacity-building measures. Developed nations are encouraged to support developing countries in strengthening their legal frameworks, institutional capacities, and anti-corruption mechanisms.[5]

Corruption often leads to the illicit transfer of funds and assets across borders; hence, asset recovery represents an important issue in this field. The UN Convention promotes the recovery and return of stolen assets to their rightful owners, reinforcing the principle of justice and the restoration of stolen resources to benefit society at large.[6]

The UN Convention on corruption incorporates several key features that distinguish it as a comprehensive and effective instrument in the fight against corruption: it provides preventive measures, international cooperation, asset recovery provisions, a monitoring and review

[3] Chapter III of the Convention, articles 5-42.
[4] Chapter IV of the Convention, articles 43-59.
[5] Chapter VI of the Convention.
[6] Chapter V of the Convention, articles 51-59.

mechanism. In the field of preventive measures, the UN Convention recognizes the significance of preventive measures, such as promoting transparency, integrity, and public participation. It encourages the establishment of anti-corruption bodies, codes of conduct for public officials, and the implementation of effective whistleblower protection mechanisms.

As previously mentioned, in the field of international cooperation, the UN Convention establishes a robust framework for international cooperation, emphasizing mutual legal assistance, extradition, and the sharing of best practices. It fosters cooperation between law enforcement agencies, judicial bodies, and other relevant authorities.

Regarding the asset recovery provisions, the Convention sets guidelines and mechanisms for the identification, tracing, freezing, confiscation, and return of stolen assets. It facilitates international cooperation and mutual legal assistance in asset recovery cases, ensuring the repatriation of illicitly-acquired wealth.

As for the monitoring and review mechanism, the Convention establishes a Conference of States Parties, responsible for monitoring the implementation of the convention. It conducts regular reviews, facilitates peer evaluations, and provides technical assistance to member states in meeting their obligations.

From a general perspective, the UN Convention on corruption represents a significant step forward in the global fight against corruption that cannot be denied. However, important challenges remain in several fields that may impact on its effectiveness. One of these is the domestic implementation, as effective measures undertaken by states in this regard require a complex array of actions such as domestic legislation, institutional reforms and the allocation of adequate resources. States must strengthen their legal frameworks, establish specialized anti-corruption bodies, and build capacities to investigate and prosecute corruption cases as well. It is not an easy process and it may require time for an effective architecture of institutions to be put into place. Yet, the most sensitive issue and the greatest challenge is the political will on which the success

of the convention hinges. Governments must demonstrate unwavering political will to combat corruption.

1.2. The European towards strengthening transparency and accountability

The Strasbourg Criminal Law Convention on Corruption was adopted by the Council of Europe in 1999 and entered into force in 2006.[7] It was the first legally-binding international instrument specifically targeting corruption, emphasizing preventive measures, criminalization, and international cooperation. The Convention builds upon earlier international efforts, and complements regional anti-corruption initiatives.

The Strasbourg Convention encompasses a wide range of provisions addressing various aspects of corruption. It covers both the public and private sectors and addresses acts of bribery, trading in influence, money laundering, and the concealment and possession of proceeds of corruption. The Convention promotes transparency, integrity, and accountability by encouraging states to adopt effective measures to prevent and combat corruption, including the establishment of specialized anti-corruption bodies.

Recognizing corruption as a threat to good governance, democracy, and economic stability, the European Union has undertaken significant efforts to combat this pervasive issue. At this end, European Union institutions adopted key initiatives, legal frameworks, and challenges in promoting transparency, accountability, and integrity across its member states. Corruption risks and legal frameworks vary across member states, requiring tailored approaches and ensuring harmonization across borders.

In response to the challenges that corruption poses, the European Union has established a comprehensive framework of policies and

[7] Criminal Law Convention on Corruption, European Treaty Series – No. 173, https://rm.coe.int/168007f3f5

regulations to be implemented both at national and supranational levels. They encompass a wide range of preventive measures and enforcement mechanisms as well.[8] The legal framework to address corruption within the European Union is grounded on the principle of subsidiarity, where Member States are primarily responsible for combating corruption within their jurisdiction by taking into consideration the standards established by the European Union. In 2017, the Directive on Combating Fraud and Corruption[9] was adopted to harmonize national legislation regarding bribery, influence peddling and the misappropriation of public funds.

The establishment of the European Public Prosecutor's Office (EPPO) in 2020[10] as an independent body responsible for investigating, prosecuting, and bringing to justice crimes affecting the European Union's financial interests, including corruption, is an important step in the fight against corruption.

Preventive measures are an important part of the efforts in combating corruption and enhance transparency, integrity and accountability. They include a varied range of policies and measures that can be implemented, such as whistleblower protection (the European Union adopted the Whistleblower Protection Directive, in 2019[11]) not; ensures that

[8] A synthetic presentation on all relevant types of legislation may be found at https://home-affairs.ec.europa.eu/policies/internal-security/corruption/eu-legislation-anti-corruption_en

[9] Directive (EU) 2017/1371 of the European Parliament and of the Council of July 5, 2017 on the fight against fraud to the Union's financial interests by means of criminal law, OJ L 198, 28.7.2017, p. 29–41, ELI: http://data.europa.eu/eli/dir/2017/1371/oj

[10] Council Regulation (EU) 2017/1939 of October 12, 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office ('the EPPO') OJ L 283, 31.10.2017, p. 1–71, ELI: http://data.europa.eu/eli/reg/2017/1939/oj. It was operational, starting 2021 in the 22 participating States (Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Estonia, Finland, France, Germany, Greece, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Portugal, Romania, Slovakia, Spain and Slovenia).

[11] Directive (EU) 2019/1937 of the European Parliament and of the Council of October 23, 2019 on the protection of persons who report breaches

individuals reporting corruption or other irregularities are safeguarded from retaliation and provided with effective channels for reporting; public procurement reforms,[12] asset declarations and conflicts of interest:, in this regard, member states are encouraged to establish robust mechanisms for public officials to declare their assets, interests, and potential conflicts of interest, promoting transparency and accountability.

Of high relevance are the enforcement mechanisms of anticorruption policies. The European Union employs various tools to this aim that include mutual assistance and cooperation (the Union facilitates cooperation between member states in investigating and prosecuting cross-border corruption cases through a mechanism such as Eurojust[13] and the European Arrest Warrant[14]). The financial control mechanisms include the European Anti-Fraud Office which plays a crucial role in detecting and investigating fraud and corruption involving European Funds.

Effective implementation of anticorruption policies relies on political will and the allocation of adequate resources by member states. Ensuring the independence and effectiveness of national anticorruption bodies is crucial. By establishing a comprehensive legal framework, promoting preventive measures, and strengthening enforcement mechanisms, the EU aims to combat corruption and safeguard the integrity of its institutions. However, continued efforts, cooperation, and political commitment are necessary to address the evolving challenges posed by corruption within the EU.

of Union law, O.J.L.305, 26.11.2019, p. 17–56, ELI: http://data.europa.eu/eli/dir/2019/1937/oj

[12] The EU promotes transparent public procurement processes, ensuring fair competition and preventing corruption in the allocation of public contracts.

[13] European Union Agency for Criminal Justice Cooperation, https://www.eurojust.europa.eu/

[14] Council Framework Decision on the European arrest warrant and the surrender procedures between Member States, https://commission.europa.eu/publications/council-framework-decision-european-arrest-warrant-and-surrender-procedures-between-member-states_en

2. The Romanian perspective

2.1. The creation of specialized institutions: the Anticorruption Directorate in Romania and its impact on combating corruption

Corruption has long been a hot topic in Romania, concerning the functioning of public institutions and public authorities and affecting the entire society; and the fight against corruption was one of the most important criteria to be fulfilled for the accession to the European Union. As part of the Treaty of accession, Romania was subject to the Cooperation and Verification System, having among other items the one concerning corruption. Real and strong efforts were made in order to combat and prevent this phenomenon and they contributed to the evolution of the social relations and the development of the Romanian society.

The challenges, as in any other country, were significant and implied continuous actions. Yet, positive results were obtained and the rank of Romania in Transparency International's Corruption Perceptions Index has steadily improved over the years, climbing from 84th place in 2006 to 70th place in 2019, 69th place in 2020 and to 63rd in 2022.[15]

The creation of specialised institutions such as the National Anticorruption Directorate (*Direcția Națională Anticorupție*) was determined by the need to address the challenges in this field in a coherent and efficient manner by the criminal law. Its activity was praised and critically examined at the same time. As a central institution tasked with investigating and prosecuting corruption offenses, the National Anticorruption Directorate played a pivotal role in the country's efforts to combat corruption.[16]

The origins of the National Anticorruption Directorate are in 2022, when the Government established the National Anti-Corruption Prosecutor's Office (*Parchetul Național Anticorupție*) as a special and

[15] Transparency International, *Corruption Perceptions Index*, https://www.transparency.org/en/cpi/2022

[16] Tr. Briciu, C.C. Dinu, P. Pop, *Instituiții judiciare*, Ediţia 2, Ed. CH Beck, 2016, pp. 184–185.

independent bureau with the authority to investigate and prosecute offenses of corruption. It was a response to the corruption that eroded public trust in government institutions and to the widespread public demand for effective measures to combat corruption.

The legal framework on the functioning of the National Anti-Corruption Directorate is at this moment completed by other legal sources such as the Law on the Organization and Functioning of the Judicial System (*Legea nr. 304/2022 privind organizarea judiciară*),[17] which provides the basis for the Directorate's jurisdiction, organization and operational procedures, the Criminal Code and Criminal Procedure Code, which define corruption offenses, outline investigative procedures, and establish the legal framework for prosecuting corruption cases.

Previously, in 2000, a specialized section within the Prosecutor's Office attached to the Supreme Court of Justice (now, High Court of Cassation and Justice) were established for investigating and prosecuting corruption and organized crime offenses.[18] It was called the Section or combating corruption and organized crime, and it functioned as the specialized structure at the national level.[19] At the same time, there were established services to combat corruption within the prosecutor's office attached to the appeal courts and specialized offices within the prosecution offices attached to tribunals. The activity of these services and offices was coordinated and controlled by the Section for Combating Corruption and Organized Crime within the Prosecutor's Office attached to the Supreme Court of Justice.[20] The organizational structures were established in order to combat with more efficiency and promptness the crimes of corruption and those committed under the conditions of organized crime. However, there were no spectacular results.[21]

[17] Published in the Official Gazette no. 1104/16.11.2022.
[18] Law no 78/2000 for the prevention, discovery and sanctioning of acts of corruption, published in the Official Gazette no. 19/18.05.2000.
[19] According to article 8 of the Law no. 78/2000.
[20] According to article 28 paragraph (2) of Law no. 78/2000.
[21] I. Leș, *Organizarea sistemului judiciar românesc. Noile reglementări*, Editura All Beck, București, 2004, p. 119.

Hence, the government adopted a new normative act, the Government Emergency Ordinance no 43/2002 regarding the establishment of the National Anticorruption Prosecutor's Office,[22] by which the previous organizational structures were abolished. According to the provisions of article 1 National Anticorruption Prosecutor's Office is organized as an autonomous structure, with legal personality, within the Public Ministry, led by a general prosecutor and coordinated by the general prosecutor of the Prosecutor's Office attached to the Supreme Court of Justice. These features remained unchanged.

Subsequent legislation followed aiming at better articulating the functioning and competences of the newly-specialized structure. One of them is the Government Emergency Ordinance no. 24/2004 regarding the increase of transparency in public dignities and public functions, as well as the intensification of exercises to prevent and combat corruption,[23] which clarified the content of the coordination exercised by the general prosecutor of the Prosecutor's Office attached to the Supreme Court of Justice.[24] The new provisions stated that "coordination concerns general guidelines regarding the steps to be taken to prevent and combat the crime of corruption, as well as the request for information on the institution's activity".

Since its establishment, the structure specialized in combating corruption has been characterized as independent in relation to the courts and the prosecutor's offices attached to them, as well as the relations with the other public authorities, exercising its powers only on the basis of the law and to ensure its compliance.[25] In regard of its legal nature, according to the Constitutional Court, it represents a special magistracy

[22] Published in the Official Gazette no. 244/11.04.2002, approved with amendments by Law no. 503/2002, published in the Official Gazette no. 523/18.07.2002.
[23] Published in the Official Gazette no. 365/27.04.2004.
[24] I. Leș, *op. cit.*, p. 120.
[25] According to article 3 of the Government Emergency Ordinance no. 43/2002.

legal nature and was of a special magistracy established to fight corruption crimes.[26]

Law no 304/2004 regarding judicial organization[27] followed, setting the legal framework and principles applicable for all judicial authorities and institutions having competences in the judicial activity. This legal act established highly suggestive provisions regarding the National Anticorruption Prosecutor's Office. This normative act remained in force until 2022, when it was replaced by the new Law on the judicial organization, no. 304/2022. As a general principle on the main function of the National Anticorruption Prosecutor's Office, it reaffirmed the aims previously established by the 2002 Ordinance, as it stated that it is specialized in combating corruption, according to the law, exercising competences throughout the territory of Romania, through prosecutors specialized in combating corruption, and functions as a prosecutor's office attached to the High Court of Cassation and Justice.[28]

The National Anti-Corruption Directorate manages medium and high-level corruption cases and is one of the most trusted institutions in Romania.

