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Sincerely,
Editorial Board

CONTENT

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THE NEED OF PERMANENT EDUCATION OF THE PUBLIC SERVICE OFFICERS (EDUCATION) AMID DYNAMIC SOCIAL CHANGES[1]

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ABSTRACT

This paper represents the theoretical and empirical effort of determination of the need of permanent education of the staff in public service. At the same time we describe the advantages of the permanent education, the existing legal regulation, the problems identified, and we describe the results of the conducted research of how the permanent education influences the high quality of the efficient task performing of one target group of people employed in the public sector-education and science. The main conclusions of our research are: the need of increasing the interest of the public sector managerial teams in investing in the permanent education of their employers, creating bylaw acts with precise systematic solutions in order to reduce the costs of the working process and improving the quality of the services provided by the institutions.

Key words: permanent education, administrative officers, public sectors, systematic solutions

INTRODUCTION (THEORETICAL APPROACH)

The staff is the most important resource in an institution. It provides the knowledge, the skills and the energy necessary for successful functioning of the total educational system (elementary, secondary and higher education) Even though this is a technologically dominated era, the thing that differentiates the effective from the ineffective public institutions is the quality and determination of the administrative staff who works there.

When we speak about a successful development, efficiency and efficacy in the educational institutions functioning, it is good to remind ourselves that it is not possible to achieve it without the existence of staff that possesses:

[1] original scientific paper

the necessary knowledge, skills and competencies as well as the appropriate behavior and engagement. The systematic development of staff in the educational institution is a long term strategy which maximizes the human capital of the institution by investing time, finances and ideas for improving the knowledge and skills of the staff. The same is defined as a process of providing education, development and training possibilities in order to improve the individual, team and organizational work results. It also represents a continuous learning process whose aim is to provide performances promotion and improvement and increasing the individual level of possibility. The permanent staff education, treated by the institution itself has a function of improving the quality of services, improving the competitiveness, adjustment to changes, performances improvements, providing higher work efficiency, acquiring greater respect from the others etc.

In order to reach its goals and overcome the problems, each educational institution has a constant need of trained, updated and educated staff. On the other side, the individual, through his/her knowledge, skills and experiences performs certain tasks, faced by new requirements and tasks and feels the need for new professional support, and new knowledge and skills. Besides that, he/she may have his/her own personal aspirations and expectations of different kind. The rational behavior of the concrete educational institution understands harmonization of these two kinds of needs in a mutual benefit/ The time and place of harmonizing these needs is when the educational institution determines that there is a discrepancy in the real condition and the things that are planned, wished for or expected.

LEGAL REGULATION

The legal matters which defines and regulates the issues related to the status, the qualification, the employment, the promotion, the professional development and training, the effect and other issues related to the administrative officers' position[2], as well as the status of the competences of the Administration Agency is contained in many legal acts such as: Law on Higher Education (Official Gazette of RM, ref.35/2008, 103/2008, 26,2009, 83/2009, 99/2009 and 115/2010), Law on Administrative officers (Official Gazette of RM, ref. 27/2014), Rules for education and professional

[2] An administrative officer is a person who is employed to perform administrative duties in an institution, in our case, and institution which performs educational activites with a status of a public officer (article 3 of the Law on Administrative Officers, Official Gazette of RM, 27/2014).

improvement of the staff at St. Kliment Ohridski University – Bitola (UKLO Bulletin, nr.346 of 01.03.2011) and numerous other acts in this area.

But, even though there is a legal and other kind of legislative, it does not apply in reality. There are numerous *ad hock* actions which alleviate the current situation. In order to achieve permanent improvement of this sphere, there are systematic changes which will enable the process of human recourse improvement, thus motivating the continuous training by appropriate career upgrading of the administrative officers, which is not a case nowadays.

There are numerous steps undertaken in the legal context of improving the condition of the administrative officers. Namely, according the Law on Administrative officers, they are obliged to sign an agreement with the institution they work in, which regulates the mutual rights and commitments, as well as the conditions for professional improvement.

The basics of such a system have already been defined, with the Agency of Administration[3] placed in a central position, providing coordination with all trainings and keeping records of all trainings that administrative officers visited in the course of their work. Keeping such records is extremely important for the analyses which need to be done in context of further motivation of the administrative officers and in the present and future needs for training.

The administrative officer has the rights and duties of professional improvement based on the professional improvement individual plan[4], and also the obligation for transferring the acquired knowledge to the other administrative officers.

The kinds of participation of the administrative officers, according the Law of Administrative officers, are divided in generic and specialized trainings which can be organized in a classroom or via internet access on their working place to the electronic system for trainings management. *Generic trainings* are conducted in order of professional improvement of the administrative officer according the framework of the general competences[5]

[3] An independent state organ acting as legal entity with rights, duties and responsibilities determined by the Law (article 13 of the Law on Administrative Officers, Official Gazette of RM, 27/2014).

[4] The individual plan for professional education determines the need of professional education of the administrative officer, for efficient performing of the estimated work tasks and duties as well as the need of working competences development. The individual plan is prepared by the superior administrative officer working in cooperation with the individual administrative officer in setting up goals and objectives (article 63 of the Law on Administrative officers, Official Gazette of R.M, 27/2014).

[5] It includes: learning and development, communication, achieving results, team work, strategic awareness, clients orientation, managing and financial management.

(for which the Ministry prepares annual program, where as the means for its realization are provided by the Ministry budget)[6].

Specialized trainings are realized for professional development of the administrative officers regarding their specific competences[7] (the institution itself provides finances for such trainings). The institution which conducts the training, after its completion, issues a certificate for successful realization to each administrative officer. The mutual rights and commitments of the institution and the administrative officer directed to training, are regulated by written agreement which determines the precise date to which the administrative officer can not ask for termination of the employment as well as hi/her material responsibility proportional to the means necessary for realization of training, if upon his/her request the employment ends before the date predicted. Where as, the way of organization and realization of training in classroom and by electronic system, its duration and cost of training, do not have to be regulated by an agreement, because it is regulated by the Minister.

As an example I will use the bylaw act of St. Kliment Ohridski University in Bitola (UKLO) – The Rules of education and professional development of the staff of UKLO[8], which includes the necessity of preparation of a four year program for professional development and setting up a special fund fro this purpose. The staff has the commitment of professional development for higher quality performances: improvement of the knowledge related to acquiring a foreign language, improving the skills for information technology; acquiring other skills and knowledge related to further improvement. The University/University unit has the commitment of creating conditions for professional improvement of the administrative officers through specific forms and activities for professional development. The University/University unit provides mechanisms for encouraging the staff for their professional development. The professional development of the administrative staff, in accordance with the Law of Administrative officers is provided in the training centers, as well as in other specialized training institutions.

[6] Based on the program, the secretary or other superior is obliged to select at least five generic trainings per year and implement them in the individual plan for professional education.

[7] They are described appropriately for each working position in accordance with the Rules on systematization of working positions in the institutions.

[8] Bulletin of St. Kliment Ohridski University-Bitola ref.346 од 01.03.2011

METHODOLOGICAL APPROACH

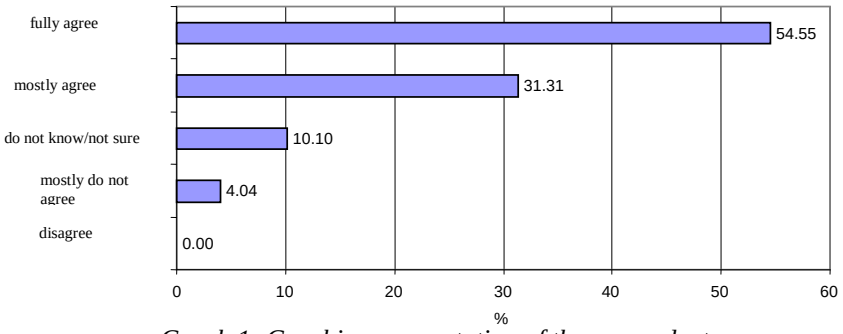
Apart from the theoretical approach, this paper strives to gain substantial knowledge in an empirical way. This is why, the aim of this research is to examine and determine the expressions related to work quality of the administrative officers in educational institutions, by the degree of accordance for implementing a system of permanent education and improvement of their skills, abilities and competencies. The point of research of this paper is the condition with the administrative officers of St. Kliment Ohridski University – Bitola (UKLO) as an important segment of the University administrative functioning. The focus of interest is of *personal nature (since the author of this paper is also an administrative officer)* because by our numerous contacts with other administrative officers we have realized the need for systematic approach for permanent education and acquiring skills and competences in order to have much more efficient and effective realization of tasks and duties. This increases the need of constant quality improvement and building system for permanent education of the administrative officers of UKLO.

The central methodological technique applied in this research has been the survey. Since the subject of our research is timely limited, according the special-temporal dimension this research is *transversely (cut) research*. The population included was divided according several segments among which are: a) the content: administrative officers and students of UKLO units; b) individuals: 111 administrative officers *(including: secretary, technical secretary, students affairs' officers, head of the students affairs' department, librarians, ECTS administrators, other kinds of administrators, accountants, treasurers, archivists, information technicians and procurement officers*) and 400 students; c) width: 7 towns in Republic of Macedonia (*Bitola, Prilep, Ohrid,, Veles,, Struga, Kichevo and Skopje*); d) time: during the working hours. The research sample includes administrative officers and students of different genders, ages, nationalities, social status, education and different level of education and working experience. *The statistical method* was applied in the phases of collecting, processing and analyzing the data, calculating the ratio, mean values and coefficients.

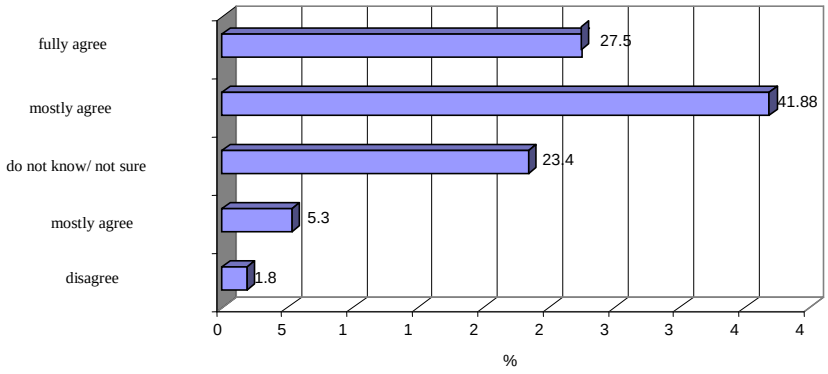
ANALYSIS, RESULTS AND HYPOTHESIS CHECK

1. According to the obtained survey records of the administrative officers and students, and the issue of analyzing the need of quality improvement of the realization of working tasks by *permanent education* of

the administrative officers *in the area of their professional comptences necessary for perform their tasks* we have obtained the following results:



Graph 1: Graphic representation of the respondents administrative officers



Graph 2: Graphic representation of the respondents students

According the results of the analysis of the influence of the permanent education on *the professional skills development*, necessary for performing the administrative work, we can see the real condition which shows approximate equalization of the gained answers by the respondents (administrative officers and students), or that they completely/fully or mostly agree on this issue. This *confirms and proves* the following hypothesis: *The permanent education will have positive influence on the professional development necessary to perform administrative work.*

2. On the quality of the work of administrative officers according the statement: *„I think that the permanent education will have positive influence on the development of professional skills and competences necessary for performing the current work of the administrative staff*", the majority of the respondents answered with *„+" degree* of accordance (*the average of the respondents on the degree on accordance on 5-fully/completely agree or on 4-mostly agree)* is 3% higher with the administrative officers than with the students, where as the extreme *„-" degree* of accordance *(the average of the respondents on the degree on accordance on 2 – mostly do not or on 1 – disagree)* is 2% higher with the administrative officers rather than with the students.