In articulating the structure of this specialized institution, the Romanian legislator used the models existing in Spain and Italy, countries where specialized prosecutor's offices were established to fight corruption (the Anticorruption Prosecutor's Office, in Spain) and mafia structures (the National Anti-Mafia Directorate, in Italy).[29] At the time of the adoption of the specific legal provisions, from a critical perspective, it was stressed that not only the organizational structure is relevant for the

[26] Constitutional Court of Romania, Decision no. 421/11.11.2003. This qualification was not amended.
[27] Republished in the Official Gazette no. 826/13.09.2005.
[28] According to article 76 para. (1) of the Law no. 304/2004.
[29] I. Leș, *op. cit.*, p. 120; I. Leș, D. Ghiță, *Instituții judiciare contemporane*, Editia 2, Editura CH Beck, București, 2019, pp. 137–139.

success of the actions and aims set, but also the guarantees of independence and the selection of the judicial personnel called to achieve the purpose.[30]

This point continues to be relevant today as well as the independence of the prosecutors and the possible political influence and pressure are highly criticized. Although the institution is no longer very young and the basis of its activity and competences as well as its social function are well established, the safeguards of its independence are subject to debate from time to time. The appointment and dismissal of the general prosecutor of the National Anticorruption Prosecutor's Office is done by the President of Romania "on the basis of the proposal of the Superior Council of the Magistracy, upon the recommendation of the Minister of Justice", a solution that was kept by the provisions of Law no. 303/2004.

Since its establishment, this prosecution office is subject to the duty of presenting an activity report before Parliament, despite the fact that the legislative forum has no competences in the nomination process. Overall, the independence of these structures should be its most important feature in relation to other public authorities.

At the first stage of its existence, the National Anticorruption Prosecutor's Office was organized into the following sections, led by section chief prosecutors, assisted by deputy section chief prosecutors:

a) Anti-corruption section;
b) Section for combating crimes related to crimes of corruption;
c) Section for combating corruption crimes committed by the military;
d) Criminal judicial section.

Also, as a part of the architecture, the legal provisions set that within the prosecutor's office services, territorial bureaus and other activity sections can be established, by order of the general prosecutor.[31]

[30] I. Leș, *op. cit.*, p. 120-121; I. Leș, *Sisteme judiciare comparate,* Editura All Beck, București, 2002.
[31] According to article 82 of Law no. 304/2004. This possibility is also provided by Law no. 304/2022.

Legal provisions clarifying the competence *ratione materiae* and *ratione personae* were also adopted, which contained legal definitions of different acts of corruption.[32] The National Anti-Corruption Prosecutor's Office is primarily responsible for investigating and prosecuting high-level corruption offenses. Its functions and powers include criminal investigation criminal investigations conducted thoroughly and independently into corruption cases involving public officials, politicians, and influential individuals, focusing on bribery, embezzlement, abuse of office, and money laundering. Upon completing investigations, it has the authority to prosecute individuals implicated in corruption offenses. It represents the state in criminal proceedings and aims to ensure fair trials and the effective punishment of offenders. At the same time, it plays a crucial role in identifying and recovering assets acquired through corrupt practices, working in collaboration with relevant institutions and international partners.

The name of the structure changed in 2006 into the National Anti-Corruption Directorate (*Direcția Națională Anticorupție*), but the features and the legal nature are the same (it is a structure with legal personality, within the Prosecutor's Office attached to the High Court of Cassation and Justice).[33] It is led by the general prosecutor of the Public Prosecutor's Office attached to the High Court of Cassation and Justice through the chief prosecutor of this department. From the point of the legal status, the chief prosecutor of the National Anticorruption Directorate is assimilated to the first deputy general prosecutor of the Prosecutor's Office attached to the High Court of Cassation and Justice.[34]

The staff is appointed by order of the chief prosecutor, with the National Anticorruption Directorate staffed with prosecutors appointed

[32] O.U.G. no. 24/2004, Law no. 78/2000.
[33] Law 54/2006 regarding the approval of the Government's Emergency Ordinance no. 134/2005 for the amendment and completion of the Government Emergency Ordinance no. 43/2002 regarding the National Anti-Corruption Prosecutor's Office, published in the Official Gazette 226 /13.03.2006.
[34] According to article 93 para. 2 of the Law no. 304/2022.

by order of the chief prosecutor of the directorate, after the expression of the opinion of the Section for Prosecutors of the Superior Council of the Magistracy.

According to the provisions amended and in in force at the present, an annual report on the activity carried out by the Directorate is presented to the general assembly of prosecutors and, after its approval, it is submitted to the general prosecutor of the Prosecutor's Office attached to the High Court of Cassation and Justice. The purpose is to assess the degree of achievement of the pursued criminal policy priorities. Next, the report will be submitted to the Minister of Justice who will submit his conclusions on the report to Parliament.[35] The technical terms that should be respected are not relevant for the purposes of this paper. However, one may notice that the obligation to submit a report to Parliament on the activity of the National Anti-Corruption Directorate, that was criticized (although the format was slightly different) is still in force, despite the fact that the structure is not related to Parliament and exercises its competences under the principle of independence. Hence, Parliament, that is the legislator, should manifest a real interest in the activity of the institution specialized in the fight against corruption, in order to improve the legal provisions related to this field.

2.2. Achievements and impact

The establishment of a specialized structure of prosecutors for the fight against corruption has had a profound impact on Romania's anticorruption efforts, demonstrating significant achievements, including high-profile convictions of numerous high-ranking officials, politicians, and businessmen involved in corruption cases. These convictions have sent a strong message that corruption will not be tolerated at the highest levels of power.

[35] According to article 99 of the Law no. 304/2022.

All these efforts had a significant contribution to the increase of transparency and accountability in the public sector. Its work has helped restore public trust in government institutions and fostered a culture of integrity and ethical conduct.

Romania also adopted National Anti-Corruption Strategies, the most recent is for the period 2021-2025.[36] The strategy includes an array of measures and policies in order to strengthen transparency and trust in the public sector, taking into account the previous strategic objectives, adopted for the period 2016-2020.

In a report released in 2022, OECD critically examined the anti-corruption strategy 2016-2020,[37] stressing that high levels of corruption still exist and continue to be a problem. The report notes that the National Anti-Corruption Directorate is one of the most trusted institutions in Romania. In 2016, 60% of Romanians said they had confidence or great confidence in the DNA compared to less than 11 percent for Parliament. Equally, in 2016, 403 cases of corruption were sent to trial, including 161 high profile cases and more than 1000 individuals.[38]

The Activity Report 2022[39] describes the evolution of notifications registered and the investigation of corruption crimes, compared to the previous years. For example, in 2022, there was a slight increase in the number of complaints addressed to the Directorate than in 2021 (2193 compared to 2139 in the previous year). Concerning the public officials with management positions or other important positions indicted in 2022 and sent to the court to be judged, the Report shows that there were 4 members of Parliament, 2 ministers, 1 under-secretary of state,

[36] Decision of the Government no. 1269/2021 on the approval of the National Anti-corruption Strategy 2021-2025 and its related documents, published in the Official Gazette no. 1218 bis/12.12.2021.
[37] OECD, Evaluation of the Romanian National Anti-Corruption Strategy 2016-2020, OECD, 2022, Paris.
[38] OECD, Evaluation of the Romanian National Anti-Corruption Strategy 2016-2020, OECD, 2022, Paris.
[39] The Activity Report can be accessed at https://www.pna.ro/obiect2.jsp?id=590

1 prefect, 2 vice-presidents of county councils, 16 mayors, 7 deputy mayors, 20 directors and deputy directors of public institutions, 5 hospital/medical institute managers or directors.[40]

2.3. Other relevant institutions in strengthening ethical standards and good governance

In addition to establishing the National Anti-Corruption Directorate, Romania has also implemented a range of other measures to combat corruption. These include strengthening the legal framework for anti-corruption, increasing transparency and accountability in government institutions, and promoting public awareness of the importance of ethical conduct. Such examples are the National Integrity Agency (ANI-Agenția Națională de Integritate) established in 2007[41] as an independent body tasked with promoting integrity, preventing corruption and the National Agency for the Management of Seized Assets (ANABI – Agenția Națională de Administrare a Bunurilor Indisponibilizate).[42]

The National Integrity Agency makes administrative verifications of declarations of assets and interests that may lead to measures as seizure or confiscations of unjustified assets or dismissals of public officials, including at a high-level, for conflicts of interests and incompatibilities. The Law on preventing and combating Corruption provides the legal basis for the Integrity Agency's mandate and defines its responsibilities in preventing corruption, promoting integrity, and monitoring conflicts of interest.

[40] DNA, *Activity Report 2022,* https://www.pna.ro/obiect2.jsp?id=590

[41] Law no. 144/2007 on the establishment, organisation and functioning of the National Integrity Agency, republished in the Official Gazette 535/3.08.2009.

[42] Law no. 318/2015 for the establishment, organization and functioning of the National Agency for the Administration of Unavailable Assets and for the modification and completion of some normative acts, published in the Official Gazette no 961/24.12.2015. The official site of the Agency is https://anabi.just.ro/en

According to the data available on its official website, on June 7th 2023, 11,158,086 statements of wealth and interests can now be consulted directly through its portal.[43]

Thus, there is an important transparency component of disclosure on the assets and interests of persons holding public functions and their family members that should contribute to reducing the incentive of corruption.

From a different perspective, that of the members, disclosing all aspects related to assets despite the fact that they are not public officials or they are minors, in a format that is publicly available at any moment, may be seen as excessive for them.

Conclusion

To understand the progress that has been made in Romania's anti-corruption efforts, it is essential to first understand the historical context. Romania emerged from decades of communist rule in 1989 and, for many years, corruption was pervasive in many areas of society. This corruption hindered economic development, discouraged foreign investment, and eroded public trust in the government.

Romania has made significant progress in its fight against corruption, yet these efforts should be continued and supported by a strong political will. The main challenges that the National Anti-Corruption Directorate must face are those of political interference and operating with limited resources, including staff. Considering its accomplishments, the institution should continue to evolve, adapt to emerging corruption challenges, and work collaboratively with other institutions to advance the anticorruption agenda in Romania.

[43] https://www.integritate.eu/Home.aspx

IVONA
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The Presumption of Innocence and the Media Coverage of Criminal Cases

Introduction

Only a few days have passed since the Balkans were shaken by a tragedy of unprecedented proportions. A mass murder of eight people was committed in several villages in the municipality of Mladenovac, near Belgrade. Unfortunately this was the second mass shooting in Serbia in a week. It came after a 13-year-old school pupil shot dead eight other pupils **and a security worker in a Belgrade school, injuring six other pupils and a history teacher**.

The media went crazy. The method and concept of reporting was not chosen.

Television and social networks were flooded with headlines like "Star pupil, 13, behind Serbian school massacre, made a gun pose with his fingers before shooting",[1] "The A4 sheet, the rich family, the massacre: the whole story of Kosta Kecmanovic, the child killer of Belgrade",[2] "Man with neo-Nazi symbols kills 8 in second Serbia mass shooting".[3] Photos of suspects, photos of tragic scenes of families torn apart by pain,

[1] Avaliable at: https://finnoexpert.com/2023/05/04/star-pupil-13-behind-serbian-school-massacre-made-a-gun-pose-with-his-fingers-before-shooting/
[2] Available at: https://news.italy24.press/news/515754.html
[3] Avaliable at: https://www.reuters.com/world/europe/two-killed-several-injured-serbian-village-shooting-2023-05-04/

with the speed of light, increased the number of views to hundreds of thousands… Hence, as many times before, despite the national and international efforts to safeguard the rights of suspects or accused persons, the media took on the role of investigation bodies, prosecutors and judges, completely disregarding the principle of presumption of innocence and ethics in media reporting.

Human rights and other relevant laws aim to carefully balance the presumption of innocence, the right to privacy and the rights to expression and information. This does not mean that investigative journalists should not give detailed accounts in terms of their research about data which may be incriminating for certain individuals, but this means that the ethical standards of the profession have to be respected. Sometimes journalists forget this principle and transpose their own beliefs or public expectations to their texts declaring guilty those whose guilt has not been proven and, at the same time, the motive for such behavior is sensationalism and the wish to increase their readership or viewership.

In the following sections of this paper, detailed elaboration of these rights at a domestic and international level will be given. Which of the rights has priority in a certain situation will be taken into account too, especially through the practice of the European Court of Human Rights.

The Presumption of Innocence – International and Domestic Standards

> "It is better that ten guilty persons escape, than that one innocent suffer."
>
> *William Blackstone.*

The presumption of innocence, shortened into the phrase "innocent until proven guilty", is not a modern principle.[4] Its beginnings stem

[4] Before the advent of the modern system of the time was based on the assumption of the quasi-guilt of the accused, a fact which, together with the prevailing social inequality in and before the law, made it virtually

from the maxim "quilibet praesumitur innocens, nisi probetur nocens",[5] further developing into what this principle means today. (Nenadic, 2019) Nowadays, it is a universally-recognized legal phrase deeply entrenched in popular culture. It can be heard even on television and in movies during a legal drama, and in the news when a certain case captures national attention.

This legal maxim applies to any individual charged with a crime and ensures that the criminal defendant is seen as innocent until they are proven guilty "beyond a reasonable doubt" in a court of law. The presumption of innocence draws a distinct line between what defines an accusation, and what defines a conviction. An accusation is a claim that someone has committed an illegal act and, in contrast, a conviction is a guilty verdict given after evidence has been presented that proves guilt beyond a reasonable doubt. An accusation can evolve into a conviction, but this must only occur after considerable evidence has been offered to corroborate the claim by meeting a standard of proof. These two distinct concepts must not be synonymized with one another, and that is where the presumption of innocence comes into play. (Teng, 2022)

The Declaration of the Rights of Man and Citizen from 1789 is considered the first formal provision of the presumption of innocence, which states that "everyone is presumed innocent until proven guilty". This is considered significant, although the presumption of innocence is

> impossible to apply the principle of in dubio pro reo, since the accused could be condemned to an arbitrary sentence in the case of uncertainty. This esteemed general legal principle of innocent unless proven guilty is regarded as the inevitable consequence of the principle of nulla poena sine crimine, nullum crimen sine culpa (there is no sentence without a crime, there is no crime without guilt), in other words, the requirement that the punishment is preceded by the certainty of guilt, since any doubt in the mind of the judge should lead to acquittal. (Barber and Arias, 2012)

[5] The modern expression of the presumption of innocence, which is often expressed by the phrase "innocent until proven otherwise", is owed to the canonical theologian Johannes Monachus from the end of the 13th century, who, commenting on the decree of Pope Bonface VIII, coined the maxim "quilibet praesumitur innocens, nisi probetur nocens". (Quintard-Morénas, 2010)

not established here as an independent principle, but as a starting point for protection against unnecessary severity against unconvicted persons who are arrested. (Beljanski, 2001)

Today's main international human rights documents recognize the presumption of innocence as a right of a defendant in criminal proceedings. These instruments conceptualize the presumption of innocence as a specific aspect of a defendant's right to a fair trial.

The United Nations incorporated the principle in its Declaration of Human Rights in 1948 under article eleven, section one. The maxim also found a place into the United Nations International Covenant on Civil and Political Rights, as article 14, section 2, and in the Article 66 of the Rome Statute of the International Criminal Court. (Pennington, 2003) Furthermore, the Green Paper on the presumption of innocence should be mentioned, as well as the Directive on strengthening of certain aspects of the presumption of innocence and of the right to be present at the trial in criminal proceedings. Complementary to the above acts, special attention should be given to the Right to a fair trial defined in Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, which Paragraph 2 describes the presumption of innocence as "Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law". (Krstevska Savovska, 2019)

If the Macedonian legislation is taken into account, the Constitution of the Republic of North Macedonia states that people charged with a criminal offense shall be presumed innocent until their guilt is established by a final court decision. (Constitution of RNM, Article 13)

As a general principle, the presumption of innocence is also part of the Law on Criminal Procedure, and clearly states that a person charged with a criminal offense will be considered innocent until his/her guilt is established by a final court verdict. All state bodies, media and other entities are obliged to abide by the rule, and with their public statements about the ongoing procedure, they must not violate the rights of the

defendant and the injured party, as well as judicial independence and impartiality. (LCP, Article 2)

By ratifying the European Convention for the Protection of Human Rights, it has become an integral part of the legal system of the Republic of North Macedonia. According to the above-mentioned Article 6 of this Convention, Macedonian Law on Criminal procedure also provided the article entitled as "Right to a fair trial", specifying that any person charged with a criminal offence shall have the right to a fair and public trial before an independent and impartial tribunal, in an adversarial procedure, with a possibility to challenge the accusations and tender and present evidence in his defense. (LCP, Article 5)

The presumption of innocence, through the analysis of these legal texts, has two aspects: an internal and external one. The internal aspect relates to how the actors directly engaged in the criminal proceedings, such as judges, prosecutors, police officers and lawyers perceive the defendant and how this affects their daily work. The external aspect deals with the public image of the defendant, and here the media has the main role. However, the distinction between these two aspects can, at times, be blurred, as media coverage can also affect those engaged in the proceedings, as we can see later. (FRA, 2021)

2. The Presumption of Innocence and the Media

The right to freedom of expression, complemented with the right to information, constitutes one of the essential foundations of a democratic society. It is key to the development, dignity and fulfillment of individuals, is a core component of a country that values the rule of law, and is the foundation of an open and inclusive society. People are unable to take part in the affairs of the country if they are unaware of what is happening in their society, which makes media an important medium for them to know this.

According to Edmund Burke, the media is considered and regarded as the fourth estate of democracy, and therefore a particularly responsible profession.[6] Unfortunately, the media is not only a boon but also a curse, especially because the media sometimes forgets its responsibility due to marketism and selfishness. (Yadav, 2020) The development of the media, from newspapers, through television, to social networks, has made it possible, information about the work of the judiciary and interesting trials to reach the public very quickly. Because crimes and violence attract readers or viewers, the media are "hungry" for such bombastic cases.

Sensationalism in the reporting of court cases, publishing the identity of suspects, showing footage of their detention, and some other forms of their behavior, complemented with the freedom of the media to add qualifications such as 'king of the underworld', 'monstrous pedophile', 'local maniac' and similar epithets to the identity of the accused persons is the moment when media reportage conflicts with the right accused persons have to a fair trial, and the basic principle of presumption of innocence.

This failure to respect the principle of presumption of innocence stigmatizes and labels these persons and they become objects of public condemnation, and we all know that public pressure is sometimes particularly significant for their conviction. This is when the authority of the judiciary is replaced by the authority of the "public court", thus collapsing the foundations of the rule of law. (Resta, 2009)

[6] This great public responsibility that journalism has as a profession comes from the fact that its mistakes cannot be hidden. They are immediately visible and seen by a large number of people. This is exactly why Max Weber believes that journalism is almost as responsible as the profession of scientists: "Rarely anyone is aware that really good journalistic work requires at least as much "spirit" as any scientific activity – above all, due to the need for information to be immediately published and to act immediately in, of course, different conditions of creation… Almost no one mentions that the responsibility is far greater and that every honest journalist's sense of responsibility is on average as expressed as that of a scientist, because after the nature of things, precisely the irresponsible journalistic action, remains in the memory because of its bad performance". (Donev, 2019)

The media, contrary to all rules, also sometimes even report on the names of the suspects at a very early stage of the procedure, often after a criminal complaint has just been filed. This means that no charges have yet been applied against that person, and that it is not yet a court procedure. In such situations, even if no procedural action is taken against the specific person, the information that has been transmitted through the media will continue to reflect negatively on him (Gruevska Drakulevski et al., 2016). No matter what happens after, media judgment can be very harsh, because stigmatized people cannot get moral satisfaction. It's like trying to pick up the sand that's being blown around by the media forces.

In the Republic of North Macedonia, respecting the principle of presumption of innocence is not only a legal obligation of journalists, stipulated in the Law on Criminal Procedure, but it is also their professional obligation regulated by the Code of Ethics of Journalists.

According to the provisions of this Code, the basic task of journalists is to respect the truth and the right of the public to be informed in accordance with Article 16 of our Constitution.[7] Journalists have the role of transmitting information, ideas and opinions and have a right to comment, and while respecting ethical values and professional standards regarding the presentation of information, journalists should be honest, objective and accurate. In this way, journalists will defend human rights, dignity and freedom, they will respect the pluralism of ideas and opinions, they will contribute to strengthening of the legal state and

[7] The freedom of personal conviction, conscience, thought and public expression of thought is guaranteed. The freedom of speech, public address, public information and the establishment of institutions for public information is guaranteed. Free access to information and the freedom of reception and transmission of information are guaranteed. The right of reply via the mass media is guaranteed. The right to a correction in the mass media is guaranteed. The right to protect a source of information in the mass media is guaranteed. Censorship is prohibited. (Constitution of RNM, Article 16)

shall participate in the control over the government and other subjects in public life. (CEJ, 2001)

The Code also emphasizes that the journalist should publish correct, verified information and, if the given information cannot be confirmed, or if it is a matter of assumption, i.e. speculation, that should be noted and published. At the same time, the way of informing in cases of accidents, elementary disasters, war, family tragedies, sickness, court procedures must be free from sensationalism. When reporting on court procedures, the principle of presumption of innocence should be respected. The media should report for all involved parties in a legal dispute without suggesting a verdict. Of particular importance in this context is the obligation that the journalist should distinguish between facts and opinions, between news and comments, and commercial motives must not be allowed to influence the freedom of information, and on the journalistic text itself with the illustration.(CEJ, Rule No.1,6,8,13)

However, this looks good on paper, but in reality it is too good to be true. If we analyze the reporting of criminal cases by the media in the Republic of North Macedonia, we quickly and easily come to the conclusion that journalists, in a very large number of cases, neglect the rules, especially considering the principle of presumption of innocence.[8]

The headlines are often sensationalistic and tendentious and, instead of informing, they ask questions that are often not answered below in the text.

The Macedonian media do not pay attention to the terminologal distinction between an accused or a suspect. The personal data of the accused and even their families are part of the media texts, and the blurring of the image or other formal protection of the identity are more than a rare practice. However, throwing around terms like mobster, pedophile, maniac and similar epithets are commonplace in media reports.

[8] More on: https://znm.org.mk/wp-content/uploads/2020/07/Eticko-izvestuvanje.pdf

The Macedonian media often uncritically take the police version of the criminal case, although even before the court proceedings have even started, and the guilt of the arrested has not even begun to be proven. This is often supplemented by "exclusive" footage from the police, which is only sent to certain media outlets. Such reports are more like a police-media combination for the promotion of the work of the Ministry of Internal Affairs, than objective information to the public. In such situations, these journalists focus only on the specific arrest and daily events, without investigating and penetrating deeper into the essence of the problem with the specific type of crime. With such a shallow and selective approach, many media serve as a means of promoting the daily political agenda of the government or the opposition and, sometimes even more dangerously – as a means of spinning information and defocusing the public's attention from other, bigger and more important current problems in society. (Zdraveska, 2013)

Using this way of reporting, journalists not only violate the right to the presumption of innocence, but in a certain case their reporting becomes so tendentious that it can be interpreted as an attempt to influence the court and its decision-making.

3. Human Rights in Conflict- Striking a Balance Through the ECtHR's Practice

Based on fundamental values of freedom and equality, human rights represent a constitutive element of any democratic society. In their original conception, human rights are granted to every individual. They are designed to protect the individual from unwarranted interferences in crucial aspects of his/her life. Only in specific circumstances, when strict requirements of necessity and proportionality are met, can a state limit human rights to protect, for instance, public order or national security. Different concerns manifest when parties to a horizontal conflict invoke a human right to maintain their interests. In such situations, where two

human rights conflict with one another, the principle of the indivisibility of human rights requires that both rights carry equal weight. Neither right can be used as a trump over the other and alternative means must be employed to resolve the conflict. (Smet, 2010)

In these contexts, there is a constant struggle for a proper equilibrium of the rights which are safeguarded by the European Convention of Human Rights. Article 10, paragraph 1 of the ECHR stipulates, among other things, that everyone has the right to freedom of expression, without interference by public authorities. Paragraph 2 stipulates that the use of freedom of expression "entails duties and responsibilities" and may be subject to "formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society" and in the interest of, among other things, "protection of the reputation or rights of others" and "maintaining the authority and impartiality of the judiciary." (ECHR, 2022)

From the above, it follows that the media have the freedom, right and duty to report on pre-criminal or criminal proceedings, as well as that the public has the right to receive this information. Conduct of criminal proceedings cannot be secret and inaccessible to the public, for the reason that criminal proceedings are conducted in the public interest. On the other hand, in the process of reporting on pre-criminal or criminal proceedings, the media are bound by the protection of the reputation and rights of all participants in the proceedings, but also by preserving the authority and impartiality of the judiciary. As the presumption of innocence represents the defendant's procedural right,[9] but at the same time it is closely related to the concept of impartiality of the court, we can conclude that the media, when reporting on proceedings, are entirely bound by the presumption of innocence. (Nenadic, 2019)

Unfortunately, this is often neglected or placed into peril by the media when reporting on court cases. This conflict is often expressed through two interrelated but distinct facets, one subjective and one objective. The

[9] Provided in Article 6 paragraph 2 of the ECHR

first focuses on the interests of the parties involved in the trial during all the stages of the proceedings as well as following the outcome of the trial. The second concerns the necessity of preserving the superior legal concepts of authority and impartiality of justice against undue interference which might affect the verdict, but also more generally from unfair comment which might harm the authority of the judiciary in general. (Synodinou, 2012)

In a large number of cases, the ECtHR dealt with the issue of this relationship between the media and the judiciary and developed a rich practice that gives guidelines to the courts on how they should act in relation to the media in order to achieve a balance in the application of law and prevent situations in which media reporting and publicity could affect the fairness of the trial and the presumption of innocence.