Table 1: Influence of the permanent education on the personal skills

Categories	*Administrative staff*		*Students*	
	f	*%*	*f*	*%*
Extreme „+" (completely/fully and mostly agree)	41	41,42	123	38,28
Extreme „-" (mostly or completely disagree)	5	5,05	10	2,97

Based on the obtained data analyses on the influence of the permanent education on the *personal skills development*, we can see that the real condition demonstrates closer equalization of the answers by the respondents (administrative officers and students), which means that most of them, completely/fully agree on this issue. This *confirms and proves* the single hypothesis: *The professional education will have a positive influence on the personal skills development of the administrative officers.*

Analyzing the need of implementing permanent education of the administrative officers in the educational institutions is a real basis for confirming/rejecting the already established hypothetical framework.

By analyzing and interpretation of the obtained results form the empirical research we have proved in the detail the following:

Special hypothesis: The permanent education will have positive influence on the development of capacities of the administrative staff necessary to perform the tasks and duties *(personal skills and professional competencies)* by certain separate hypothesis:

1. The permanent education will have positive influence on the development of professional skills necessary for performance.
2. The permanent education will have positive influence on the development of the professional competencies necessary for performance.

By confirming the two separate hypotheses and one special hypothesis, we can conclude that the general hypothesis of our research is confirmed: *The permanent education of the administrative officers in educational institution will have positive influence on the higher quality and efficient performance.*

CONCLUSION

Based on everything said before, there is clear and unambiguous urgent need of introducing the permanent education of the people employed in the public sector (education), having in mind the contemporary social changes and legal adjustments. In this direction there are several conclusions related to the object of analysis:

1. Increasing the *interest of the managerial teams in the public sector (education)* for investing in permanent education of the administrative officers;

2. The need of establishing system of permanent education of the administrative staff in education institutions, which will enable continuous following and appropriate transfer of additional knowledge, skills and competencies in order to improve the quality of performance. As an example of this, we can mention the ISO standard for Quality Management and the *Procedure for staff training,* of St. Kliment Ohridski University in Bitola;

3. The necessary need of defined mechanism of permanent education of the administrative officers which will enable periodic testing, surveying, and other similar activities performed by the central level;

4. Amending the bylaw of the University in accordance with the existing legal regulations with providing systematic solutions besides the already stated, which will refer to the administrative officers in the area of continuous investing in the *capacities development* (personal and professional skills in service of institutional functioning and building a *career system* as a challenge to an institution itself ;

5. Suggestion of establishing *University career center* for permanent education of the administrative officers, which will incorporate different forms of upgrading knowledge, skills, competences such as: trainings, workshops, professional meetings etc.

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658.141:334.72

THE COMPLEXITY OF COMPANY'S VALUATION PROCESS THROUGH ITS BASIC VARIATIONS[9]

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ABSTRACT

Value determination was always recognized as a process on which the economic rule of ceteris paribus cannot was not to be efficiently applied due to the reason of high number of variables given in the process. Such process is also recognized as one of economic and even legal science contemporary challenges. Once companies are subject of analysis and research it becomes more complex due to the highest number of variables influencing the companies in micro economy. Tasks of the science are directed towards description of the basic concepts that are going to unify subjective and objective variables in different situations and perspectives of analysis. Basic definition of the value as an economic value within companies and its connection with various needs of the valuation concept remains recent challenge. In particular specific concepts different than the fair market and investment value are analyzed.

Key words: Valuation, Concepts of value, Company law, Competitiveness

Value as a concept and increase of the company's value

In context of company valuation t the term of value is usually equalized with economic value. Such value is consisted of sum expressed in money that are to be paid in exchange for obtaining property right as well to obtain right for

[9] professional paper

management of assets and gaining of future benefits of such asset composition[10].

The concept of value is not static or homogeneous concept. Value of any asset is dependent on many factors changing from time to time such as:

- The overall business environment;
- Potential use of the valuation subject;
- Time framework for making value forecasts;
- Location of the valuation subject;
- Availability of the subject for business purposes as well as its substitutes
- Number of owners;
- Subject liquidity and market existence for the valuation subject[11]
-Physical conditions of the valuation subject.

The value concept is often different from the price or cost. Price can be determined as actual price spent with aim some asset to be obtained. Cost is seen as money value of the input factors used output to be produced. The phrase "asset is overpaid" usually indicates situation where there was above payment of money for one asset that its value usually was. [12]

There is a difference between value and cost also. Cost for the construction and establishment of a trade mall, for example might not reflect its value if suddenly after his construction there have been changes in the business environment such as bankruptcy of large scale employer. In that case cost could be much higher than value. The value, price and the cost are different concepts and they are rarely showing same amounts of cash for the same asset.

In the last 70 years the contours were formed of several different value concepts out of which twelve can be mentioned as most exploited:

- Fair market value. That's an amount expressed in cash of equivalent after which the property right of one asset was changed voluntarily between the buyer and seller having in mind that both are having enough information and fact about the asset.
- Investment value. The value of future benefits gained through the property of one asset;

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[10] David Laro Judge, U.S.Tax Court Shannon P. Pratt CFA, FASA, MCBA, CM&A, MCBC, *Business Valuation and Taxes Procedure Law and Perspective,* John Wiley & Sons, Inc. p. 5 2005

[11] Company liquidity is frequently reason for the mergers and acquisitions and opposite - Jose M. Campa, Caterina Moschieri- *The European M&A Industry, Trends, Patterns and Shortcomings,*IESE Business School, University of Navarra, Barcelona, Spain, p. 22 2008 p. 21-35

[12] Frank C. Evans David M. Bishop, *Valuation for M&A - Building Value in Private Companies* John Wiley & Sons, Inc. 2001 p. 28-30;

- Fair value. The fair value concept is directing towards a kind of statutory standard of value developed according to the judicial case law as well as similar transactions from the past;
- Fundamental value. Determined by the existence or non-existence of an option for returning of the investment;
-Value in use/value in exchange. It is value that over compasses the productive use of all assets that one company is consisted of as well as on the amount that is needed to be invested for other assets to be bought as a replacement for the ones in use if the second has become unproductive;
-Goodwill value. It is a difference between the value that is given of a company as one unit/one name and the value of all the tangible and nontangible assets owned or used by the same company.
-Current value. Was meant on the current company value from the point of view from a single time moment or period;
-Accounting value. That's a typical concept of value used for tax and accounting purposes[13];
-Liquidation value. The liquidation value in its essence might not be analyzed as separate value concept but as a circumstances under which value of a subject could be considered if the business is closing down;
- Insurance value. That is a money value for the allowances for the parts of the business that can be insured and in case the insured risk to happen. – Replacement value. Directs towards the costs made in order new asset to be bought with the same characteristics.
- Compensation value. Such concept is used in order the amount to be determined that should be transferred if the subject of value does not executes the functions for which was its purpose and to be set out of use.

1.1 Value in use/replacement value

Value in use is not considered as a type of value but as a way through which some hypothesis were made considering the valuation of a particular type of asset. It is usually applicable to the assets that are having productive use and could be explained as a value of one asset in relation with its contribution towards certain output, produced through use of a an asset valuated in that case also considered as an input. There is in no particular definition for the value in use from a relevant institution or researcher. Despite it is important to understand that the concept of value in use is related mostly with the processes of merging of companies or acquisitions

[13] David Laro Judge, U.S.Tax Court Shannon P. Pratt CFA, FASA, MCBA, CM&A, MCBC, *Business Valuation and Taxes Procedure Law and Perspective,* John Wiley & Sons, Inc. 2005;

because valuation in that case is to be undertaken through the process of asset valuation towards their productive use into the company.

The replacement value is essentially different that the value in use. Concept of replacement value is related with the value of particular asset in the time of selling the asset, and analyzed as single one with no any connection of the working environment in which it was used previously.[14] Typically, replacement value is lower than the value in use in certain business entity. For example the replacement value is usually lower than the value in use of a single asset used by one company. For example the cash machines and their software can be hardly used for other purpose and even by other banks than the original owner due to their tailoring.

1.2 Goodwill value

Goodwill is a specific type of value , an intangible assets that appears once the business in whole has higher value that his parts one by one both tangible and intangible.Since 1960 US case law defines the goodwill as a sum of qualities for which joint denominator cannot be identified but which are attracting the clients.[15]

From the side of mergers and acquisitions, the goodwill value is calculated as a difference among the value paid for business buy out and the fair market value for the assets that has been bought through the process of buying out the same business. The goodwill concept has significant use within the companies for the tax purposes, financial reporting as well as the regulatory issues.

1.3 Going concern value

Such kind of value does not represents standard value as fair market value or investment value. By the other meaning of words it is wrong to be said that "the going concern value of the company XYZ is 100 million EUR value". But the statement "fair market value as a going concern value of the company XYZ is 100 million EUR is a true statement . Such difference might be seen as a semantic one with little practical usage but in the essence

[14] Barber, Gregory A. *"Valuation of Pass-Through Entities."* Valuation Strategies Magazine, USA, 2001, p. 50-65

[15] Bhide, A., *The Causes and Consequences of Hostile Takeovers*, Journal of Applied Corporate Finance, v2, 1989 p..20-36

is represents a key for understanding of the value of a single asset or company.

The going concert value is usually applied when businesses are valuated through their profit units or branches and with the hypothesis that profit unit or branch will not stop with revenues in a recent period of time. The last one is essential premise for such valuation method. From the taxation point of view the valuation has different meaning. In that case the going concern value has been seen as a value from which the depreciation coefficient has been deducted. Dozens of case law materials are using the going concern value as a basis.

1.4 Accounting value

The most of the errors in valuations are in connection with the accounting value. It is a valuation from the accounting and taxation point of view and does not needs to be economic valuation in the same time. For particular asset the accounting value is simply historical cost of a single asset and historical benefit of the same. For a business entity the accounting value is a complete value of assets from which liabilities has been deducted. In the terms of the accounting terminology this has been noted as a net value[16]. This concept is of a high importance that is to be applied when mergers or acquisitions are undertaken at least in order fair market value or investment value to be compared with the accounting value. Examples are showing that in always there is an existing difference among the fair market value or investment value and the accounting value.

In the table below there is an example of a value of the bank for which there is an interest for acquisition and the difference occurred between the fair market value and the accounting value.

[16] J Fred Weston and Samuel C Weaver *Mergers and Acquistions , Tax and Accounting Guidelines , Legal and Regulatory Frameworks and Guidelines for Postmerger Integration*, McGraw-Hill Publishing Executive MBA Series, New York , 2003 p.-50-65

Table- An example of differences between the accounting value and the fair market value (in money units)

Assets	Accounting value	Fair market value
Cash and equivalent Готовина и еквиваленти	11,694	11,694
Investments	34,369	31,812
Loans	56,718	52,892
(reserves for nonperforming loans)	(780)	(780)
Net loans	55,938	52,112
Premises and fixed assets	3,517	4,703
Other real estate	810	525
Other assets	2,860	
Nontangible assets	/	
Assets total	109,188	

Source: Zabihollah Rezaee, Financial Institutions, Valuations,Mergers, and Acquisitions, The Fair Value Approach, *Second Edition,* John Wiley & Sons, Inc.New York, USA, p. 170, 2001

1.5 Liquidation Value

Liquidation value does not represents the separate type of value but as a precondition or premise under which the valuation process has been undertaken. It is a net sum that can be gained if the business has been closed and it's assets are being sold out as a single or in whole until the liabilities are not compensated fully. Under the principle of liquidation value it is not true to said that "value of the asset X in liquidation is 100 EUR". Liquidiation value can differ among the forced and voluntary liquidation. From the Net value it the first situation should be deducted all the provisions and administrative fees occurring from the forced liquidation legislative.

1.6 Insurance value

The insurance value is analyzed as a total of a price paid of gained if the company has been lost of its assets if the risk case insured happened . Such kind of value has not significant use in cases of mergers and acquisitions but is often used in cases when the business is confronted with high risks in his business environment.

1.7 Replacement value

The replacement value of an asset is a price that is to be paid in relation with procurement of a new assets, materials and technology. This value is not equal with the reproduction value. The second represents the cost of asset duplicate production under the actual prices. The replacement value are used mostly in cases when there is a valuation of a tangible assets that are not giving direct revenues such as for example furniture,equipment etc.

1.8 Selling value

It is a value or sum that is to be received from the sale of particular asset if it cannot be used any more for the current owner and it has to be set out of use. In the cases of trade mergers and acquisitions such valuation method is usually applied when there is a case of a several companies joined together through mergers and acqusitions and which are having the same assets appearing two or more times.

1.9 Types of property that cannot be valuated

Valuation is an economic concept closely connected with the property concept. When there is a discussion about the term valuation usually means rights and benefits related with the property. The legal concept of property and owning is very complex albeit some points are of essential meaning in order for his better understanding.

The clearest way of property is identified through tangible assets. Such an asset is having physical type. Within the companies they are shown within the asset balance as a fixed assets.

Within the companies loans as well as material financial assets. Despite they are not having physical appearance the loans and investments are obligatory demands for future revenues that are to come in recent period of time and there is also a risk not be received.

Property rights are also considered as nontangible.[17] It includes those assets that are not having physical value and are having contribution to the revenues of the company. Such nontangible assets in the business environment are including the following elements:

- Money base ;
- Contracts for loan servicing;
- Computer software;
- Image;
- Goodwill etc.

Every single of those types of nontangible assets could be valuated also.

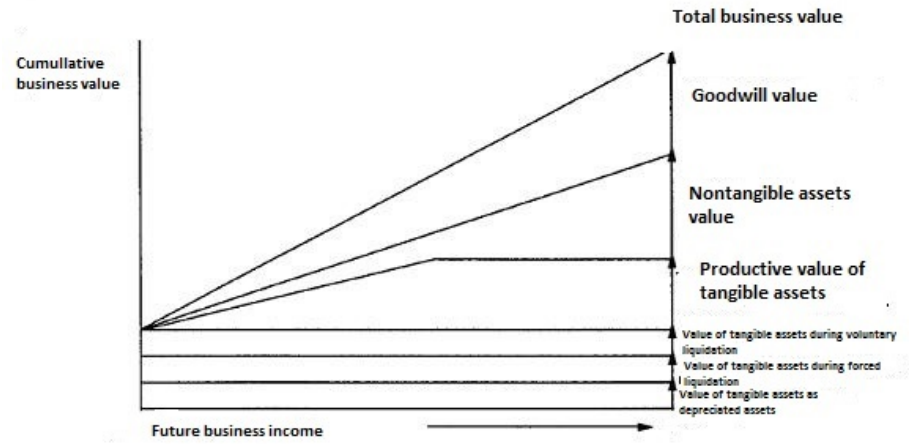
The third type of property that can be valuated is a business in whole as a combination of tangible and nontangible assets and property rights. In order the concept of total valuation to be understood tangible and nontangible assets are to be analyzed as a unity of use that is produced through tangible and nontangible assets.

1.10 Relationship between the different types of value

From the aspect of complete business management from the various types of valuation certain relations can be established.In the table below it is shown that various types of future revenues are having influence on the different types of valuation .

[17]Geoffrey H. Smart *Management Assesment Methods In Venture Capital: Toward a Theory of Human Capital Valuation* Claremont Graduate University 1998 p. 10-28

Graph – llustration of the relations among the various types of value and valuation and future revenues of the business



Source: M&A Valuatons- Building value in private companies Frank C. Evans David M. Bishop -John Wiley & Sons, Inc. New York 2004

The lowest value that business could gain is the value as per the depreciated tangible assets which remains the same with no influence by the value of revenues that are obtained by the company. For example value of the write – offs is constant in certain period of time no matter of the earning that business had .

Value of the company in the terms of forced liquidation is the second lowest value , but from the practical point of view this might be the lowest value that company could have if it has to be sold as a whole. Likewise the value of the written-off (depreciation value) of tangible assets, in this situation also value is not dependent on revenues that the company could have in future. Voluntary liquidation is conceptualy the identical as forced liquidation except the fact that in the last case there is probability higher price to be gained in comparison with the forced liquidation, due to possibility for longest waiting period transaction to be made, in which period probability better buyer to be found, increases.

The value in use is a value of the tangible assets that typically increases as the revenues of the company. Once the revenues of the company will become zero the value in use and the value of the voluntarily liquidation are theoretically equal but as the business becomes more and more successful the meaning of tangible assets becomes higher and is such cases the value in use is higher than the value in case of voluntarily liquidation. The value of

tangible and nontangible shows the tendency for increase as the revenue of the company increases.

The goodwill value is often increasing as business profits are going high sinc such value is calculated on a basis of difference between the value of a business as a whole and the value of identified tangible and nontangible assets. Same as the profit of the business raises it creates the raise of the goodwill value.

Cumullative result shows the total business value. It is a value of all tangible and intangible assets increased for the revenue expected in future. The most of the business valuations are undertaken as per the cumulative value of business.

2. Property Valuation in Republic of Macedonia

In Republic of Macedonia long time ago there was no legal basis for valuation of the various kinds of property. Since 2010 there is a Law on valuation that is regulating property valuation with the primary aim for the tax purposes but the same law also stipulates use for valuation for private purposes.[18] Property has been categorized within the 12 categories: real estate, movable goods, machines and equipment, information technology, intellectual property rights ,trade companies as a whole,military equipment, industrial property, receivables and obligations, agricultural goods, information technology, environment protection. [19] For each of the previously mentioned categories there is a separate methodology based on several standards. For the real estate key standards are environment and location within Republic of Macedonia, for the information technologies, transport goods, military equipment key standard is depreciation, while for the industrial property and property rights, agricultural property machines and equipment a well as movable goods are both depreciation factor as well as the possibility for future receivables. For each of the last can be used revenues method, costs method or market value method.

[18] Law on Valuation , Official Gazet of RM 115/2010
[19] Same, articles 1-9.

CONCLUDING REMARKS

- Valuation concept is a key economic concept that is strongly connected with the property concept. When valuation has been analysed -usually are examined rights and benefits arising from the property that is object of valuation. Potential use of the property, timeframe for the value forecast,property location, relative presence and value of substitutes, number of owners, liquidity and presence of market for such property, physical conditions and overall economic environment are mainly considered as factors of highest impact on the valuation concept for certain property.

- Due to the impacting factors in recent 70 years various property valuation concepts were developed such as : fair market value , investment value , fair value, fundamental value, replacement value, going concern value, book value, goodwill value, replacement value, insured value and compensation value.

- In Republic of Macedonia legal basis for valuation can be found within the Law on valuation as of 2010 where concept and methodology for the property valuation are determined on the basis of previous categorization of property in 13 categories. .

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502.17:340.13 (497.7)

LEGAL PROTECTION IN ENVIRONMENTAL IN MACEDONIA ACCORDING TO THE ADOPTED EUROPEAN STANDARDS[20]

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ABSTRACT

Environmental pollution, depletion of natural resources, loss of biodiversity, ozone depletion, climate change, with all its seriousness imposed on the global stage. It is clear that to preserve the environment is to preserve life.
Why there is a desire of every country that claims to be a responsible, to build legislation that would allow as much as possible a higher level of protection. Member of various legal ways problematic regulate this, and every country has upgraded and supplemented existing legislation.

Key words: biodiversity, protection, legislation.

INTRODUCTION

As for the legislation concerning the protection and improvement of the environment, the European Union appears to be a leader in the world. Relations European Union, the Republic Macedonia began in October 1992 with the main objective to become its member country. Government has confirmed its readiness to join the Union by developing relations with setting membership in the European Union as a national goal of the highest priority.
In 1995godina, Macedonia established diplomatic relations with the Union in 2001It signed a Stabilization and Association Agreement between the European Union and the Republic of Macedonia[21]
In 2004, the Government submitted the application for EU membership, after which, in 2005 she was given the status of a candidate country. The principle of partnership was legalized by a decision of the European Union

[20] professional paper

[21] www.sep.gov.mk.

in 2006, when the EU Council adopted the European Partnership with the Republic of Macedonia.
The requirement for such a membership candidate country to harmonize its legal system with the Acquis, acquis communautaire, which covers all obligations and criteria of EU membership. The process of integrating 'European' laws in national legal administrative system is called approximation process, and consists of three main components in the legal transposition of the European Union[22], practical implementation of legislation and enforcement of legislation.

1. HORIZONTAL DIRECTIVES OF THE EUROPEAN UNION

The rules apply to all media and waste fall into the so-called horizontal EU legislation and is governed by the so-called horizontal directive. The Law on Environment, transposed following horizontal EU directives:
Directive 2003/4 / EC on public access to information on the environment. It aims to guarantee the right of access to information in the field of environment they own or possess for public authorities. This Directive makes effort information from the environment progressively becoming much more accessible and published with the intention of their widest possible systematic availability and dissemination to the public through electronic media and use of computer telecommunications. It contains the terms in which public these authorities should make information available and strictly defined cases in which public authorities of the country may refuse a request for information.
Directive 2001/42 / EC on the assessment of the effects of certain plans and programs on the environment. This Directive belongs to the more recent legal acts of the European Union, Its purpose is to provide a higher level of environmental protection, and also to contribute to the integration of environmental issues in the preparation of plans and programs or to guarantee enforcement's evaluation plans and programs which are likely to have significant effects on the environment.
Directive 85/337 / EEC and amendments of the Directive 97/11 / EC on the assessment of the effects of certain public and private projects on the environment. This Directive[23] governing the assessment of the

[22] http://mk.wikipedia.org/wiki
[23] http://europa.eu/legislation_summaries/environment/general_provisions/l28091_en.htm

environmental effects of those public and private projects, which is likely to have significant environmental impacts. With the assessment of environmental impact is identify it, describe and assess the impacts of a project on humans, flora and fauna, soil, water, air, climate and landscape, material assets and cultural heritage.
Directive 96/61 / EC on integrated prevention and control of pollution. This Directive contributes to achieving integrated prevention and control of pollution arising from the activities or the activities of installations listed in Annex I to Directive. It defines the measures designed to prevent or reduce emissions in the air, water and soil as a result of the above activities, including measures concerning, waste, and to achieve a high level of environmental protection in general.
Directive 96/82 / EC on the control of major accident hazards involving dangerous in substances. This Directive is addressed to the prevention of major accidents in the presence of dangerous substances, and limit their consequences for man and the environment, in order to provide high levels of environmental protection of consistent and efficient manner.

2. COMPARATIVE ANALYSIS

In comparison to the Law on Protection and Promotion of the environment and nature, and the Law on Environment, and given the level of transposition of the horizontal directives of the Union they are imposed four areas heavily regulated differently in the two laws. In this regard, the Law on Protection and Promotion of the environment and nature do not regulate precisely the rights and obligations for access to information about Environment and the right to access to justice, as well as procedures for assessing the impact of certain projects, plans and programs on the environment.
Also, the Law on Protection and Promotion of the environment and nature lacked provisions that would have provided the foundation to provide integrated environmental management through a special system of integrated permits, and the prevention and protection against accidents.
As to the first element, the rights and obligations for access to information about Environment and the right of access to justice, national legislation in various acts contained several provisions relating to active and passive dissemination of information, including that they were not clear enough . For example, the Law on Protection and Promotion of the environment and nature was stated that the data on the quality and cases endangering the environment public, without having to explain whether they think the active dissemination of information or passively responding to a request for

information. Interpretation of existing provisions in this area was too limited for what is meant definition for environmental information under Directive 2003/4 / EC (as well as under the Aarhus Convention).
According to the Directive, it was necessary to determine which organs are obliged to actively disseminate information and respond to requests for information. The same Directive contains provisions for the procedure seeking and giving information that should be taken into account when regulating this matter, and provisions for legal protection when the request for information is denied or insufficiently answered. The general impression is that the legal framework in this area was low (despite the efforts of authorities for transparent operation), which sought a completely new way-approach that is contained in the Law on Environment.
As regards the second element, the procedure for assessing the impact of certain projects, plans and programs on the environment, according to previous legislation, when making plans and Program of the state administration bodies, not conducted an assessment of their environmental impact. The new Law on Environment introduce a procedure (laid down in Directive 2001/42 / EC) aimed at the environmental implications can be identified and assessed during the preparation and prior to the adoption of certain plans and programs. According to the Law on Environment, public authorities can give their opinion and all conclusions are integrated and taken into account in the course of the procedure.
Following the adoption of the plan or program, the public is informed of the decision and the way it was taken. Under the Government of the Republic of Macedonia, the Government informs the public about its work and for the annual program implementation, while the Law on Local Self-Government, the municipal bodies have an obligation to inform the citizens about the plans and programs that are important for the development of the municipality and public participation is only at the initiative of citizens.