In the case **Du Roy and Malaurie v. France**, the court reminded that the media plays a key role in a democratic society, as well as that journalists who report on criminal proceedings that are currently taking place must not cross the border imposed in the interest of the correct administration of justice and are obliged to respect the right of the accused to be considered innocent (Du Roy and Malaurie v. France, 2000). However, it was especially emphasized that the state must not abuse the right to encroach on freedom of expression and make it difficult for the media to inform the public.

The ECtHR, in the case **"Wirtschafts-Trend" Zeitschriften-Verlagsgesellschaft mbH v. Austria**, stated that, when the case had only reached an early stage of the criminal proceedings, particular care had to be taken to protect a person against "trial by the media" and to give effect to the presumption of innocence. ("Wirtschafts-Trend" Zeitschriften-Verlagsgesellschaft mbH v. Austria, 2002)

In the decisions of **Ensslin, A. Baadre J. Raspe v Federal Republic of Germany**, the Commission emphasized that a "virtual media campaign" can harm fair trials. Similar statements were implemented in the **Craxi v. Italy** case where the Court stated that in certain cases a virulent press campaign can adversely affect the fairness of a trial by influencing public

opinion and, consequently, the jurors called upon to decide the guilt of an accused. It was in this case that the Court ruled that when trials are decided by professional judges rather than a jury, there is less likelihood of a breach of Article 6. (Craxi v. Italy, 2002)

In the case of **Khuzhin and Others v. Russia**, the court states that the presumption of innocence prohibits the formation of premature court positions, which would appear the idea that a person charged with committing a crime is guilty before his/her fault is proven according to the law. This requirement applies to statements of the media and to statements of other officials on the progress of the investigation of the criminal proceedings if such statements encourage the public to believe in the guilt of the accused and affect the assessment of the facts of the case by a competent court. (Khuzhin and Others v.s Russia, 2008)

Ribemont v France is also a case where the Court was categorical that there was a violation of the applicant's right to be considered innocent until proven otherwise. In this case some of the highest-ranking officers in the French police, during a press conference, referred to the applicant, without any qualification or reservation, as one of the instigators of a murder and, thus, an accomplice in that murder. This was clearly a declaration of the applicant's guilt which, through media reports, firstly, encouraged the public to believe him guilty and, secondly, prejudged the assessment of the facts by the competent judicial authority. (Allenet de Ribemont v France, 1995)

Pseudo-trials have also been addressed by the Court in its judgment in the case of **Worm v. Austria**, where it held that it could not be excluded that the public's becoming accustomed to the regular spectacle of pseudo-trials in the media might in the long run have nefarious consequences for the acceptance of the courts as the proper forum for the determination of a person's guilt or innocence on a criminal charge. It held that an interference on the ground of protecting the authority of the judiciary could be justified without requiring an actual result of influence on the particular proceedings to be proved. This must be borne in mind by journalists when commenting on pending criminal proceedings since the limits of

permissible comment may not extend to statements which are likely to prejudice, whether intentionally or not, the chances of a person receiving a fair trial or to undermine the confidence of the public in the role of the courts in the administration of criminal justice. (Worm v. Austria, 1997)

From the practice of the ECtHR, regarding the attitude of the media towards criminal proceedings and the presumption of innocence, it can be concluded that the ECtHR mainly considered this issue when deciding in cases concerning the violation of freedom of expression. Violation of the presumption of innocence in these cases is incidentally mentioned, with the statement that the media campaign may harm the authority of the courts, the fairness of the proceedings, the impartiality of the courts and/or the presumption of innocence. Therefore, monitoring the judicial practice of the ECtHR in relation to the violation of the presumption of innocence by the media is not simple, as it requires the simultaneous monitoring of several possible violations of rights from the ECtHR.

However, the ECtHR has described how much influence the media can have on criminal proceedings and, therefore, on the presumption of innocence. This influence can go so far as to give the impression that the trial is separated from the judiciary and passed into the hands of the media and public opinion, and in some moments it can take the form of a public lynching. Also, in numerous cases, the ECtHR has expressed concern about the way the media campaign is conducted regarding criminal cases, calling the campaigns: malicious, dangerous, contagious, poisonous, aimed at exaggerating or simplifying reality. This kind of thinking of the ECtHR is part of our previous views that courts do not judge in a "vacuum" and that media activity affects the life of the accused as a whole.

Conslusion

"Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law." This rule, known under the formulation presumption of innocence has been described as a "golden thread"

running through criminal law. It is a norm of customary international law and is protected by numerous international treaties and in national legal systems. The presumption of innocence is crucial to ensuring a fair trial in individual cases, to protecting the integrity of the justice system, and to respecting the human dignity of people who are accused of committing crimes.

However, despite the fact that we are talking about one of the foundations of the rule of law, nowadays, media reporting on criminal cases frequently violate the presumption of innocence. In a race to attract as many viewers or readers as possible, the media bombards us with sensational attention-grabbing headlines, photos and juicy details of criminal cases, while not taking into account the impact that such actions will have on the accused in the public or on the potential decision that will legally end the respective case. In this way, we have long faced the challenge of striking a balance between the presumption of innocence and the right to freedom of expression and access to information.

As a country, we can boast that we have enacted a solid legal regulation of this controversial issue, but certain cases of the ECtHR are perhaps the only practice on which we can set the principles on the basis of which we will crystallize the place of the media in criminal proceedings.

The respect to the presumption of innocence in media reports is crucial for preventing miscarriages of justice, and minimizing the harmful impact on the lives of the suspects and accused persons, which is in turn an essential part of a just society. The public's right to information and freedom of speech are essential for democracy, but they should be fulfilled to the extent that no other fundamental rights such as those to a private life and a fair trial are infringed. Finally, for this balance it is necessary to distinguish between "what interests the public" from "what is in the public interest". (ARISA, 2021)

TANJA
KARAKAMISHEVA-
JOVANOVSKA

Controversies and Challenges of the Macedonian Public Prosecution – European *versus* Macedonian standards

"The prosecution does not win or lose cases,
It has to seek for justice and do justice".
Prof. Tanja Karakamisheva-Jovanovska

1. The principles as key values and standards in the organizational and working setup of the Public Prosecutor's Office – Contemporary overview

Public prosecution offices in the European countries are very important legal institutions that are responsible for ensuring and guaranteeing the legal security of the citizens and their legal trust in the state's legal systems. During the functioning of every public prosecutor's office, it is of crucial importance to respect all the national and European norms and standards in this area which are considered as a legal asset in the legal systems. One of the basic condition which is part of all public prosecution principles is that prosecutors shall always "*serve and protect the public interest; respect, protect and uphold the universal concept of human dignity and human rights*". In this sense the Bordeaux Declaration of 2009[1] states that *'The prosecutors shall fairly, objectively, and impartially be*

[1] See more details: https://rm.coe.int/1680747391#_ftn1. This Declaration is accompanied by an Explanatory Note. The Declaration has been jointly drafted by the Working Groups of the CCJE and the CCPE in

independent and autonomous in their decision-making and carry out their functions. The Prosecutors shall:

- at all times maintain the honor and dignity of their profession;
- always conduct themselves professionally, in accordance with the law and the rules and ethics of their profession;
- at all times exercise the highest standards of integrity and care;
- keep themselves well-informed and abreast of relevant legal developments;
- strive to be, and to be seen to be, consistent, independent and impartial;
- always protect an accused person's right to a fair trial, and in particular ensure that evidence favorable to the accused is disclosed in accordance with the law or the requirements of a fair trial;
- always serve and protect the public interest;
- respect, protect and uphold the universal concept of human dignity and human rights.[2]

These principles have been implemented by most of the European democratic states, either as prosecutorial directives or in statutory provisions. Even if not implemented into national legislation, they should indeed form the basis for standards of public prosecution in most European countries.[3] The main principles of the activities of the public prosecution offices are stipulated in many Council of Europe Recommendations,[4] Opinions of the Venice Commission,[5] and other legal documents.[6]

The most important principles are the following:

- principle of legality;

Bordeaux (France) and has been officially adopted by the CCJE and the CCPE in Brdo (Slovenia) on 18 November 2009.

[2] Ibid.

[3] See: https://www.soulier-avocats.com/en/justice-must-be-seen-to-be-done-asserting-the-principle-of-objective-impartiality/

[4] See: https://rm.coe.int/168074738b, https://rm.coe.int/16804be55a.

[5] See: https://www.venice.coe.int/webforms/documents/?pdf=CDL-PI(2018)001-e

[6] See: https://www.eppo.europa.eu/en/legal-framework

- principle of the protection and respect of the rights and freedoms of a natural entity and the rights of a legal person;
- principle of professionalism and competency;
- principle of objectivity and impartiality and
- principle of centralism.

In legal theory, the prosecutor's duty to act objectively is often elaborated in connection with aspects of the law on evidence, especially regarding the collection and evaluation of evidence, evidentiary standards, and the prosecution's burden of proof. This approach is due to the principle of material truth having in mind that the aim of each criminal procedure is to establish the truth, and to determine criminal liability based on established facts. This goal is commonly accepted, although there seems to be a slight shift in the general orientation of the aims of the criminal process, from a focus on 'truth-finding' towards conflict resolution.[7]

The principle of material truth constitutes the foundation of the prosecution's duty of impartiality and objectivity.[8] It also provides the basic guidelines that regulate and limit the prosecution's decisions and the prosecutor's appearance at any stage of criminal proceedings. Objectivity must, therefore, be seen as a precondition for truth-finding. The obligation to objectivity is closely linked to the prosecution's function as the head of the investigation, and its responsibility to collect and facilitate all the materials that serve as the basis for both the prosecution's decisions or the court's decisions on guilt and criminal liability.

[7] See: https://www.juridicainternational.eu/article_full.php?uri=2019_28_28_truth-in-criminal-law-and-procedure-the-erosion-of-a-fundamental-value

[8] There are many court decisions dealing with breaches of objective impartiality. A few examples are provided hereafter. The situation where some members of the Luxembourg Council of State successively carried out both advisory and judicial functions in the same case. See: https://www.soulier-avocats.com/en/justice-must-be-seen-to-be-done-asserting-the-principle-of-objective-impartiality/ and CEDH, September 28, 1995, Procola v. Luxembourg, Application No. 14570/89, § 44-45.

Other principles related to objectivity are: professionalism, moral standards and personal attitude towards the function and the role of the prosecutor as a public authority. But the principle of objectivity goes beyond this, and it must be seen to be upheld in action. The Strasbourg European Court of Human Rights gives some guidance in its case-law.

In the ECHR case-law the concepts of independence, objectivity, and impartiality of judges are closely linked. To some extent, this is similar for the public prosecution offices. There are two aspects to the question of prosecutor's "impartiality":[9]

1. The prosecutor must be free of *subjectivity*, and
2. The prosecutor must be impartial from an *objective* point of view. This requires sufficient guarantees in the legal framework and practice to exclude any legitimate doubt in this respect.

The impartiality is closely linked with the criterion of public prosecutor's independence which is related with the manner of appointment of prosecutors, their term of office, the existence of guarantees against outside pressure, whether the prosecutors appear to be independent, and whether the accused's possible doubts that the prosecution lacks independence or impartiality can be objectively justified.

The Strasbourg Court underlined "hierarchical, institutional and practical independence" as a crucial element of an "effective official investigation" and that the prosecution's subordination to the executive branch does not satisfy the requirements of independency and impartiality.[10]

[9] See: Report on the relationship between judges and prosecutors, Working paper of the consultative council of European judges (CCJE-GT(2009)4), 16th meeting 2009, https://www.coe.int/en/web/ccje/opinion-no.-12-on-the-relations-between-judges-and-prosecutors-in-a-democratic-society

[10] See: Gert Johan Kjelby, Some Aspects of and Perspectives on the Public Prosecutor's Objectivity according to ECtHR Case-Law, Bergen Journal of Criminal Law and Criminal Justice, Vol. 3, Issue 1, 2015, (pp. 61-83).

The ECtHR underlined hierarchical, institutional and practical independence as a crucial element of an 'effective official investigation', and the prosecution's subordination to the executive branch does not satisfy the requirements of independency and impartiality of an 'officer authorized by law to exercise judicial power' within the meaning of article 5.3. See: Moulin v. France, judgment November 23, 2010 (appl. 37104/06),

Objectivity, independence, promptness, thoroughness, and the use of all reasonable steps available to secure evidence, are the essential elements of an effective official investigation. The effectiveness of the investigation and prosecution is, therefore, at stake if the principle of objectivity is not upheld by the police or prosecution in securing evidence during the investigation phase or in the evaluation of the investigation material during the pre-trial phase. This is also true if the circumstances in the case cast serious doubt about their objectivity, especially if there appears to be any "collusion in or tolerance of unlawful acts".

For instance, in the Grand chamber case of *Nachova and others v. Bulgaria* (2005),[11] the court stated a basic principle: "The investigation's conclusions must be based on thorough, objective and impartial analysis of all relevant elements".

If there are relevant evidences missing, the question of why they are missing arises. Any insufficiency in the collection of relevant evidence could undermine the investigation's capacity to establish the circumstances of the case or to find the person responsible. The court has in several cases found that such failures "fall foul of the required measure of effectiveness".

On this case, the Strasbourg Court found violations of Art. 2 of the ECHR and criticizes that "a number of indispensable and obvious investigative steps were not taken", as well as the fact that "the investigator and the prosecutors ignored highly relevant facts related to the case".[12]

On this occasion, some other cases should also be mentioned.

In *Mátásaru and Savitchi v. Moldova* (2010),[13] the court formulated the obvious requirement, but sadly not fulfilled in the case, that "the

also Merit v. Ukraine, judgment March 30, 2004 (appl. 66561/01) and Nevmerzhitsky v. Ukraine, judgment April 5, 2005 (appl. 54825/00), para. 116 and in para. 125.

[11] See: https://www.justiceinitiative.org/litigation/nachova-v-bulgaria.

[12] See: https://www.lawpluralism.unimib.it/en/oggetti/274-nachova-and-others-v-bulgaria-nos-43577-98-43579-98-e-ct-hr-grand-chamber-6-july-2005

[13] See: https://hudoc.echr.coe.int and https://laweuro.com/?p=6942

authorities must always make a serious attempt to find out what happened, and should not rely on hasty or ill-founded conclusions to close their investigation". The prosecution's decision not to initiate an investigation was based on 'tendentious circumstances', and the General prosecutor's assignment of the case back to the same district prosecutor after the investigation was initiated "raised a legitimate concern for the first applicant that his case was not being examined without unnecessary delay".[14]

The case of *Dimitrova and others v. Bulgaria* (2011)[15] is an example of the ECtHR's broad and extensive examination of the conduct of police and prosecutors.

The court expressed serious doubts as to whether the investigation was thorough and above the minimum standards of effectiveness. The court found that the regional public prosecutor failed to take into account important elements of facts when entering into a plea bargain / plea agreement with one of the alleged perpetrators.

The plea agreement was based on a confession that he had killed the deceased in self-defense (but reacting disproportionately), with one blow to his head. But the investigation material indicated several blows, a possible deliberate attack on the deceased and several other persons involved.

Based on this and a lack of promptness and expedition, the court concluded that the authorities did not carry out "a thorough and objective investigation, as required … because they failed to take available investigative measures and manifestly disregarded important evidence".

This brief presentation of cases illustrates the crucial importance of securing and upholding the highest standard of objectivity and thoroughness among public prosecutors through all phases of the criminal

[14] See: https://www.5rb.com/wp-content/uploads/2013/10/Savitchi-v-Moldova-ECHR-11-Oct-2005.pdf

[15] See: Dimitrova and others v. Bulgaria, judgment of January 27, 2011 (appl. 44862/04), para. 76, https://www.refworld.org/cases,ECHR,4d5d276a2.html

proceedings, in order to fulfill state parties' positive obligations under the ECHR.

Most European criminal justice systems rely on internal bureaucratic accountability to keep prosecutors in line with rule of law standards. But the ECtHR and the ECHR demands more.

When it comes to alleged breaches of the state's positive obligations to investigate, prosecute and punish human rights violations, the ECtHR calls for an external control on prosecutors.

As mentioned above, the court requires hierarchical, institutional and practical independence for an investigation to be effective. There should not be institutional or hierarchical connections between the investigators and the police officers or prosecutors complained against. This should be seen as a precondition for an objective investigation and prosecution of such cases.

The ECtHR has no clear preference as to the form in which these requirements should be met, but it seems to be a common view that these obligations require a special law enforcement agency to conduct investigation and prosecution.

Practical independence also implies that police and prosecutors cannot take any part in the investigation, unless immediate action is necessary to avoid the loss or destruction of important evidence. The demands for objectivity and independence also have other implications for the prosecution. The requirement of an 'effective' remedy is not met if an appeal authority lacks the competence to deal with the case, has limited competence, or is not sufficiently independent.

The preferred legal strategy to secure compliance with the principle of objectivity should be to implement this principle in the legal framework and in legal practice, in a way that reflects its fundamental value and makes it operational in every decision-making process, on a daily basis.

A statutory obligation to prosecute every known case with sufficient evidence could be seen as a procedural safeguard and a guarantee against unequal justice and prosecutions based on non-objective grounds. Furthermore, it strengthens prosecutors' independence since instructions

or interference by the executive branch and politicians cannot have an impact on the decision to prosecute.[16]

But in the very few European countries who still uphold a strict legality principle, the reality is that the public prosecution in practice, without any clear statutory basis or limited statutory basis, decides not to prosecute some cases.

As was briefly presented above, the ECtHR's case-law has a strong focus on the objectivity of police and prosecutors, and the court has performed a thorough examination of several aspects of this fundamental obligation. The prosecutors have an obligation to secure this in practice, and the principle of objectivity should be the basis for all their activities in that respect.

The Public Prosecutor's office has also a hierarchically-defined structured organization which does not only mean that prosecutors take orders from their superiors, but also that the public prosecutorial offices are formally organized in accordance with the principle of hierarchy. The principle of hierarchy is set as an organizational and working method in most public prosecutors' offices in Europe.[17]

For example, in Poland and in many other countries including Serbia and Macedonia[18], the public prosecution authorities operate according to the principle of hierarchical subordination. This principle practically means that a public prosecutor is obliged to obey the regulations, guidelines and orders from the superior and subordinated public prosecutor. Any order concerning the prosecutor's action has to be issued by the superior public prosecutor in writing with appropriate justification.[19]

[16] See: http://www.albersconsulting.eu/pdf/New%20quality%20standards%20for%20the%20public%20prosecutors.pdf

[17] See: Opinion No. 9 (2014) of the Consultative Council of European Prosecutors to the Committee of Ministers of the Council of Europe on European norms and principles concerning prosecutors, https://rm.coe.int/168074738b

[18] See: https://jorm.gov.mk/en/public-prosecutors-in-the-public-prosecutors-office-of-the-republic-of-north-macedonia/

[19] See: https://www.oecd.org/corruption/The-Independence-of-Prosecutors-in-Eastern-Europe-Central-Asia-and-Asia-Pacific.pdf

The hierarchical dependence is also set out, for example, in Article 142 of the Spanish Constitution and in Article 221 of the Constitution of Portugal as well as in other statutory provisions. Belgium and France also have a hierarchical system which is explained through the hierarchical subordination.[20]

Another very important principle of the public prosecutor's office is that of unity and indivisibility.

2. The Organization and functioning of the Macedonian Public Prosecution

The Macedonian Public Prosecutor's Office is defined as a unique and independent state institution that prosecutes perpetrators of crimes and other punishable acts sanctioned by law and performs other duties as stipulated by law.[21] The Public Prosecutor's Office is organized in accordance with the principles of hierarchy and subordination and by adhering to the very principles one must not jeopardize the independence and accountability of public prosecutors in the exercise of their office.

The Macedonian Public Prosecutor's Office, according to the law, is organized as: Public Prosecutor's Office of the Republic of Macedonia, established for the whole territory of the Republic, which can act before the Supreme Court, 4 (four) Higher Public Prosecutor's Offices that act before the appellate courts in Bitola, Gostivar, Skopje and Shtip, and the Basic Public Prosecutor's Office Prosecuting Organized Crime and Corruption in the whole territory of the state with its headquarters in Skopje and 22 (twenty two) basic public prosecutor's offices that act before one

[20] See: https://www.rolplatform.org/wp-content/uploads/2021/09/independence-and-impartiality-of-judiciary-eng.pdf. The subordination qualified the chief prosecutors' with specific powers regarding other subordinated public prosecutors with the maxim "The pen is subservient, but speech is free".

[21] See also: https://www.pravda.gov.mk/upload/Documents/Strategija%20i%20akciski%20plan_ANG-web.pdf

or several courts. The basic public prosecutor's offices are organized as: 10 basic public prosecutor's offices with a basic competence (acting on criminal cases punishable with imprisonment of up to 5 years as a main sentence) and 12 basic public prosecutor's offices with expanded competence (acting on criminal acts punishable with imprisonment of over 5 years as a main sentence).

In those public prosecutor's offices dealing with a larger workload of similar cases, in order to improve the efficiency and to specialize the work of the Office, the law allows for formation of departments as internal organizational units, managed by the public prosecutor or the deputy public prosecutor. In the Basic Public Prosecutor's Office Prosecuting Organized Crime and Corruption, a specialized unit is formed in order to prosecute criminal acts performed by persons with police authorities and members of the prison police guards. The specialized unit has its own professional service and investigators from the investigative center. The public prosecutors working in this unit and the head of the specialized unit are chosen from the public prosecutors working in the Basic Public Prosecutor's Office Prosecuting Organized Crime and Corruption. They are selected by the chief public prosecutor of the Basic Public Prosecutor's Office Prosecuting Organized Crime and Corruption with the prior consent of the State Public Prosecutor.

The Macedonian prosecution encompasses the accusatory principle in the criminal procedure, according to which the judicial office and prosecution office are separated in the interest of objectivity of the trial and aimed to provide possibilities for passing of legal judgements. In this context, the public prosecution does not come down to mere prosecution of the suspects for criminal acts as representatives of the public order, but also to the function of achieving single application of the laws and protection of the legality and constitutionality in the country. To achieve that goal, the prosecution has at its disposal a series of regular and special legal remedies which it can use to pass meritory decisions. From an aspect of the position of the public prosecution in the Macedonian constitutional system, we should point out that the public prosecution, same as

the court, is an organ of the entire social community, and not just of an assigned political and territorial community. This place and role of the public prosecution, having in mind its main task – to protect the social interests and to protect the constitutionality and legality in the country, puts this institution above the influence that certain local factors can have on it, thus strengthening its independence in performing its tasks.

Public prosecution is organized according to the above-mentioned principles of hierarchy and subordination, without threatening the independence and liability of each public prosecutor in performing his/her duties. In this context, the higher public prosecutor can take over certain tasks which are under the authority of a lower public prosecutor or can authorize a lower public prosecutor to act in a case or perform certain actions under the competence of another lower public prosecutor (right to delegation).

The Macedonian public prosecution system also includes a Council of Public Prosecutors, which acts as an independent body authorized to secure and guarantee the independence of the public prosecutors. The Council is composed of 11 members, which include: the chief public prosecutor and the Minister of Justice by their function, one member is appointed by the public prosecutors from their ranks, one member is appointed by the senior public prosecutor offices in Bitola, Gostivar, Shtip and Skopje from their ranks, one member of the Council comes from the non-majority communities in the country and is appointed by the public prosecutors from their ranks, and three members are appointed by the Assembly from the rank of university professors, lawyers and other legal experts, two of whom come from the non-majority communities. The mandate of the Council members is four years with a right to one re-election. The Council is represented by and managed by its President who is elected by the Council members from the line of elected public prosecutors, with a majority of votes from the total number of members through a secret vote, with a mandate of two years without the right to re-election.

The President of the Council has a deputy who is elected by the Council by recommendation of the President, at the same session on which the President is elected. The Chief Public Prosecutor and the Minister of Justice cannot be elected President of the Council. The Council is authorised to: give opinion to the Government on proposals for appointment or dismissal of the Public Prosecutor of Macedonia, to elect and dismiss the public prosecutor; to conclude the end of the function of the public prosecutor and to pass second-instance decisions in a procedure for disciplinary responsibility of the public prosecutors; to decide in cases of unprofessional execution of function by the public prosecutors; to monitor the work of the public prosecutors based on the assessment for their work in accordance with the Law on Public Prosecution; to decide on temporary suspension of a public prosecutor; to act on complaints from citizens and legal persons on the work of the public prosecutors; to determine the number of public prosecutors in the public prosecution offices; to adopt a Rulebook; to publish adds and to perform other duties defined by the Law.

3. Establishing the Special Public Prosecution in Macedonia and the legal consequences – Political solution with unconstitutional position

The organization and functioning of the Special public prosecution office, starting from 2015 until 2020, occurred because of the decision of the than-opposition political party, which is today a ruling party in Macedonia, to publicly present the so-called "audio bombs" where the public heard many private and official talks between the leader and other members of only one party, than the ruling and now opposition party. The possession of recorded phone audio material by the opposition was announced after the failed meeting between the then leader of the opposition, now prime minister of the Macedonian Government, who tried to blackmail the former Prime Minister into forming a technical

government. What really made this political game so heated was not just the alleged seriousness of the illegal wiretapped materials which were in the opposition leader's possession, but also the two parallel discourses which were formed around this issue that have completely polarized Macedonian society. Those materials were used by the then opposition to produce major political crisis in the state and the overthrowing of the then official government.