CONCLUSION

Constitution guarantees citizens the right to a healthy environment, and establishes the duty of the state to enable the fulfillment of this right. Environmental law is a framework law made under the model of the Western laws where basic principles and horizontal affairs are regulated in one basic law. He is a kind of general environmental act which covers common issues regulated by sector laws for individual environmental media and waste management, such as laws on water, waste management, protection of nature and quality ambient air. Environmental law taken to meet the requirements contained in the Directives of the European Union which are approximated

in it. In the otherwise regulating the matter concerning the environment. In this sense a general conclusion is that the Law on Environment establishes a legal framework for all management, supervision and protection of the environment in accordance with the principles of professionalism and competence. The law envisaged multi-sector approach to environmental protection. Thus, the law allows the Republic of Macedonia has an integrated system for environmental protection, and regulation which is in line with established international standards in this area. Thus, the Law on Environment provides the basis for integrated environmental management.

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SITUATION IN BALKAN FOOTBALL: CLASH BETWEEN FANS AND FOOTBALL FEDERATIONS (AN OBSTACLE FOR PREVENTION OF SPORT VIOLENCE)[24]

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Abstract

Sport violence is a problem that have been known for a long time, but in these last years it became part of number of campaigns for its suppression and prevention. And it started as a train without brakes, one law after another, first Croatia, then Serbia and Macedonia. The primary versions of those laws were supplemented a few times, each time becoming more severe.

The paper examines the paradox in sport events, the UEFA reactions and the permanent decrease of sport fans are just some of the problems of Balkan football, as problems which are an obvious obstacle of reducing of sport violence.

Key words: fans, football, prevention, sport violence, suppression.

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INTRODUCTION: VIOLENCE ON SPORT FIELDS IN CROATIA (POLITICS AND SPORT WITH ELEMENTS OF VIOLENCE)

Politics system, as method of fulfilling projected goals and realization and implementation of ideologies as given values, has it's „ dosed" influence in to the sport area, as one of many social areas. This conclusion is not a surprise, this is not a new phenomenon, because politics and sport has been and still are a part of unbreakable circle.

There are a lot of reasons for this situation, but our paper aims to explore the connection between sport and politics, in direction where politics, uses, to be more precise, the situation where sport, sport events, sport funds, are used as tools for political goals and influence.

Probably the Maximir Stadium would not have such publicity and would not have been an important part of Croatian independence[28] if there didn't happen the most known incident[29] on these Balkan territories (ex-Yugoslav territories). If we have the courage we will say that it was the dusk of Yugoslav Wars. It happened soon after „the realization"of the first democratic elections[30] in Croatia, which happened on April 21st 1990. The conclusion should be in direction where we will say that the incident was consequence of all other problems and conflicts in that period.

At the end of this part we are asking (rising) the question what is the most important reason or which are the conditions and concrete causes, which alone or in correlation with other factors are initiating violence and misbehavior on sport fields and why politics uses sport events as ground for fulfilling its most evil goals.

EUROPEAN DOCUMENTS AND LEGAL INTERVENTIONS

That's why as the most important benefits the European Convention on Spectator Violence and Misbehavior at Sports Events and it particular at Football Matches gives are:

- **Prevention -** the text underlines the importance of deploying public order resources in stadia and along the transit routes used by spectators; separating rival groups of supporters; strictly controlling ticket sales; excluding trouble-makers from stadia and matches; prohibiting the introduction and restricting the sale of alcoholic drinks in stadia; conducting

[28] 25.06.1991, Croatian Parliament declared independence, which was result of the 19.05.1991 Referendum. On that date 93% from Croatian citizen gave its vote.

[29] On 13.05.1990, on Maksimir Stadium, Dinamo and Crvena Zvezda from Belgrade played their game. The game was interrupted, because of incident (as a result of nationalism). This incident is known as event which is seen as starting point of the end of Yugoslavian Federation.

[30] http://www.dnevno.hr/ekalendar/na-danasnji-dan/55177-prvi-visestranacki-izbori-u-hrvatskoj-1990.html [12.03.2015]

security checks, particularly for objects likely to be used for violence; clearly defining responsibilities between organizers and the public authorities; designing football stadia in such a way as to guarantee spectator safety; the development of social and educational measures to prevent violence and racism (develop fan embassies, improve club-supporter relations, promote fan coaching and stewards, etc.)";[31]

- **Cooperation -** the Convention also highlights the importance of co-operation between the sports clubs and police authorities of all countries concerned during the organization of major international sports events in order to identify the possible risks and be able to prevent them. Preparatory meetings for the European Championships and World Cup, as well as evaluation meetings, are organized within the framework of the Convention;[32]
- **Repression -** Legal co-operation should allow the identification of trouble-makers and their exclusion from stadiums and matches; the transfer of legal proceedings to the country of origin for sentencing, extradition or the transfer of those found guilty of violence.[33]

With this ratification Croatia accepted to implement a proactive action in the process of solving problems and that in the borders of its capacity (staff, materials, and infrastructure) will work to decrease sport violence. Namely, this proactivity comes out from the Article 1 of the European Convention[34], where among other things is an obligation for member states to undertake measures for decreasing the level of sport violence. The obligation for special law which will regulate this area is part of the Article 3, paragraph 1. Most important benefit of the Convention is the commitment to full cooperation between members. The Article 4 from the Convention (International Cooperation) says that "the Parties shall co-operate closely on the matters covered by this Convention and encourage similar co-operation as appropriate between national sports authorities involved. In advance of international club and representative matches or tournaments, the Parties concerned shall invite their competent authorities, especially the sports organizations, to identify those matches at which violence or misbehavior by spectators is to be feared. Where such a match is identified, the competent authorities of the host country shall arrange consultations between those concerned. Such consultations shall take place as soon as possible and

[31] European Convention on Spectator Violence and Misbehaviour at Sports Events and it particular at Football Matches, Strasbourg, 19.08.1985. available at http://conventions.coe.int/Treaty/en/Treaties/Html/120.htm [21.02.2015]
[32] Ibid;
[33] Ibid
[34] Ibid

should not be later than two weeks before the match is due to take place, and shall encompass arrangements, measures and precautions to be taken before, during and after the match, including, where necessary, measures additional to those included in this Convention.

CROATIAN LEGAL SOLUTION: STARTING POINT FOR MACEDONIAN LEGAL SOLUTION

For a long period sport violence in Croatia was part of existing legal solution and incriminations. Special law[35] for the first time was brought in July 2003. This law for the first time defined the phenomenon of sport violence and through long discussion concluded that there is an increased number of incidents, where we will separate the incident which happened during the final game[36] from the Croatian cup. Between many legal norms coming out from the new law we will mention the once connected with rights and responsibilities of organizers [37]of sport games, the defining of the term sport game[38], the possibility of inclusion of fan groups[39] in the proactive process in the organization of sport games. The legal solution of Croatia gives possibility to spectators which are fans of the guest team to set wardens from them and in such way to help in the process of decreasing tensions. Also there is possibility for fan groups to take part in planning and security assessment of the sport event. Legal norms about infrastructure conditions[40] and characteristics are very important. We must potentiates form the Article 15, about the obligation for sport clubs to form club of fans or for fans, an in such way to communicate with them, help them in their trips in country and abroad and to educationally influence them.

Analyzing the Macedonian legal solution which was brought for the first time in 2004, we can conclude that the legislator had an idea to use cooperation between wider number of bodies and institutions as a tool against sport violence. The fight would include a policy of inter-institutional and interdisciplinary approach and a policy which will relativize and will push violence to a minimal point, a point where it will be accepted.

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[35] Zakon o sprecavanju nereda na sportskim natjecanjima. Narodne novine, br:117/2003

[36] NEREDI, SUZAVAC I PREKID U POLJUDU, http://arhiv.slobodnadalmacija.hr/20000503/sport.htm (20.02.2015)

[37] Zakon o sprecavanju nereda na sportskim natjecanjima. Narodne novine, br:117/03, 71/06, 43/09, 34/11, clan 6.

[38] Zakon o sprecavanju nereda na sportskim natjecanjima. Narodne novine, br:117/03, 71/06, 43/09, 34/11, clan 5.

[39] Zakon o sprecavanju nereda na sportskim natjecanjima. Narodne novine, br:117/2003, 23.07.2003, clan 13, 14 i 15.

[40] Zakon o sprecavanju nereda na sportskim natjecanjima. Narodne novine, br:117/2003, 23.07.2003, clan 16 - 23.

Very wrong is the opinion that is a consequence of irrational prejudices and stigmas in public opinion, where the only and direct responsibility is looked and found into the Ministry of Internal Affairs. The Ministry of Internal Affairs is part of the system which should give its own contribution to the suppression and prevention of violence on sport fields. As an institution, maybe, is the most often "pointed with finger", but it is wrong to seek solution in retribution and repression.

Contrary, the legal solution at the moment, specifies, i.e. transmits, part of the responsibility to other institutions, bodies and organs. An example, federations who are organizers of competitions (football, handball, basketball and volleyball) have obligations coming from the legal norms which is expected to be implemented, and used in a way which will help to prevent violence on sport fields. Sport clubs are also part of the system of institutions that have legal rights and obligations, with whose fulfilling they would help in the process of elimination of this phenomenon. A very important obligation for which we can say it is a primary one and which is connected to fan groups[41] is the obligation for direct and close communication with fans.

Also, very important question is whether this law can be implemented. In many cases laws are transferred from other countries where they did not give any quantitative and qualitative results. Legal transfer and coping of laws in ex-Yugoslavia, also in Croatia, mostly contains parts of the English law[42] for suppression of violence on sport fields. This is the biggest mistake in the process of making good legal solution. With coping laws from other countries, we are not solving the problem, but making it even worse. Namely, rewriting legal solutions is not difficult, but implementation is. You cannot expect that with borrowing legal solution, also conditions from that country can be borrowed. Those conditions are in direct correlation with politics, culture, education, economy, social area etc. That is the point where the incompleteness of the Croatian law can be found. The proof of such statement is the fact that from 2003 till today the law was changed four times[43].

[41] Закон за спречување на насилството и недостојното однесување на спортските натпревари , член 6

[42] Football Spectators Act, http://www.opsi.gov.uk/acts/acts1989/pdf/ukpga_19890037_en.pdf (27.02.2015)

[43] Navijači novi zakon o navijačima drže suludim, nakaradnim i protuustavnim, http://dalje.com/hr-hrvatska/navijaci-novi-zakon-o-navijacima-drze-suludim-nakaradnim-i-protuustavnim/336683 (20.02.2015)

EXPERIENCES WHICH CAN BE OF HELP: ENGLAND, GERMANY AND NETHERLANDS

Very often we are witnesses of discussions about how action against sport violence should look like; that the English model is the most appropriate and most practical example and that this model has proved is efficiency with best results in its use. Maybe this theory is pushing the English model as the best solution if we go back in time and analyze the situation in the stadiums in England after the 1980s and 1990s.[44] What did England do when suppression and prevention of sport violence are seen through the prism of interest?[45]

England[46] started to use a system of efficient supervision, that understands a situation of complete monitoring of the sport arena (stadium), and also used without severe measures, a system of repressive measures directed towards offenders for certain criminal acts. Those severe measures have its own preventive role and function, because with their consistent application avert huge part of potential offenders. While we are analyzing the English model, it is inevitable to mention the fact that English clubs have great infrastructural conditions which cannot be an obstacle of consistent implementation of set goals and allow uninterrupted possibility for successful application of the system of efficient supervision. Compared with Macedonian clubs, the conclusion would be that we are far behind England in this area, and that's why we can't expect implementation of the policy of efficient supervision, because it would be limited at the beginning. But, what Macedonia can use is the model of police work in Western countries. That is

[44] Hillsboro stadium is the place where in the incident in the Cup game between Liverpool and Nothingam, 96 people lost their lives. England is the first country where organized spectator groups were born[44], but also was the first country which started the process for institutional solution of the problem of violence on sport fields. From there the action was spread through all Europe. Namely, the violence on football matches was not unknown for Germany, Italy, France, Spain, the countries from the Eastern Block and the countries from ex-Yugoslavia. Actually Europe is the only territory where hooligans[44] compete between one another.

[45] The law brought in the time when Margaret Thatcher was Prime minister was not brought only to cover the area connected to sport fans and hooligans. It was a law more connected with the very bad organization of football matches. The Hillsboro incident was the last of the many mistakes.

[46] As an illustration for the proactive working we will mention just a few from the many measures and activities used in England. They are the following:

- dismantling of the fences in the area for spectators;
- dismantling of the fences which physically are dividing the field from the spectator's area;
- no standing places;
- cameras;

replacement of the police officers with wardens (club fans) with severely defined role.

the policy of data exchange, which is an obligation coming out from the European Convention, i.e. Recommendation of use of standard documents for police data exchange (T-RV/917), a system that matches and gives results in the action against violence and misbehavior on sport fields. But, we must have in mind the fact that an implementation of such a policy needs strong personnel and forming special force whose one and only obligations and role will be suppression of sport violence and misbehavior on sport fields.

The example from Germany has preventive target as the English model. The difference is not in the use of English methods from Germany, but the fact that Germany uses the education as a tool of prevention. Namely, youngest fans are educated for the problem of sport violence, its consequences, giving education a chance to be used for affecting young people awareness for those problems.

Regarding the policy in Netherlands regarding sport violence, we can say that in this country a serious attention is put on the process of rehabilitation of sentenced hooligans, giving them a second chance for social life. After rehabilitating them, the government, includes them into the process of education of other sport fans who are potential perpetrators of sport violence. Namely, having a sentenced and rehabilitated hooligan as an example, a picture of direct situation will be provided for others. This measure used by the Netherlands has its positive sides, but in Macedonia there is no such development of the fan scene and there is no high number of sentenced hooligans, so they can be part of the educational process after they are rehabilitated.

CONCLUSION

When a country signs an international document, a country accepts all the obligations; a country implements them but also builds conditions for their successful implementation. To make a good system and to know how to prevent a phenomenon, one country should learn its own characteristics and its own possibilities. Cooperation is imminent part of the whole process. Laws, measures, activities should be written and built through active work. Everything should be made using others opinions.

It is absolutely necessary every change of a law to be subject of a public opinion and public debate. All relevant institutions should mandatorily be included in the process of proposals and suggestions, but also in the process of its implementation. Fan groups should also be included as relevant institutions because are directly affected by the law and its provisions.

As an annex to a new and better legal solution, which will be functional and will not give authorities more serious difficulties in implementing it, a solution directed towards timely and exact institutional responsibility and reaction, solution which means bigger efficiency and effectiveness in the action against violence and misbehavior on sport fields (individual and collective), we propose activities for Macedonia, which should be undertaken in future, by few subjects. They are:

- **Authorities should use solutions which are easier to be used in practice, which do not ask serious conditions and standards, and which, at the end, will bring better situation.**

Macedonia can with a little intervention in the personnel potential to include other bodies and institutions and use the German model of education of sport fans. That kind of education is an obligation from the Macedonian Law against violence and misbehavior on sport fields, and refers to the communication between sport clubs and fans. In that process of education, local authorities should be included. Its participation is important because different regions have different problems, and local authorities are those who know the problems of its citizens.

- **A faster reaction of other institutions and bodies is necessary.**

The National Coordinative Body for suppression of violence and misbehavior on sport fields should be included in process of prevention, by using educational systems to influence the citizen's awareness (practically, not only declarative including of primary and secondary schools in the process of prevention), including and active contribution of the Ministry of labor and social policy, which would give easier and less painful rehabilitation of sentenced violent sport fans, continuous monitoring of legal norms and their addition and change, that will help for decreasing the violence (an obligation for the Ministry of Justice).

- **The system in Macedonia needs to be strong and consistent in application of norms and rules that are in force.**

Steps must be made and people should not be amnestied from their responsibility for violent behavior on sport fields, using political influences.

- **Secure public support for undertaken steps in actions against violence and misbehavior on sport fields.**

The support should not be based on stigma and generalization of all sport fans, and all sport spectators, but on public debate and continuous education of public for the legal measures and sanctions.

- **Continuous debate for this problem, enriched with presence of relevant institutions, associations, so they can give their support and help in the process of eliminating sport violence;**

- **Macedonia to start using services of so called spotters;** [47]

This idea of using spotters is an idea which is originating from English model of solving the problems connected with sport violence. Namely, by using spotters, authorities collect data for fans, groups that are followed, problems that can be expected. Spotters mandatorily are connected with sport clubs and through them are contacting fans and collect information, that later are used in process of decreasing the level of sport violence and misbehavior and their prevention.

- **Data collected by spotters to be gathered and classified at one place, i.e. forming National football and sport data center;**

The idea of forming such a center, where collecting and analyzing data will take place, is an idea coming from England where is already happening and successful. Using spotters, English authorities collect data for fans' movement, their number, their modus of communication, their plans (especially plans for travel on guest sport fields) and based on such analysis, security plans are ready and undertaken. That's why security policies and their practical realization are easier and viable when a number of data is used. Using this conclusion as starting point, Macedonian authorities should start thinking to use, form such center and realize the idea. It is correct that such an intervention needs financial resources, maybe personnel equipping, but results at the end are positive. Most important acquisition from the successful functioning of the National football and sport data center (directly or indirectly) and all those institutions which are part of the organization of sport games (directly or indirectly) is the possibility of preventive actions and reactions. Every preventive action and its results will be higher and with higher value than every repressive action, because repression's influence is with instant effects, contrary with prevention that has wider influence, the effect is on more people and the action does not have only instant effect, but is continuous process. Forming such a center will help Macedonia to keep pace with countries from Western Europe, i.e. countries who are working on preventive activity and policies in suppression of violence and misbehavior on sport fields. With such actions, Macedonia will be a country where legal solution and repressive measures contained in that Law will be used as ultima ratio.

It will be wrong if Macedonia stays only on the legal solution, police reaction, sport clubs action etc. A policy of synergy of all bodies and institutions, and togetherness in reaction should be built for successful implementation of the Law and decreasing the level of sport violence.

[47] Football Spotters - NUFC, http://www.northumbria.police.uk/advice_and_information/eventsdemos/football/spotters/index.asp (19.02.2015)

Absence of institutional fight means we should not expect successful tale. Maybe the severe legal solutions sometimes give results at the moment; strategies in long terms must offer other conditions and possibilities, and other methods of prevention.

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THE ROLE OF THE GLOBALIZATION AND INFORMATION-COMMUNICATION TECHNOLOGIES IN THE MODERN BUSINESS WORK[48]

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Abstract

The modern companies that work and act in the global surroundings and that are supported by the newest equipment of the information-communication technology are based on information as asset of competitor advantage. The speed with which the information is processed as well as the speed of the strategy development for market stand in accordance with the given information, determine the successfullness of the work of such companies in the international business. The progress of the information-communication technology (ICT) enables faster and cheaper transport of the information to the final users, which means, for the international business making better decisions. This comes to expression at the highly developed countries that with help of the globalization and information-communication technologies managed to maintain high rates of economical growth.

Key words: globalization, information, knowledge, information-communication tehnologies, economical growth.

[48] professional paper

INTRODUCTION

The world economy is faced with large restructuring of the large world companies regarding numerious status changes made from the globalization and new information-communication technologies. Globalization and new information-communication technologies have started the revolution and regarding the type and the structure of the education profiles that will be needed in the modern companies. In dying stage are many classical professions and their position will be taken with other, different professions that weren't familiar so far. Retraining becomes condition for keeping the working position of great number of workers. Entire generations, especially the eldest are faced with the challenge and the traumas that bare the changes caused from the globalization and ICT.

GLOBALIZATION AND THE ECONOMY OF KNOWLEDGE

The world economy today passes through „tectonic“ move-ups and through continuous transformations. The free flows of the market and the capital as well as the large progress of the telecommunications have enlarged the international competence. Progressively more come into issue the governmental policies in the economical sphere because this is counted that they aren't competent for the new economy which is based on knowledge.[49]

The economy of knowledge arises from two different forces: the enlarged participation and the enlarged intensity of the knowledge of the economical activities and the enlarged participation of the globalization, in the world economy in general as well as in the international economies separately. The increased intensity of the knowledge is a result of the information-technological revolution from one hand and the increased dynamics of the technological changes on other hand.

The globalization is caused from the national and international deregulation, as well as the communication revolution that is also connected with information-technological revolution.[50]

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[49] Lester Thorow, economist from MIT, arguments in his own book “The Future of the Capitalism” that the tactonic move-ups brake old rules of the capitalism.

[50] Besides the decrease of the expences for communications, the information technologies have helped the globalization of the production and the finance

The globalization is a connecting process of the economical and financial flows in world level. It presents striving for reunion of the markets and spreading the econimical activities out from the national borders in world scale with simultaneous enforcement of the each other dependency. The globalization often is understood as liberalization, i.e. decrease of the market barriers, abolition of the limits for foreign direct investments, decrease of the control over the capital and abolition of the visa boundaries.

The extreem interpretation of the globalization is identified in the advanced capitalism, electronical business communications and internet with which are leveled regional differences, local traditions are overpassed and is made homogenous world culture.

The globalization is extremely complicated and changing social process that takes with itself benefits and problems. In this context should be underlined the fact that arises some "new social issues, thinkings and dillemas" such as:

-first, the globalization in original is generated from the private sector. The public sector "runs" faster in economics than the private sector,

-second, the globalization shaprens the competition. But, the extreme competition results with many social problems,

-third, the social reconstruction does not keep up with the economical or the tehnoclogical restruction. The labour market, the educational system, the pension system as well as the health system do not change in accordance with the radical economic and technologic changes,

-fourth, the non-liberal policies which are introduced in the 80s from the past century do not resolve the outcome problems of the conventional economy, such as: unemployment, poverty and unbalanced distribution of the income. In fact, they only make it more intense,

-fifth, new social issues have two components: first, they intensify old problems and second, new dangerous elements (international criminal, urban dualism, new forms of international migrations, drugs as global industry, terrorism etc),

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markets. In return, the globalization encorages technology with intensifying the competition and with increase of the difusion of the technology through direct international investments. Altogether, as showed in practice, information technologies and the globalization are more efficiant in overcoming space and time

-sixth, the world has entered in the period of global wealth from one hand and increase of the national and the individual poverty. If we take aside the insignificant decrease of the poverty in India and China, the situation in the countries in development will be devestating. The combination of neo-liberalism and globalism creates global treasure and on the other hand we have new social problems, new distribution of the problems, increased social fregmentation and dicreased social cohesion.

From the aspect of modern economical fashions, and in the first line of the economy of knowledge, the role of the globalization is large. The internet as modern communication esset makes access into large amount of informations, documents and written resources from the whole world. Learning from distance (distance learning) becomes more important and many of the students are able through the screens to watch the teachings of the world important scientific authorities. The scientific and professional magazines are open for cooperation through the entire world. More and more the movement for student and teacher exchange is encouraged because on this way will be made new knowledge exchange. The countries found their development strategies in education investments, and unformal shapes of education get much in importance. The essence of the social policies of the states in future will be represented by educated and health people. In addition, the challenges of the globalization are large, especially for the main issue on unemployment.

KNOWLEDGE INTENSITY INCREASE

Last few decades are characterized in massive computer usage as well as communication technologies in all fields of social life. This massive appearance is due to the precipitous fall of the price for computers and the expences for communication as well as the fast development of the devices and the applications that satisfy needs of the costumers. Digitalization, the development of supporting technologies for application of the new computer and communication systems, the development of the software etc, help the users to realize their potentials from the IT revolution.