As a result of those "audio bombs" and under external pressure, the ruling party was forced to accept the forming of the separate Public Prosecution Office which was regulated with the special law. The short title of the Law was Law of Special Public Prosecution, and the official name was the Law of the Public Prosecution for the persecution of crimes which arise from the content of the illegal interception of communications. The main reason for the introduction of a special prosecutor's office was that the then opposition, with major Western support, did not believe in the work and impartiality of the regular prosecutor's office in the country. This new law was adopted with the 2/3 majority in the Assembly, which means that the government and opposition had reached the consensus to implement this law. The law was unconstitutional and in direct conflict with Article 106, item 1 as well as with Article 51, item 1 of the Macedonian Constitution.[22]

According to article 106, item 1 of the Macedonian Constitution, the public prosecution's office in Macedonia is unique (single) and an independent office who prosecutes perpetrators of criminal offences and other offences established by law. According with Amendment 30, items 1, 2, 3, 5 and 7, the public prosecution performs its functions in accordance with the Constitution, laws, and ratified international agreements. As was already explained above, the public prosecution functioning is performed by the Public Prosecutor of the Republic of Macedonia and the public prosecutors in accordance with the regular

[22] https://www.sobranie.mk/the-constitution-of-the-republic-of-macedonia.nspx

law for the public prosecution which was adopted by 2/3 majority of the total MPs in the Assembly. The Regular Macedonian Public Prosecutor is appointed and dismissed by the Macedonian Assembly for the mandate of six years with the right to be re-appointed.

Other public prosecutors are elected by the Council of the public prosecutors in accordance with the appropriate and equitable representation of citizens which belong to other ethnic communities in the country. The Council decides on the public prosecutor's dismissal.

On of September 15, 2015, the Macedonian Assembly, under political and foreign pressure, had adopted the so-called Law for a Special Public Prosecution despite its controversial constitutional basis.

Most of the law academics and the law practitioners in Macedonia have considered this separate and parallel state organ as unconstitutional and problematic from the constitutional perspective.

Firstly, this Special public prosecution is organized and is functioning outside of the unique system which is established as a constitutional framework of actions of the regular and official public prosecution office in Macedonia.

Our Constitution defines the public prosecution as a unique state organ, not like the parallel state office which has the competences to do the public prosecution activities.

In this sense, the Constitution is accepted by the international principle of centralism as an organizational principle under which the public prosecution is functioning.

The public prosecution function, in addition to prosecuting the perpetrators of criminal acts, is also representative of the public order and of the interests of the legal system of the country as well as protector of the principle of constitutionality and legality. The main role and the crucial status of the public prosecution in the country is to protect the public interests, to be a guarantor of its citizens human rights and freedoms in the criminal procedure, to protect the constitutionality and legality in the country, and to protect its independence in the system.

In this sense, the public prosecution in the Republic of Macedonia is dependent only on the Constitution and the laws. The uniqueness of public prosecution is guaranteed with the principle of centralism, subordination of the lower before the higher public prosecutors.

Although there is legal obligation for the public prosecution to be organized in accordance with the principles of hierarchy and subordination, the respect for this principle should not jeopardize the independence and responsibility of every public prosecutor in performing its functions.

The Law on Special Public Prosecution is breaching Article 106, item 1 of the Constitution because contrary to the Constitution, Macedonia legalized two parallel public prosecution offices: the first one which is regular and which is functioning in accordance with the Constitution and the regular, official law of the public prosecution, and the second special public prosecution which is established by law, but whose law is unconstitutional.

The Law on Special Public Prosecution regulates the procedure of election/appointment of the Special Public Prosecutor who will manage with the new public prosecution, the principle of autonomy of the new special public prosecutor, the organization of the new public prosecution, the finance, and the salaries of the employees in the Special office, the legal basis for the dismissal of the function of special public prosecutors etc.

The law deviates from the constitutionally-guaranteed single, unique concept of the public prosecution in Macedonia, and creates the legal basis for existing parallel public prosecution which have a power to work and to act as a separate whole, different from the regular public prosecution.

Despite the Macedonian Constitution which is guaranteeing the uniqueness of the organ, the new law of special public prosecution is legalizing the parallelism into the public prosecution system.

This parallelism in the two public prosecution offices could be seen in all the articles covered in the special law. Conceived as *lex specialis*, this new law is contrary to the regular law of the public prosecution

which is seen as *lex generalis*. The contradiction of both laws is perceived through several issues:

- Different conditions for election/appointment of the Public Prosecutor of the Republic of Macedonia, on one side, and the Special Public Prosecutor, on the other side.
- Different powers and competences which are given to the special prosecutor in relation to other public prosecutors in the country.
- The concept of autonomy of the special prosecutor in relation to other public prosecutors in the country. and
- The basis for appointments and dismissals of the special public prosecutor which are different for appointments/elections and dismissals of the regular prosecutors.
- Different conditions for appointment of the regular Macedonian Prosecutor and the prosecutor who is managing the special prosecution office in the country.

In article 40, item 1 of the Law of Public Prosecution, it is stipulated that the Macedonian Public Prosecutor, on the Government's proposal, is appointed by the Macedonian Assembly on a mandate of six years with the right of re-appointment. In item 2 of the same article, is stipulated that the manner of election of all other prosecutors is regulated with a separate law for a Council of the public prosecutors in Macedonia. Article 40 says that the Council gives the opinion on the governmental proposal for appointment and dismissal of the Macedonian Public Prosecutor.

In article 41, it is stipulated that the Macedonian Assembly under the governmental proposal announces the appointment of the Macedonian Public Prosecutor in at least two daily newspapers. The Council of public prosecutors, under the Governmental request, gives positive or negative opinion in written form for all registered candidates on a public announcement which have fulfilled the legal conditions. The Macedonian Government submits a proposal for appointing the Macedonian Public Prosecutor to the Assembly from the list of registered candidates for which the Council gives a positive opinion. For the governmental

proposed candidate, together with the proposal, the Government sends the Council opinion.

If the Council, within 15 days, do not send their opinion to the Government, the deadline of 15 days is extended for another 15 days. If the Council does not send the opinion by the extended deadline then it could be considered that the opinion is positive. If the Council did not give a positive opinion for none of the registered candidates, or if from the registered candidates the Government could not determine the final proposal for appointment of the Macedonian Public Prosecutor, in that case the Government may suggest to the Assembly to repeat the announcement.

On the other hand, in Article 3 of the new Law on the Public Prosecutor's Office for prosecution of crimes related with and arising from the content of illegal interception of communications reads that:

1. Upon a proposal by the Committee on Elections and Appointments Issues in the Assembly of the Republic of Macedonia.
2. Upon prior consent of the four political parties with the largest number of Representatives in the Assembly of the Republic of Macedonia.
3. Upon a proposal of the Assembly of the Republic of Macedonia, the Council, without announcing a public announcement, shall appoint the Special Public Prosecutor with a mandate of 4 years with the right to re-election.

The Assembly shall determine the candidate for Special Public Prosecutor with a two-thirds majority, including a majority of votes from the Members of Parliament belonging to the non-majority communities, and shall submit it to the Council of Public Prosecutors of the Republic of Macedonia (the Council).

This procedure is special and completely deviates from the one envisaged in the existing Law on Public Prosecutor's Office, according to which the Public Prosecutor of the Republic of Macedonia, as well as the other prosecutors are elected.

– The new law also foresees a new concept of autonomy for the special public prosecutor vis-a-vis the other regular public prosecutors in the country.

For instance, Chapter 6 of the new law regulates the principle of autonomy of the Public Prosecutor who manages the Public Prosecutor's Office. Article 6 of the Law states that:

(1) The work of the Public Prosecutor's Office is independently managed by a Public Prosecutor who manages the duties and tasks and is responsible for a timely and quality performance.

(2) The public prosecutor has full autonomy in the investigation and prosecution of crimes related with and arising from the content of unauthorized interception of communications. No public prosecutor in the Public Prosecutor's Office of the Republic of Macedonia, including the Chief Public Prosecutor of the Republic of Macedonia, can influence his work or seek reports related to cases of the Public Prosecutor or the public prosecutors within the Public Prosecutor's Office.

(3) The Chief Public Prosecutor and the public prosecutors are not invited and do not attend the meetings of the Special public prosecutor and do not have insight in professional matters, as well as in matters under the competence of the special public prosecutor.

(4) The higher public prosecutor cannot submit an initiative or request for referring a particular case or criminal case to the Public Prosecutor.

(5) The public prosecutor of the Republic of Macedonia or other public prosecutor can not undertake investigations and prosecutions in cases falling under the competence of the Public Prosecutor without his / her written consent.

Article 20 of the Law on Public Prosecution foresees that the Public Prosecutor of the Republic of Macedonia is responsible for the general situation regarding the organization and execution of the functions of the

Public Prosecutor's Office and for his work and for the work of the Public Prosecutor's Office answers to the Assembly of the Republic of Macedonia.

The Public prosecutors in the Public Prosecutor's Office of the Republic of Macedonia are held accountable for their work before the Public Prosecutor of the Republic of Macedonia, while the responsibility in the Special Public Prosecutor's Office is defined in a completely different way.

This variety of legal solutions for the regular and for the special public prosecutor's offices provide a sufficient legal basis for initiating an assessment of the constitutionality of the Law for the Public Prosecutor's Office for prosecution of crimes related to and arising from the content of unauthorized monitoring of communications in general, i.e. for violation of the principle of unity of the public prosecutor's office, that is, the public prosecutor's office as a single and independent state body.

Despite the fact that the existing Law on Public Prosecutor's Office foresees the formation of a basic public prosecutor's office for prosecution of organized crime and corruption for the entire territory of the Republic of Macedonia with its headquarters in Skopje, and that this office has been already operational in the system for eight years now, the legislator decided to foresee and to establish a special public prosecutor's office, as a separate unit, separated from the existing prosecutor's office.

– The two laws also differ in regard to the rights and obligations of the public prosecutors; on the one hand, determined in the existing Law on Public Prosecution, regarding the authorizations of the special public prosecutor and, on the other hand, determined by the new law.

  For instance, in the new law, in chapter V, entitled as *Competences and duties of the Public Prosecutor*, Article 5 states that:

  (1) The public prosecutor who leads the Public Prosecutor's Office shall be authorized to investigate and prosecute crimes related with and arising from the contents of the unauthorized interception of communications, as defined in Article 2, paragraph (1) of this Law.

(2) The Public Prosecutor's Office is established for the entire territory of the Republic of Macedonia, with a seat in the City of Skopje.

(3) The public prosecutor who leads the Public Prosecutor's Office is authorized to undertake actions and to act in cases before the Basic Courts, the Courts of Appeal, and the Supreme Court of the Republic of Macedonia.

(4) The public prosecutor who manages the Public Prosecutor's Office has full competence and authority to independently perform all investigative and prosecutorial functions of the Public Prosecutor's Office, which include:

- participation in court proceedings and initiation of any court proceedings, including civil and criminal matters, deemed necessary by the Public Prosecutor;
- declaring an appeal against any court decision on any matter or procedure in which the Public Prosecutor participates as a party;
- an insight in all available documentary evidence from any source;
- obtaining all security clearances for viewing confidential information and data that is not available to the public; and
- Launching and enforcement of charges in any competent court, drafting and signing charges, submitting information, and managing all aspects of any subject arising from this Law, on behalf of the Republic of Macedonia.

(5) All evidence of crimes that are not within the scope of the authorizations and competencies of the Public Prosecutor for prosecution of crimes related with and arising from the content of unauthorized interception of communications, or relevant to existing criminal cases will be handed over to the Public Prosecutor of the Republic of Macedonia and to the prosecutor who leads the case.

Unlike these legal provisions, the jurisdiction of the regular public prosecutor's office is set out differently in the existing Law on Public Prosecution.

Another very important question regarding the Macedonian prosecution system is the prosecutor's obligation to respect and protect principles which are enshrined in the various international documents and in the soft law instruments regarding prosecutorial conduct and working.

The position of the public prosecutor in the criminal procedure does not only come down to the prosecution function. The public prosecutor's sphere of interest is much broader. Namely, as a body interested in determining the truth and to a pass legal decision, the public prosecutor has the right, and obligation, to undertake a series of procedural activities to the benefit of the accused, which do not fall under the prosecution activities.

This is the reason why it is considered that the Constitution has for its goal to determine and establish the principle of centralism in the public prosecution, i.e. to state that even though there are several types of public prosecutors with different competences and organisation, they all serve as a single organ led by the Chief Public Prosecutor.

Regarding the existence of the Special Public Prosecutor, many in the country said at the time when this institution was formed that its position in the constitutional and legal system of the country is contrary to the Constitution, and this question was addressed to the Constitutional Court. The work of the Special Prosecutor's Office was constantly in the focus of the civil, as well as of the expert, opinion, after the chief special prosecutor revealed that she received the illegally-obtained wiretapped materials from the former leader of the opposition in accordance with the provisions of the Protocol for office and archive work of the Government, and not in accordance with the law that she was obliged to follow as a public prosecutor – the Law on Criminal Procedure. This brutal avoiding of the law and its replacement with a bylaw, a Protocol, which is a lower legal act than the Law on Criminal Procedure, calls for legal grounds for initiating procedure for responsibility of all those who were involved in the process of receiving these illegal materials y the SPO.