The global computer network, telephones and TVs as well as other devices from the field of business[51] and entertainment electronics have

[51] For example, few of the brokers who united on Wall Street no.68 in 1792 had never, not even in their craziest fantasies thought that never, in future, that companies and the investors will realize moment transactions all around the world. They didn't have telegraphs (founded in 1837), telephones (founded in 1877), TVs

increased their own capacity for information transfer for 1.3 million times. The computer power is doubled approximately on each 18 months accordnig the Moore's law.[52] The computer nowdays is much powerfull than the computer that is made in the middle of the 70s from the past century. Thirty years ago, the entire world had around 50 000 computers. Today the number is increased around 500 million with which there is still unequal distribution. Here, are not calculated the chips that are built in the cars, the washing machines, dish washing machines, aeroplane industry etc. The typical car nowdays has got increased computer power from the first vehicle that was launched on the Moon in 1969.[53]

As for economical aspect, the main feature of the IT revolution presents the ability to manipulate, to store and to transmit large amount of informations on low level expences.[54] Also, very important feature of these technologies is their ability to get in. As for the past, the technological changes were focused on specific type of products or industrial sectors, the informatic technology is generic. It influenses on each element on the economy, on the benefits and services, and on each element of the business chain of the development and exploration, up to the production, marketing and distribution. Considering the fact that the marginal expense of the usage,

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(founded in 40s from the past century), not mentioning computers (first computers started in spread usage in the 90s from the past century). That is a development old 220 years from speaking face to face (tête à tête) until the email todays.

[52] Gordon Moore is co-founder of the American company Intel. According to Moore, the power of the computer is doubled in every 18 months. The production of the micro processors follows this legality since 1965 when is released Moore`s article in the magazine "Electronics"

[53] In 1844 Samuel Morse launched in air the first words through telegraph machine "God, what did you do"? In 1960 trans atlantic cable could transfer simultaneously only 138 conversations. Today, hairy optical cable can transmit over 2 million calls and conversations. The fiber with diameter of a human hair fiber in less than a second can transmit the content of "London Economist". Not even one communication medium had such growth as the Internet. The Internet in 2000 had around 50 million subscribers all around the world. On May 31st 2011, according to the Internet World Stats data, the number of Internet users in the world has increased on over 2 billion (http://www.internetworldstats.com/stats7.htm).

[54] For the development of the global communications influenced two technological inovations: the satelite communiucations and the technologies of the optical fibers. For example, at the end of the 90s from the past century, Gemini, the trans atlantic marine cable with optical fibers had greater capacity than the actual trans atlantic cables so far (The Financial Times, July 28th 1998).

store and transmit of the information is in zero position, the application of knowledge in all the knowledge aspects is drastically releived and is drastically increased the intensity of knowledge at the economic activities. This increased intensity of knowledge includes increased intensity of knowledge in the individual wealth and services as well as increased importance of these wealths and services in the economy.[55]

The implementation of information-communication technologies have changed the way of life significantly, studing and work, transformating the way of interaction of people, business systems and the public institutions. In this way should be mentioned the fact that it is already started the first revolution regarding the type and the structure of the educational profiles. In this dying stage with lots of classical professions and their place taken with other professions, new professions that weren't familiar until now. Pre-qualification becomes condition for keeping the working position of many of the working stuff. Entire generations, especially the eldest are faced with the challenge and traumas that make the changes.[56]
Further, the modern societies imposed the need from digital networking and communication infrastructure that provide global platform on which the people and the companies react mutually, communicating and cooperating and demanding appropriate informations. Regarding the fact the intense

[55] Still, there is no international agreed frame for measurement of the knowledge. However, the efforts for measurement of the knowledge are undertaken on two levels: on macro level (on level of national economies) and on micro level (on level of companies). One of the most relevant methodologies for measurement of knowledge on macro level has developed the World Bank. It is famous as the Methodology for assessment of knowledge (Knowledge Assessment Methodology-KAM) and represents facility for marking the conditions of different states around the world on basis of different variables. This type of methodology is based on several different created indexes from which the most used and the most cited is the aggregate Index of economy and knowledge (Knowledge Economy Index-KEI). This index makes summary of the relevant economical performances of individual states in the world through integrating the four aggregate sub-indexes (system index for economical encouraging, inovating index, education index and index of information-communication technologies). The countries with higher KEI show propensity to higher levels of economical growth and vice versa.

[56] All this was showed in sharpen form in Republic of Macedonia. Namely, the main feature of the transition process was firing the emoployees from work due to reorganization and bankruptcy. The greatest number of stuff ended up under the social funds of the state which all had over 25 years of working experience. This type of chategory of employees did not have any chances for prequalification.

main role of ICT as factor for development in the economy of knowledge, development and implementation of these technologies, the knowledge usage and informations, as well as the growht of the number of Internet users represent necessary commitments of each state that strives to develop economically, politically anc culturally.

The implementation of the digital technologies in these aspects of the society and the changes that arise from this implementation have abled development in the information society that needs further to be directed to greater usage of the ICT potential and increase of the labor efficinecy, economical growth, greater employment and improvement of the quality of life for the people. Great number of the states have implemented the basic concepts of the digital society and economy and became states with higher digital culture.[57]

In this context should be mentioned and the index of network readiness (The Networked Readiness Index-NRI) of the world economic forum. This index is defined as degree for readiness of specific state or group of states to participate and to accomplish benefit from the ICT development. The structure of NRI is made from: surrounding (political and regulatory, business and inovational), readiness (infrastructure and digital content, possession of facilities, skills), usage (individual, business and governmental) and influence (economical and social).[58]

CONCLUSION

Information technologies provided rearrangement of economy that is based on knowledge. The development of the modern communication

[57]Regarding world and European activities and movements in this area, Republic of Macedonia lags behind in the implementation of ICT in the development of the information society. Considering the fact the purpose of our country to join Translatlantic structures, it is necessary no only the transformation of the national economy but the transition of the entire social system but also accepting European norms and standards in the fields of information society.

[58]According to NRI for 2011-2012 year (142 states were ranged in the world), Republic of Macedonia is on 66th position. On this position have influences the rangs of our state regarding the surrounding of ICT development (60), regarding readiness for development of ICT (78), regarding degree of ICT usage (61) and regarding ICT influence (71). (According to World Economic Forum and INSEAD, *The Global Information Technology Report 2012-Living in a Hyperconnected World*, Geneva, 2012, стр. 12, 13, 14, 15 и 16).

facilities (TV, internet, mobile telephones etc) provide people today to be developed in other type of skills and to have greater approach to informations. Information-communication technology is generic. It influences on each element of the economy and on wealth and services. This, along with the globalization, provides modern company to act and to compete on world frames.

From here, the countries where the companies do not have enough ability to adapt to changes caused from the globalization and information-communication technologies will have lower economical performances and will notice law steps of economical growth.

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TOURISM ENTREPRENEURSHIP OPPORTUNITIES AND THE ECONOMIC DEVELOPMENT[59]

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Abstract

Tourism is one of the fastest growing, and world's largest industry. Tourism as an important social and economic phenomenon, with distinct and dynamic development, has many positive effects. Those can be direct as well as indirect; can be seen as socio-psychological or economic improvements. Economic development through tourism is natural inclination of most world-wide and local initiatives. SME have significant contribution to economic development through the important concept of the job creation. From the perspectives of entrepreneurship, tourism is seen as a different context in which entrepreneurial opportunities can be identified, sized and commercialized into a consumable tourism product. The paper will illustrate the state of SME in Macedonia and their relevance for Macedonian economy.

Key words: tourism, entrepreneurship, SME, economic development

[59] review scientific paper

INTRODUCTION

Tourism is one of the fastest growing, and world's largest industry[60]. Tourism as an important social and economic phenomenon, with distinct and dynamic development, has many positive effects. Those can be direct as well as indirect; can be seen as socio-psychological or economic improvements. Economic development through tourism is natural inclination of most world-wide and local initiatives. Governments in the face of falling employment in agriculture and industry, and a failure to attract foreign direct investments have turned to tourism as a last resort. That's why it is necessary to first gain an understanding of the role small and medium size tourism enterprises play in economic development, before making decision about specific development strategy. The reason lies in the fact that SME have significant contribution to economic development through the important concept of the job creation. Based on these understandings, private and public sectors are pouring a lot of efforts in creating innovative businesses and tourism development models worldwide. These efforts cannot be always measured by business criteria. The reason behind, is that tourism product is often intangible and secondary to the main commercial activities; therefore it is difficult to prove its value on the market. From the perspectives of entrepreneurship, tourism is seen as a different context in which entrepreneurial opportunities can be identified, sized and commercialized into a consumable tourism product. These opportunities are then transformed into business innovations based on nature, culture, heritage, traditions, religions, and myriad other venture initiatives in tourism.

TOURISM RELATED ENTREPRENEURSHIP OPPORTUNITIES

Tourism, as a global phenomenon, has been researched and studied across disciplines that try to understand rationale behind the tourist movement and activities associated with technological advancement and accelerated liberalization in global trade in services (Knowles, Diamantis, El-Mourhabi

[60] http://www2.unwto.org/content/why-tourism (15/Apr/2015). As World Tourism Organization (WTO) points out …" Today, the business volume of tourism equals or even surpasses that of oil exports, food products or automobiles. Tourism has become one of the major players in international commerce, and represents at the same time one of the main income sources for many developing countries… ". Tourism key facts: 9% of GDP– direct, indirect and induced impacts; 1 in 11 jobs is in tourism; US$ 1.5 trillion in exports; 6% of the world's exports; 30% of services exports.

2004). In this context, free flow of capital and people has significantly contributed to the growth of travel, creating numerous business opportunities for small ventures in tourism industry. In general, tourism is social phenomenon, per se. Travel, in its essence, is main characteristic of tourism. The travel of humans is for various reasons, such as business pursuits, leisure, education, religion, pleasure, security, politics, etc. Activities done before, during and after the travel, are providing a plethora of opportunities for social change, political intervention, educational diversification and policy regulation. Complexity of motivation and purpose of travel is determining the number of tourism forms defined by the tourist needs (Tureac, Turtureanu, 2008).

Nature-based (rural, eco, recreation) tourism covers broad range of activities that attract people visiting natural destinations for a different reasons, such as nature photography, hiking, bird watching, camping, parks and rural visit, kayaking, fishing, hunting, etc. Besides having favorable natural resources, Macedonia lacks adequate facilities, infrastructure, and what is most important creativity of local people to develop economically attractive nature-based tourism forms (Wearing and Neil, 2009).

Adventure tourism is nature-based form of tourism, and is including factors of risk and challenge, with players engaged in a range of soft and hard adventure activities (canoeing, trekking, parachuting, bungee jumping, helicopter flying, etc.) Technically, these forms of activities represent improvements in existing tourism products and are providing a range of business opportunities for small and medium sized ventures (Kane, 2002).

Mountain and winter (ski) tourism, are newer phenomenon, began more organized in 1930s in countries covering the Alps region and with development of cable cars, used for transportation of skiers. The travel with cable cars then becomes purpose for itself, as is cable-cars sight-seeing. Mountain tourism is spatially diffused, concentration of visitors is very low, and requires advancement skills and innovation in its development. Ski resorts attract more visitors, and have greater economic impact in the destination. Competition in mountain tourism is high world-wide, and marketing campaigns should focus their efforts in promoting mountains, climate, lifestyle, resource diversity, peacefulness, hospitality, culture, etc. (Shokirov, Abdykadyrova, Dear, Nowrojee, 2014).

People are growing increasingly aware of their lifestyle, health, and balanced diet. Visiting fitness and leisure centres, is becoming prerequisite for staying

healthy and looking good. Sport activities, hot mineral waters, massage, saunas, fitness exercises, and many other services helps the human body in recovering from the stressful lifestyles. Spa and wellness tourism is providing business opportunities in the market segment of physical, mental and spiritual restoration (Smith, Puczko, 2009).