Conclusion

The Public Prosecution in Macedonia, the same as in all EU member-countries, is an organ of the entire state. The place and the role of the public prosecutor's office, bearing in mind its primary task to protect the interest of the state and to serve as guarantee for the human rights and freedoms in the criminal procedure, to protect the constitutionality and legality in the country, frees this institution from the political influence in the country and strengthens its independence to performs its tasks and duties. In this sense, the Macedonian Public Prosecution can depend only on the national Constitution and its laws. The Constitution and the law ought to secure unity and independence for this organ of the state.

Bearing in mind the European standard related with the work and organisation of the public prosecution offices in the European countries, we may conclude that Article 106, paragraph 1 of the Macedonian constitution also aims to determine and set up the principle of centralism in the Macedonian prosecution, i.e. even though there are several types of public prosecutors with different organisation and authority, they are all one body led by the Chief Public Prosecutor, and all other prosecutors are his subordinates.

Despite the legal obligation for the public prosecution to be organised in accordance with the principles of hierarchy and subordination, respect for these principles must not cause a threat for the independence and responsibility of each public prosecutor when it comes to his/her duties.

The Law on Public prosecution for prosecuting criminal acts related and coming from the content of illegally-monitored communications de facto legalised the existence of two types of public prosecution offices in the country: one organised as a regular public prosecution, which works according to the Constitution and the Law on Public Prosecution, and the other, special public prosecution, which was separated from the regular prosecution. As was explained previously, the establishment of this special public prosecution, its organisation and the other aspects

regulated with the law were contrary to Article 106, paragraph 1 of the Macedonian Constitution,[23] as well as to the single organisation of the public prosecution in the country, as defined in Article 11 of the Law on Public Prosecution, which states that the public prosecution is organised as state public prosecutor's office, higher public prosecutor's office, basic public prosecutor's office for organised crime and corruption and basic prosecutor's office.

Article 12, paragraph 4 says that the Public Prosecutor's Office for organised crime and corruption is established on the entire territory of the country with its head office in Skopje. Further on, Article 15, paragraph 2 of the Law on Public Prosecutor's Office[24] states that the public prosecutor's office for organised crime and corruption and the public prosecutor's office for a judicial area have extended capacity to operate through special departments for monitoring and disclosure of criminal activities through a special service, in accordance with the Law.

The Law on Special Prosecutor's Office was contrary to the constitutional concept for one public prosecution in the country and created a legal basis for parallel public prosecution which was supposed to work and act as a separate entity, outside the framework of the regular public prosecution. This parallel existence of the two prosecution offices, the regular and the special one, was reflected in all articles of the disputable Law on the Special Prosecutor's Office.

It is important to highlight that although the Law of Special Prosecutor's Office no longer exists[25] in the Macedonian justice system, its dark stain remains in the system. The Special prosecutor is currently serving

[23] See: https://www.sobranie.mk/the-constitution-of-the-republic-of-macedonia-ns_article-constitution-of-the-republic-of-north-macedonia.nspx

[24] See: Official Gazette of RM, no. 150/07,42/20, https://jorm.gov.mk/zakon-za-javnoto-obvinitelstvo-2/

[25] https://balkaninsight.com/2020/07/01/justice-denied-how-north-macedonias-special-prosecution-became-history/

a prison sentence for office duties abuse,[26] but the rest of the prosecutors who were controversially selected in the composition of the previous prosecutor's office were illegally taken over in the organized crime prosecutor's office of the regular prosecutor's office and are currently working in the very high positions of the regular public prosecution system.

The absence of the law and of the Special Public Prosecutor's Office does not reduce the responsibility of violators of the Constitution and laws, and certainly should not close the door to the truth of what happened in Macedonia in the period 2015-2017, and what type of political engineering scenario had happened for the illegal overthrowing of the then official state government.

[26] https://www.intellinews.com/north-macedonia-s-chief-special-prosecutor-put-in-detention-166499/; https://www.transparency.org/en/projects/cases-project/data/bribery-and-racketeering-involving-the-special-prosecution-office

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Representative Democracy and the System of Division of Power: Macedonian Lessons

Introduction

The legislative function, as a part of the functions operating under the branches of power in democratic systems, represents a practical expression of the sovereignty of citizens. It is exercised within the representative bodies whose members are elected in general and direct elections, for a certain mandate period.

All parliaments, notwithstanding the system of organization of state power, are endowed with a broad spectrum of competences which may be narrowed down to three key areas:

- First, the legitimate function, or, respectively, the function of representation;
- Second, legislative function;
- Third, oversight function.

This being said, in the light of the imminent jubilee to take place on November 17, 2023, when three decades since the adoption of the "Constitution of the Republic of Macedonia" shall be marked, this analysis, through the application of quantitative parameters and their qualitative interpretations, aims to anticipate the role of the legislature in the Macedonian political system through the prism of the degree of achievement of the most important competencies of the parliament.

Based on the data obtained, we hereof present the key considerations which shall in a more precise manner clarify the place, role, challenges

and the performance of the Parliament within the system of the division of power in our country.

The conducted analysis contains information and parameters for each of the key competencies typical for representative bodies in democratic states, and for this purpose we have used all available statistical and other data contained in public documents that the parliament of the country has at its own disposal.

1. The Competencies of Parliament as Opposed to Reality

The Parliament as the holder of legislative power is subject to constant observations and evaluations. From the point of view of performance of this branch of power, the opinions and assessments from an expert community perspective are quite divergent. However, the common prevailing dilemma is whether the legislative power in our country is exercising, as a whole and in an appropriate manner, the competences it has been entrusted by the Constitution,[1] the Parliament Rules of Procedure,[2] and by the Law on Parliament.[3]

In addition, through the prism of the theory[4] which studies the place of the legislature in countries with representative democracies, as well as based on the intrinsic specificities arising from the Constitution and

[1] Constitution of Republic of Macedonia, Official Gazette of Republic of Macedonia, year.: XLVII, No.: 52, Skopje, 1991, pages.: 805–815.
[2] Rules of Procedure of Republic of Macedonia, Official Gazette of Republic of Macedonia, No.: 91, Skopje, 2008, Rules of Procedure for amendments and addenda to the Rules of Procedure of the Parliament of Republic of Macedonia, Official Gazette of Republic of Macedonia, No.: 119, Skopje, 2010 and Rules of Procedure for amendments and addenda to the Rules of Procedure of the Republic of Macedonia, Official Gazette of Republic of Macedonia, No.: 23, Скопје, 2013.
[3] Law on Parliament of Republic of Macedonia, Official Gazette of Republic of Macedonia, No.: 104, Skopje, 2009.
[4] See Гордана Силјановска – Дафкова, Тања Каракамишева – Јовановска и Александар Спасеновски, *Парламентарно право*, Правен Факултет „Јустинијан Први“ и Фондација „Конрад Аденауер“, 2020.

the indicated laws, we seek to elucidate the dilemma of whether the Assembly, both as a whole and in an appropriate manner, is exercising its competencies.

1.1. Legitimate function, or respectively the function of representation

The function of representation and its actual effectuation in the case of the Parliament shall be analyzed through the following six indicators:[5]

- First, the duration of the mandate of the parliamentary compositions;
- Second, representation of the members of Parliament according to their ethnic belonging;
- Third, gender representation of the members of Parliament;
- Fourth, the number of members in Parliament whose mandate in Parliament has been prematurely terminated;
- Fifth, the number of political parties or coalitions in Parliament;
- Sixth, the number of independent members of Parliament.

Table 1: Duration of the mandate of the parliamentary compositions from 1991 until 2016.[6]

Composition	Period	Duration
First composition	1990–1994	Completed mandate
Second composition	1994–1998	Completed mandate
Third composition	1998–2002	Completed mandate
Fourth composition	2002–2006	Uncompleted mandate
Fifth composition	2006–2008	Uncompleted mandate
Sixth composition	2008–2011	Uncompleted mandate

[5] The indicators herein referred to are in line with the methodology we have defined in light of the set objective as well as in line with the specifics of the legislative power itself and the political system in the country.

[6] According to the data obtained from the website of the Parliament, www.sobranie.mk, March 2021.

Composition	Period	Duration
Seventh composition	2011–2014	Uncompleted mandate
Eighth composition	2014–2016	Uncompleted mandate

Although our constitution has not foreseen the constitutional possibility for the President of the Republic, at request of the Government, to be able to take a decision on the dissolution of Parliament as a form of checks and balances of the executive against the legislative power, something which is typical for parliamentary democracies, such a factor may still not be assessed as positive from the point of view of the duration of the mandates of the parliamentary compositions from 1990 until 2016.

As may be inferred from the data contained in the table above, only 50% of the parliamentary compositions have completed their four-year mandate, whereas the remaining 50% had had it prematurely terminated. In particular, the first four parliamentary compositions had retained their constitutionally-specified mandate till its expiry, whereas the subsequent four parliamentary compositions until 2016 had had it prematurely terminated through their own dissolution due to the decision to organize snap parliamentary elections. In this sense, the duration of the mandate of the parliamentary compositions from 1990 till 2016 had been, on average, somewhat more than 3 years.

The reasons behind such shorter a duration of mandates needs to be sought within two circumstances:

- First, in the political crises in the country which have had their own impact on reducing the duration of legitimacy entrusted to the ruling parties,
- Second, in the strategies of the ruling parties which, due to the distribution of power between themselves and the parties in the opposition, had been opting for early elections so as to regain the legitimacy from the citizens.

From the political parties perspective, it should be concluded that until 2016, the parliamentary compositions in which the majority of MPs

had been from the SDSM-led coalition had remained in power until the end of their mandate, whereas the parliamentary compositions with the majority of MPs led by VMRO-DPMNE had been more inclined toward dissolution and organizing early parliamentary elections.

Table 2: Representation of MPs from 2002 until 2016[7] according to their ethnic belonging

Mandate	Macedonians	Albanians	Turks	Roma	Serbs	Vlachs	Bosniaks
2002–2006	70.8	21.6	2.5	0.8	1.66	0.8	1.66
2006–2008	70.8	23.3	1.6	1.6	0.8	0.8	0.8
2008–2011	67.5	24.2	0.8	1.6	2.5	1.6	0.8
2011–2014	68	20	1.6	1.6	3.2	0.8	1.6
2014–2016	74	22	1.6	0.8	1.6	0	0.8
Average	**70**	**22**	**2**	**2**	**2**	**1**	**1**

Based on the data above, as well as on the results obtained from the 2002 census on population and housing, it may be concluded that in Parliament there have been certain, mainly minor deviations from the point of view of the ethnic representation of MPs. Given the fact that such deviations have not been of a grand scale, two major conclusions may be accordingly inferred:

- First, the present electoral model (regional – proportionate) which has applied since 2002 to date, with certain changes being made there in view of the voting of the diaspora, has enabled the equitable representation in Parliament of all ethnic segments in the country, and
- Second, the strategy of the largest parties (VMRO-DPMNE and SDSM, but also DUI) to set out with pre-election coalitions which integrate parties from the smaller ethnic communities

[7] According to the data obtained from the website of the Parliament, www.sobranie.mk, March, 2021.

(Turks, Roma, Serbs, Vlachs, Bosniaks, Egyptians etc.) has proved quite rightful from the aspect of the distribution of powers seen both through the prism of the number of received votes and the correction to the deficiencies in the electoral model which, by making it difficult to the respective political entities to be able to have their own independent presentation, is in fact encouraging them to get integrated in coalitions led by the largest parties in the country.

Considering the above data through the perspective of the constitutional character of the country, especially after the implementation of the 2001 Ohrid Framework Agreement, it is noticeable that the legislative power is a corresponding reflection of the civil and ethnic equality.

Table 3: Gender representation of MPs from 2002 until 2016[8].

Mandate	Men	Women
2002–2006	81.6	18.3
2006–2008	70.8	29.1
2008–2011	71.7	28.3
2011–2014	70	30
2014–2016	67.5	32.5
Average	**73**	**28**

By analyzing the tendencies from 2002 until 2016, we may establish that there has been an increased equality of the gender structure among the MPs in Parliament. Namely, unlike in 2002 when the male-female MP ratio in Parliament was more than 80% male against less than 20% female, in 2016 the same ratio was 67.5% against 32.5% respectively, which signifies a great progress having been reached. This confirms that the legislative requirements for greater gender equality have gradually yielded results, even though the required gender equality has still not been achieved.

[8] Ibid.

Table 4: Number of MPs in the parliamentary compositions from 1991 until 2016[9] whose mandate had been prematurely terminated.

Composition	Number of MPs with prematurely terminated mandate
1990–1994 first parliamentary composition	2
1994–1998 second parliamentary composition	6
1998–2002 third parliamentary composition	21
2002–2006 fourth parliamentary composition	25
2006–2008 fifth parliamentary composition	12
2008–2011 sixth parliamentary composition	6
2011–2014 seventh parliamentary composition	10
2014–2016 eighth parliamentary composition	14

In all compositions of Parliament since the independence of the country until 2016, there had been MPs whose mandate had been prematurely terminated due to circumstances envisaged by the Constitution, at which, in the largest number of cases, the termination had ensued by following a submitted resignation (Article 65, paragraph 1) either due to the respective MP being appointed to another function in the executive power or to the local government respectively. On average, within the eight parliamentary compositions until 2016, 12 out of 120 MPs, which is 10% of the total number of MPs, had had their mandate prematurely terminated.