Urban, and cultural tourism, depends on the local initiatives for responding to changing tourism trends. Tourists visit cities and culture places for a variety of reasons, combining them, in a short trip, two or more in a single visit. The motivators for city visit are culture, education history, business, and transit. Typical tourist visiting cities will spend his/her time in shopping, entertainment, food and beverage consumption, and culture places visit (Csapó, 2012).

Religious tourism is very old form of tourism movement activity, and is still growing. This form of tourism is developed with destinations connected to the sacred people, events, places, art and unique architecture, providing facility to believers for exercising their spirituality. Religious tourism has been aggressively marketed by national tourism organizations and tourism businesses in order to overcome seasonality in tourism destination. Religious tourism is attractive in a sense to provide unusual holiday experiences or diversification within a single trip (Norman, 2004).

Main motivator behind maritime tourism is relaxation, and “doing nothing” (sea, sand and sun). Increased world-wide competition offers more choices for tourists, thus competition is growing exponentially (Romania, Bulgaria, Cuba, and other examples of development of less known destinations). Higher quality food, accommodation and entertainment will define competitive advantage for less known destinations (Cameron, Gatewood, 2008).

Human behavior, desire and motivation for travel are much broader and complex, thereby previously discussed forms of tourism are only part of the full picture of tourism movements. Tourist needs need to be translated into individual tourism products through viable tourism-based business ventures.

TOURISM PRODUCT AND TOURISM INDUSTRY

Tourism product is based on tourist perceptions and curiosity. In most industries, the product can be seen, touched, tried before consumption. Here in tourism, human curiosity is commercially manipulated to create

competitive position in the tourism market. The tourism product is mainly perceived by the tourist as a full package experience consisting of destination attractions, facilities, travel infrastructure, brand and price. Thus, the tourism product is either the total tourist experience (time between leaving and returning to home), or a specific product consumed in a concrete business establishment (diner at family restaurant in tourist destination). Moreover, the same product cannot be seen equally by all tourists. Intangibility is very often involved (service at the restaurant as a part of overall tourist product experience); tangibility can be a part of a single tourist activity (transportation, accommodation) (Muhcina, 2008).

The term "tourism industry" is problematic, because many businesses serving the tourist needs are not industrially connected to tourism (Destination NSW, 2015). The tourism consumers cannot be 100% defined. Also, the businesses supplying tourism with goods and services have other customers, not only tourists. The term "tourism industries" can be proposed in regard with Standard International Classification of Tourism Activities (SICTA) definition of tourism as tourism-related activities[61]. Nevertheless, the term "industry" simplifies interaction between various tourism stakeholders (government, businesses and tourists). Some direct commercial sectors serving the tourist needs are easily identified: transport services, accommodation, destination attractions, tour operator activities, tourism product wholesalers, distribution of tourism products, marketing and promotion, and retail services. Various activities from other industries can also fall under umbrella of tourism sector (museums, arts), thus further complicating tourism product understanding. Tourism Satellite Account (TSA) system advocates the use of "tourism ratio", as a tool in measuring the size of the tourism industry (WTO, 2010). The term "tourism ratio" is covering the receipts in an industry which are attributable to tourism industry; it as a ratio between total tourism demand and supply. For industry to be considered tourism industry, the tourism ratio should be greater than 15%.

Tourism industry is largely composed of small businesses. Competing against large tourism enterprises becomes very difficult for small firms; tourism product complexity leaves the small businesses to look for adding value to their existing products as a way of differentiating their products and option to size un-served market-niches.

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61 http://mail.perfectbg.com/TouristDocuments.nsf/547C46C008D66BADC22570610033B032/$FILE/SICTA.pdf

TOURISM LED ECONOMIC DEVELOPMENT

Tourism can be selected as a growth pole. The growth pole can be economically marginal destination, where government incentives, public and private investments are poured in the selected area, helping to build facilities and infrastructure (Speakman, Koivisto, 2013). The government either provides support for the local entrepreneurs or directly invests in the area. The incentives and subsidies are attracting more investments in tourism related businesses and employment is growing. Creation of jobs brings other entrepreneurship opportunities, especially in the cultural and eco-tourism niches. After some time, development becomes self-sustaining and attracts critical mass of residential population. Large residential population attracts additional development, incentives are withdrawn and tourism benefits pass to the surrounding area.

According to Vellas (2007) economic benefits of tourism can be seen in income generation, creating employment opportunities, positive influence on balance of payments, and encouraging investment and development climate. The destination uses tourism as an "invisible" export of tangible (food, souvenirs, retail sales, etc.) and intangible goods and services (sun, air, walking, accommodation, transportation, sight-seeing, cultural sales receipts, etc.)

THE IMPORTANCE OF SMALL BUSINESS IN TOURISM

Small businesses plays vital role in expanding overall economic development in a destination. Small businesses are more flexible to the market changes, they help in creating diversified economic structure, build healthy competition environment, stimulate innovation, improve quality of the products and services, and foster entrepreneurship culture. Tourism is mainly composed of small businesses. In OECD countries, 60-90% of companies in tourism sector employ less than nine employees (OECD, 2014). As agents of economic development, tourism small businesses are cornerstone of the tourism economy. According to Turner and Sears (2013) tourism creates significant number of jobs (employment). The employment can be direct employment (hotels, restaurants, night clubs, travel agencies), indirect employment in businesses that benefit from tourism spending (retail, construction), or induced employment resulting from re-spending of local residents money through the tourism multiplier effect (Horváth, Frechtling, 1999). Direct employment can be observed through new venture creation or expanding existing ones. The process of new venture creation is process of

entrepreneurship. As such, an individual brings changes to the economic structure through innovative responses to tourism market needs. The motivated entrepreneur, sizes the market opportunity by establishing the company, gathers resources, starts servicing market needs, but is worth to mention that in the process bears risk of the venture failure and reward opportunities if venture succeeds.

Based on previous assumptions, developing large-scale foreign investments in tourism sector is not viable solution for a developing country. The contribution to national income and employment is questionable, based on the economic leakage of profit outside the country, purchasing project material and employing foreign labor. Local entrepreneur economic success brings benefits to the local economy (Nolan, 2003). Local community and small tourism businesses can package local resources into attractive, desirable and marketable tourism product. Developing local entrepreneurship process will be the main challenge for the public policy makers. Small business creation is key vehicle for entrepreneurship process (Thurik, Wennekers, 2004).

SMALL AND MEDIUM-SIZE TOURISM ENTERPRISES IN MACEDONIA

European commission defines micro, small and medium-sized enterprises based on headcount as: micro- less than 10 persons employed, small- less than 50 persons employed, and medium-size- less than 250 persons employed. Same definition is applied by State Statistical Office, Republic of Macedonia (European Commission, 2003). Accommodation and food service sector includes accommodation (hotels and similar accommodation; holiday and other short-stay accommodation; other accommodation) and food and beverage service businesses (restaurants and mobile food service businesses; event catering and other food service businesses; beverage service businesses). The following examples will illustrate the state of SME in Macedonia and their relevance for Macedonian economy.

Table 1 represents the number of active enterprises in accommodation and food service businesses for 2014 in the Republic of Macedonia. It is obvious that micro, small and medium size enterprises (less than 249 employees) represent 94.0% of the total number of enterprises in 2013. On the other hand, micro -enterprises (1-9 employees) are representing 88.0% of the total number of enterprises in accommodation and food service sector. We found these numbers in correlation with OECD (2014) countries data where

between 70% and 95% of all firms are micro-enterprises (firms with less than ten employees).

Table 1: Macedonia, total number of active businesses, accommodation and food service sector total number of active businesses, and by number of persons employed in 2014

Sector of activity	Total	%	Enterprise size by number of employees					
			0[62]	0-9	10-19	20-49	50-249	250 +
Total	70659	100.0	3972	60215	3092	1869	1305	206
Accommodation and food service	4493	6.4	67	3952	325	125	23	1

Source: _____ (2015): Business entities, Number of active business entities, 2014- News Release No: 6.1.15.14. State Statistical Office, Republic of Macedonia, p. 2;

Table 2 gives overview of accommodation and food service sector in 2013, by number of employees, per business size. In 2013, 73.16% were employed in micro enterprises with less than 19 employees. Also, in 2013 accommodation and food service sector employment number represented 2.87% of the total employment in Macedonia[63].

Table 2: Employees by enterprise size classes, in accommodation and food service sector, 2013

Year	Enterprise size classes by number of employees					
	Total	0-9	10-19	20-49	50-249	250 +
2013	19479	10386	3865	3197	1747	284

Source: _____ (2015): Structural business statistics, 2013-final data- News Release No: 6.1.15.23. State Statistical Office, Republic of Macedonia, p. 4;

Table 3 contains data about accommodation and food service enterprises turnover with less than 49 employees who realized 83.4% of the total turnover in 2013.

[62] Including business entities with unascertained number of persons employed
[63] Source: http://makstat.stat.gov.mk/pxweb2007bazi/dialog/statfile18.asp; Total employment number for 2013 is 678 838.

Table 3: Turnover by size class of number of employees, 2013, in thousand € (1 €= MKD 61.5020)

Sector of activity	Total turnover	Enterprise size by number of employees				
		0-9	10-19	20-49	50-249	250 +
Accommodation and food service activities	212 936	79331	47690	50665	28584	6666

Source: _____ (2015): Structural business statistics, 2013-final data- News Release No: 6.1.15.23. State Statistical Office, Republic of Macedonia, p. 5;

Table 4 contains data about accommodation and food service enterprises turnover with less than 49 employees who generated 76.2% of the total value added.

Table 4 Value added at factor cost, by size class of number of employees, 2013, in thousand €, (1 €= MKD 61.5020)

Sector of activity	Total	Enterprise size classes by number of employees				
		0-9	10-19	20-49	50-249	250 +
Accommodation and food service activities	77981	27836	15073	16520	13756	4797

Source: _____ (2015): Structural business statistics, 2013-final data- News Release No: 6.1.15.23. State Statistical Office, Republic of Macedonia, p. 6;

DISCUSSION AND RECOMMENDATIONS

Total number of tourists in Macedonia witnessed increase of 47,3% in 2014 comparing to 2006. Accommodation and food service sector in 2013 numbered 26 025 employees, out of total employment figure of 696 046, representing 3,73 % of the total employment in the country, and share of

tourism in Macedonian GDP in 2013 was 1.4% (Dimoska, Tuntev, Nikolovski, 2015).
Small and medium-size enterprises employ the largest number of employees in the country, realize most of the turnover, and create most of the value added in the accommodation and food service sector. On the other side, accommodation and food service sector number of businesses is only 6.3% of the total number of businesses in Republic of Macedonia. The large accommodation and food service enterprises (more than 250 employees) realized only 3.13% of the turnover and generated only 6.15% of the total value added.

Based on the data presented small and medium-size enterprises have significant importance for economic development of the Republic of Macedonia. Therefore, it is necessary to take measures and actions to further encourage development of these enterprises, such as: introducing incentives for investment in tourism facilities, investment in tourism product (developing different types of tourism), continuous training and professional education of tourism industry employees, increasing awareness of public policy makers about the need for tourism led development and knowledge dissemination about positive effects of tourism spending for the overall economy.

CONCLUSION

Tourism industry enterprise structure is micro and small. Tourism is a fragmented industry, with different players in the field from small village craft shop in mountain to the city gallery offering modern paintings. The fragmentation is consequence of tourist behavior; tourist is completing his experience by choosing the components of tourism product. In that direction, market niches can be best served by flexible and small tourism enterprises. The same can be seen in the structure of Macedonian economy. The number of registered active enterprises in Macedonia notes steady growth. Most of them belong to the category of small and medium enterprises. This category is particularly important for the economy and represents the main driver of the economic activity in the country. Seeing the fact that small and medium enterprises in the country in general and in the tourism sector especially employs most of the active working population, have the largest share in the realization of turnover and in the generating of value added, it can be concluded that these enterprises have great importance for the economy and for economic development of the Republic of Macedonia.