In pursuance to Article 63, paragraph 4 of the Constitution, the MP mandate may be extended either by Martial Law or in a state of emergency declared in the country, though it should be noted that our county has had no such experience where the extension of the MP mandates, due to such circumstances, has been imposed.

[9] Ibid.

Table 5: Number of political parties or coalitions in Parliament in all eighth compositions from 1990 until 2016[10].

Composition	Number of political parties/coalitions
1990–1994 first parliamentary composition	12
1994–1998 second parliamentary composition	9
1998–2002 third parliamentary composition	12
2002–2006 fourth parliamentary composition	19
2006–2008 fifth parliamentary composition	20
2008–2011 sixth parliamentary composition	18
2011–2014 seventh parliamentary composition	20
2014–2016 eighth parliamentary composition	15

Despite the fact that the party system of the country has all the characteristics of a system of restricted pluralism (against the systems of extreme pluralism and the atomized systems as per the classification made by Giovanni Sartori)[11], when looking from a perspective of the party representation in Parliament, other conclusions may also be drawn.

Namely, the difference between the formal significant party representation against the essential four-party system is due to the fact that the largest political entities (VMRO-DPMNE, SDSM and the two largest parties of the ethnic Albanians) represent, in fact, coalitions[12] in which other minor parties participate as well, the latter being in the largest part either political entities which advocate for the interests of the remaining ethnic communities (Serbs, Turks, Roma, Vlachs, Bosniaks etc.) or other entities with some rather different ideological specificities.

[10] According to the data obtained from the official website of Parliament, sobranie.mk, March 2021.
[11] See: Силјановска – Дафкова et.all, *Парламентарно право*, op.cit.
[12] Thus, in the elections of 2006, 2008, 2011, 2014 and 2016 VMRO-DPMNE led the coalition "For better Macedonia".

Table 6: Number of independent MPs in Parliament within the eight parliamentary compositions from 1990 until 2016[13].

Composition	Number of independent MPs
1990–1994 first parliamentary composition	3
1994–1998 second parliamentary composition	1
1998–2002 third parliamentary composition	6
2002–2006 fourth parliamentary composition	0
2006–2008 fifth parliamentary composition	4
2008–2011 sixth parliamentary composition	2
2011–2014 seventh parliamentary composition	2
2014–2016 eighth parliamentary composition	3

If we analyze the number of independent MPs within the analytical sample, it is noticeable that this number is quite small, ranging between 1% and 5% of the total number of MPs. Such a situation is due not only to the strong partisanship in the Macedonian society, but also to the nature of the electoral model which is rather discouraging of any initiative implying the composing of election lists which would be rendered equally competitive with the large parties in any of the electoral districts.

1.2. Legislative function

According to the Constitution of 1991 and the Law on the Parliament of 2009, Parliament is defined as a representative body of all citizens and as the holder of the legislative power in the country.

Considering this essential function of Parliament, its practical effectuation shall be analyzed through the following five indicators[14]:

[13] According to the data obtained from the official website of Parliament, op.cit.

[14] The indicators herein referred to are in line with the methodology we have defined in light of the set objective as well as in line with the specifics of the legislative power itself and the political system in the country.

- First, number of convened parliamentary sessions;
- Second, working days for parliamentary sessions;
- Third, items on the agenda of the parliamentary sessions;
- Fourth, submitted and adopted laws in Parliament;
- Fifth, number of Laws submitted to Parliament by legislators.

Table 7: Convened sessions in Parliament from 2002 until 2016[15].

Mandate	Number of sessions
2002–2006	136
2006–2008	115
2008–2011	147
2011–2014	87
2014–2016	125
Total	**610**
Avarage per mandate	**122**

Table 8: Working hours for sessions of Parliament from 2002 until 2016[16].

Mandate	Number of working hours for sessions
2002–2006	389
2006–2008	328
2008–2011	299
2011–2014	318
2014–2016	243
Total	**1577**
Average per mandate	**315**

[15] According to the data obtained from the official website of Parliament, op.cit.
[16] Ibid.

Table 9: Items on the agenda for the sessions of Parliament from 2002 to 2016[17].

Mandate	Items on the agenda
2002–2006	1543
2006–2008	715
2008–2011	2130
2011–2014	1910
2014–2016	2064
Total	**1672**
Average per mandate	**334**

Table 10: Submitted and adopted laws in Parliament from 2002 until 2016[18].

Mandate	Number of submitted laws	Number of adopted laws
2002–2006	809	594
2006–2008	463	293
2008–2011	1636	982
2011–2014	1488	907
2014–2016	1635	1140
Total	**6031**	**3916**
Average per mandate	**1206**	**783**

[17] Ibid.
[18] Ibid.

Table 11: Number of laws which legislators had proposed to Parliament in the period from 2002 until 2016[19].

Mandate	Laws proposed by the Government	Laws proposed by MPs
2002–2006	567	26
2006–2008	289	4
2008–2011	800	28
2011–2014	888	19
2014–2016	1007	63
Total	**3551**	**140**
Average per mandate	**710**	**28**

As can be discerned from the presented data, during the period from 2002 until 2016 the parliamentary compositions had been mainly occupied with adoption of legislation.

Each parliamentary composition had convened about 122 sessions on the average per mandate, which is equal to 315 actual working days. Within these 315 days, Parliament had adopted 334 laws on the average per a mandate period, implying that within one working day the MPs would adopt more than one law. The number of submitted law proposals is much higher than the number of laws being actually adopted. Based on the presented data, 1,206 law proposals on average per mandate had been put forth to Parliament for adoption, 783 out of which being actually adopted, which is 60% of the submitted law proposals. Furthermore, although Parliament by definition is the holder of the legislative power, and the MPs should be the key authorized legislators (along the Government and 10,000 voters), in more than 95% of all law proposals submitted to Parliament, the Government had been the actual law proponent.

[19] Ibid.

Considering the above, the following conclusions can be drawn:

- First, notwithstanding the fact that the MPs also have as per their mandate other authorizations to perform, the largest part of their activities had been related to reviewing law proposals or draft laws and to law adoption;
- Second, the political majority in Parliament is entirely dependent on the instructions and the dynamism imposed by the Government as the holder of the executive power;
- Third, the political opposition in Parliament does not entirely exhaust the possibilities for oversight over the executive power, as may be concluded from the exceptionally small number of proposed laws, but also from the submitted interpellations, the requests for casting a confidence vote in the Government etc.;
- Fourth, the lack of reinforced legislative initiative on the part of MPs is a key indicator implying that the function of oversight over the executive power likewise has been very modest.

1.3. Oversight function

Parliament, inter alia, represents the branch of power in the state which has within it inherently important mechanisms for oversight over the performance of the executive power.

With due consideration of this fundamental function of Parliament, its practical effectuation shall be analyzed through the following two indicators[20]:

- First, the number of sessions of Parliament devoted to MPs' questions;
- Second, submitted and adopted interpellations in Parliament.

[20] The indicators herein referred to are in line with the methodology we have defined in light of the set objective as well as in line with the specifics of the legislative power itself and the political system in the country.

Table 12: Sessions dedicated to MPs' questions from 2002 until 2016[21].

Mandate	Number of sessions devoted to MPs' questions
2002–2006	25
2006–2008	14
2008–2011	25
2011–2014	22
2014–2016	17
Total	**124**
Average per mandate	**25**

Considering the data from the representative sample, it can be concluded that about 25 sessions dedicated to MP questions have been convened on average per a parliamentary mandate. If we add to this the data suggesting that about 20 questions have been on average addressed per session, the common conclusion that arises is that within a single mandate period, under the competence of oversight of legislative over the executive power, somewhat more than 500 MP questions are addressed.

The majority of all MP questions are addressed at a parliamentary session, which means that the MPs make very little use of the possibility to address their questions in writing, thus anticipating the replies from the competent institutions in the scope of the executive power. At the same time, the character of the replies submitted by the institutions is likewise disputable, as one part of them has noticeably given rise to discontent and public reactions, as observed by the MPs in the opposition. Finally, it has to be emphasized that the MPs from the ruling parties frequently use their right to address MPs' question only for the purpose of promoting certain governmental projects (rather than as a form of

[21] According to the data obtained from the official website of Parliament, op.cit.

oversight), which further relativizes the power and significance of this mechanism.

Table13: Submitted and adopted interpellations in Parliament from 2002 until 2016[22].

Mandate	Interrpelations	Adopted interpellations
2002–2006	6	0
2006–2008	7	0
2008–2011	11	0
2011–2014	4	0
2014–2016	2	0
Total	**30**	**0**
Average per mandate	**6**	**0**

Considering the data above, it may be concluded that in the period from 2002 until 2016, 30 interpellations against the work of the ministries in the government had been submitted, which on average is 6 submitted interpellations within a single mandate period. Also, during the period from 2002 until 2016, not a single debate on the subject of interpellation had been resolved through actual dismissal of the respective member of the government against whom the interpellation had been raised. This situation points to two critical conclusions:

- First, that Parliament is an institution in the system of power whose primary objective is to oversee and implement the politics of the government led by the president of the government, who is most of the time president of the political party which has the majority in Parliament; and
- Second, that the oversight of the legislative over the executive power is entirely limited, which, in a way, also distorts the system of the division of power, in particular when the said principle is

[22] Ibid.

viewed through the prism of the application of the principle of "checks and balances".

Conclusion

Parliament as the holder of the legislative power represents a central authority by which, in reality, all key steps regarding the instituting of independence have been taken and effectuated: starting with the adoption of the Declaration of Parliament of the Socialist Republic of Macedonian of January 15, 1991, whereby the need for "creation of an autonomous, sovereign and independent Republic of Macedonia"[23] had been declared, through the adoption of the decision on organizing a referendum on sovereignty and independence of September 8, 1991, and the respective Declaration adopted for that occasion[24], all the way through the adoption of the Constitution of the state on November 17, 1991.[25]

Since then, Parliament, by varying success and enthusiasm, has been accomplishing its competences, which, as mentioned earlier, mainly fall into the scope of three major areas.

As regards the function of representation, the conclusion is that it has been exercised at a satisfactory level. The nature of laws, as well as the nature of the political practice have promoted Parliament as an institution which is reflecting in a corresponding manner the political, ethnical and confessional divergences of the country, though the minor challenge in this part to be further coped with is the gender representation, as it is still being under-attained, notwithstanding it is more than obvious nowadays that there has been a continuous progress in this area

[23] Declaration for sovereignty of the Socialist Republic of Macedonia, Parliament of the Socialist Republic of Macedonia, No. 08-220-1.
[24] Declaration on the occasion of the plebiscitary expressed will of the citizens for a sovereign and independent Macedonian state of Macedonia, Parliament of Republic of Macedonia, No. 08-3786, 17.9.1991.
[25] Constitution of the Republic of Macedonia, op.cit.

with each and every new parliamentary electoral cycle and in each and every new subsequent parliamentary composition.

As regards the second, legislative function, based on the sample we have taken for the purpose of preparing this analysis, it can be inferred that there has been a certain failure, in particular when considering the fact that the MP activities are predominantly aimed at and determined by the executive power, which is, to the greatest extent, the legislator and the one which takes the initiatives on the items to be discussed in Parliament. Apart from the great tendency of the government to influence the work of Parliament, there has been a noted absence of reinforced legislative initiatives on the part of MPs, which additionally increases the dependence and subordination of Parliament by the executive power. This "subordinate" position of Parliament very often reverberates in the saying that the MPs are instruments in the hands of the executive power. Not only do such assertions have a negative impact on the reputation and authority of Parliament in the system, but they at the same time lead to a distortion of the principle of the division of power as an inherent value in our constitutional system.

Finally, in the part of the oversight function, through the presented example on the use of the MPs' questions and interpellations, it may be concluded that Parliament has been continually failing to achieve this important segment of its authorizations.

Considering the above-stated weaknesses, one of the important questions that arises in the sense of finding the solutions for the system, is how to attain a more active, stronger, more independent and more imposing Parliament in which the citizens will have greater confidence and which will take more care for the needs of the state instead of taking care for the needs of the government (and of parties).

The facts presented herewith, implying the Parliament being in a subordinate position in relation to the Government, should be considered as a challenge to enact rectifications so as to be able to reach the state of more apposite functioning of the parliamentary democracy in the country. The lessons learnt from the three-decade practicing of parliamentary

democracy represent a solid ground for embracing more essential changes in our political system by introducing new and more high-quality democratic mechanisms aimed at reinforcing the institutional responsibility.

The lessons learnt should be taken as a depository of experience which are intended to produce a better quality definition of the positions of Parliament, and in particular of the accountability that MPs have before the citizens, as well as to enable a consistent respect of the rule of law and the division of power as two fundamental tenets on which our political and constitutional system has been founded.

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