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DEVELOPING DESTINATION COMPETITIVENESS: SMALL TOURISM ENTERPRISES (STE) AS INNOVATION DRIVERS[64]

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Abstract

Small tourism enterprises (STE) are particularly important for the destination competitiveness. In order to maintain or improve destination market position, STEs must be constantly innovative. Innovation is a key factor for improving SMEs performances, and indirectly for increasing destination competitiveness. Innovation is a multifaceted concept and it can be classified according to the object, the field, relevance and origin. As a result of innovation, STEs improve product quality, reduce production costs, increase the range of products, replace outdated products, improve their performances and thus enhance destination competitiveness. This paper examines the specific contributions to destination competitiveness of the innovative STEs, with some data reflecting the innovation activity by registered enterprises in the Republic of Macedonia.

Key words: Small tourism enterprises (STE), innovation, entrepreneurship, tourism destination

INTRODUCTION

As World Tourism Organization (WTO) points out …"Today, the business volume of tourism equals or even surpasses that of oil exports, food products

[64] review scientific paper

or automobiles . Tourism has become one of the major players in international commerce, and represents at the same time one of the main income sources for many developing countries… ". Tourism is one of the fastest growing, and world's largest industry. Consider following tourism key facts: 9% of GDP– direct, indirect and induced impacts; 1 in 11 jobs is in tourism; US$ 1.5 trillion in exports; 6% of the world's exports; 30% of services exports (2015). Tourism growth has accelerated significant changes in the way tourism destinations compete for their share of the global travel market. Different tourism stakeholders try to understand destination competitiveness determinants, find the way to spur relationships and coordination between actors' activities in a destination, and stimulate tourism led destination development. From the perspectives of entrepreneurship, tourism destination is seen as a different context in which entrepreneurial opportunities can be identified, sized and commercialized into a consumable tourism product. These opportunities are then transformed into business innovations based on nature, culture, heritage, traditions, religions, and other tourism venture initiatives. A small tourism enterprise (STE) is able to cope with the constant market pressure if it realizes reliable, balanced and high-standard operation in its business. STE business innovation activities have been identified by different authors as the principal driver of destination competitiveness, as well as key factor for any business survival (Van Auken et al., 2008). STE business innovations enable STEs to bring new and / or improved products and services in the market and thus meet customers' needs better and fully, gain loyal customers, increase sales of products and services, substitute outdated products, increase income, improve market share, increase competitive advantage, conquer new market segments, improve performance, and positively affect the economic development of the destination in which STEs operate.

DESTINATION COMPETITIVENESS DEVELOPMENT

As tourism demand continues to mature, the need for understanding destination competitiveness ability will inevitably lead to competitive advantage factors developing. The concept of competition and competitive advantage of a tourism destination has been researched and studied across tourism and business disciplines as a part of growing interest in business competition generally (Teece, 2010). Competitiveness is a complex, multi-dimensional, multi-faceted, relative and very confusing concept. Since early 1980s until today, various authors, depending on the width and aspect of their research, offer different views on the competitiveness and continually expand their models for competitiveness. The competitiveness concept

according to Waheeduzzaman and Ryans (1996) involves different perspectives, namely, comparative advantage perspective, management and organization perspective, as well as socio-cultural perspective. O'Sullivan (2008) adds cost, quality, delivery dependability, flexibility and *innovation* as factors formulating such a competitive position. The World Competitiveness Report (2014-2015) survey, as well as Porters' work on competition among firms (Porter, 1980, 1985) and among nations (Porter, 1990) provides a stepping stone in understanding the concept of competitive advantage. Porter's "diamond" model (1990) emphasizes the inputs needed to compete in the industry, required level of home demand for the products/services, the context in which *innovative entrepreneurship* nourishes- enterprise creation, organization and management, and supporting and competitive industry structure- supplier and other related industries.

Based on previous notions, we can identify some of the factors that influence destination competitiveness. These are:

- *Infrastructure* group of factors provide foundation for a strong tourism sector, such as roads and communication network, accessibility, accommodation, facilitation, and STEs.
- *Attractive* group of factors represents destination appeal factors, such as physiography, culture, events, activities, ties, and human infrastructure
- *Constraints* group of factors which govern the potential of destination competitiveness, such as location, safety, and cost
- *Destination management* group of factors are shaping the destination competitive strength and marketability, such as marketing and promotion, tourism sector destination organization, strategic alliances, destination maintenance, market research, service productivity and uniqueness.

STEs fall under *infrastructure* group of factors. STEs are a foundation for a strong tourism sector at destination level. STEs are more flexible to the market changes, they help in creating diversified economic structure, build healthy *competition* environment, stimulate *innovation*, improve quality of the products and services, and foster entrepreneurship culture. As agents of economic development, STEs are cornerstone of the tourism destination economy. STEs play vital role in expanding overall economic development in a tourism destination. STEs are ideal mechanism for development of innovative tourism products and experiences.

But, tourism fragmentation can be seen as a weakness, too. Tourism is mainly composed of STEs. In OECD countries, 60-90% of all companies in tourism sector employ less than nine employees (OECD, 2014). STEs are characterized with high labor intensity, and low levels of productivity (Aremu and Adeyemi, 2011). Low levels of productivity are affecting the competitiveness, and organization innovation ability. The loss of destination competitiveness can occur when innovation failure becomes widespread across the overall tourism sector. It is better to focus on destination innovation in early developmental phases, than to rebuild already declined destination.

The origin of the word "innovation" comes from the Latin words "innovatio" or "innovo." Both words mean to "renew or to make something new". The research shows that innovation is the key catalyst of destination growth, rather than capital investment (OECD, 2009). Innovation in the tourism destination can be observed at different levels: firm level, network level, public policy level. Schumpeter (1996) outlines the main areas of innovation as product innovation (new or significantly improved product), process innovation (new distribution method), market innovation (identifying new markets or new ways to serve target markets), and logistical innovation (supply chain improvements). According to Sundbo et al. (1998) tourism innovation means a change in business behavior, which is culture shift. The culture of innovation can be spurred by growing appropriate business attitude, building necessary supporting structures, and focusing state actions into welcoming the new ventures. Once the destination masters the relationship between its public tourism sector and organization innovativeness, destination competitiveness grows naturally. Innovative activity at a destination level can be improved by appropriate public sector decision-making and activity leadership. Cooperation between public sector policy-makers is fundamental to create innovative behavior in tourism. Public sector has an important role in leading innovation process by building tourism networks which will enhance the learning and dissemination of knowledge at destination level. This leads to the notion of a "learning" destination as a new concept in adding value to destination competitiveness. Private businesses view themselves in terms of competition, that's why

public sector policy-makers can assist in facilitating tourism networks, and educating network agents about the collaborative benefits at a wider, destination level (Table 1).

Table 1: Developing destination competitiveness through tourism networks

Learning and Knowledge Sharing	Accelerated Business Activity	Destination Effects
Public sector initiatives dissemination developing	Public sector investment increase	Tourism purpose destination
Culture shift	Joint marketing	Tourist spending
STEs early stage support	Pooling STEs resources	retention
Understanding destination development context	Increased customer base through cooperation	STEs networking
Communication strengthening	Business continuum	

STEs INNOVATIVE CONTRIBUTIONS TO DESTINATION COMPETITIVENESS

Innovative STEs are defined as small and medium size tourism enterprises which create value through 'innovation,' or seek innovative activities continuously. Innovative STEs are those enterprises which play a leading role in creating jobs and add value by improving existing tourism products or services, or producing and distributing new ones. STEs have potential to drive destination growth and create quality jobs through continuous innovation activities. Due to the considerable importance of STEs in job creation at a destination level, policies and approaches to enhance STEs competitiveness have become an important part of public policy decision-making (Figure 1).

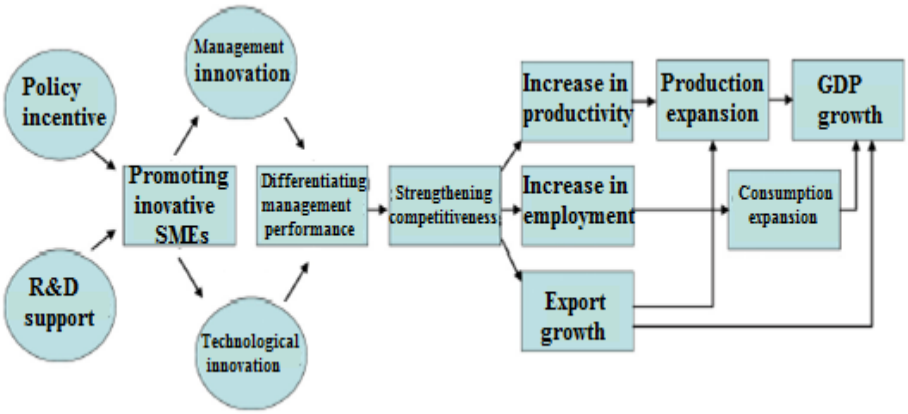

Figure 1: Destination competitiveness impacts of innovative STEs
(Developed from Tiwari and Buse, 2007)

Various factors encourage an STE to innovate. These factors can be summarized as follows (O'Sullivan, 2008): emerging technologies; competitor actions; new ideas from customers, strategic partners, and employees; and emerging changes in the external environment (societal, political, industry trernds and government support). STEs directly influence visitors' experience thereby potentially gaining valuable correctives' in the form of visitor feedback. Acting in a more informal manner and faced with fewer intra-firm hierarchy levels than large firms, STEs are better suited for innovations than their large counterparts. This opportunity for invention should enable STEs to develop products better suited to market niches and thus bring more success at a firm and destination level.

Particularly, with regard to STEs/destination level innovative entrepreneurship, following activities contributes to poorly developed destination competitiveness:

- Local supply of food and services in the hospitality sector creates innovative opportunities for numerous alternative suppliers, building competitive environment for excellence
- Establishing innovative linkages between STEs in a destination encourages inter-firm cooperation on a mutual self-interest in the success of the destination (sectoral associations, market alliances, management structures)
- Promoting learning activities and sharing innovative practices at industry meetings

- Focusing on innovative local and regional foods in product development enables STEs/destination to concentrate on their core competencies
- Receiving consultancy services and expertise from other destinations
- Informal and formal dissemination of acquired knowledge through tourism networking
- Government business assistance in the form of business incubators and facilitators for development of creative destination-wide innovative ideas, which needs to be implemented by private sector
- Establishing municipal incentives for innovations development
- Local authority engagement in stimulating STEs to cooperatively innovate through the process of building public-private network structure,etc

Despite the evident contributions to destination competitiveness, the high number of small firms in tourism industry leads to several problems and challenges. The tourism business is seasonal in nature, and staff turnover is very high, which makes difficult for owner-managers to invest in staff training. The nature of tourist product "assembled" by tourist consumption makes it difficult for entrepreneur to be concentrated and to recognize firm dependency on the competitiveness of the destination as a whole.

STEs AND INNOVATION IN THE REPUBLIC OF MACEDONIA

The term STE covers a wide range of definitions and measures varying from country to country and between the sources reporting STE statistics. Some of the commonly used criteria are the number of employees, total net assets, sales, investment level, and shareholders funds. Thus, depending on the criterion selected, the same firm can be classified as "small" under one criterion and as "medium" under another criterion.

European commission defines micro, small and medium-sized enterprises based on headcount as: micro- less than 10 persons employed, small- less than 50 persons employed, and medium-size- less than 250 persons employed. Same definition is applied by State Statistical Office, Republic of Macedonia (European Commission, 2003). Peterson et al. (1986) use both quantitative and qualitative measures in defining STEs. Quantitative measures such as the number of employees and the annual turnover are the most popular tools to define STEs. Storey (1994) considers STEs as enterprises with a relatively small share of their market, enterprises managed

by owners- without formalized management structure, and enterprises as self-sufficient businesses, not being part of a large group.

The following examples will illustrate the state of STEs innovation activity in Macedonia and their relevance for Macedonian economy.

Table 2 represents the total number of active enterprises and statistics for accommodation and food service businesses for 2014 in the Republic of Macedonia. It is obvious that micro, small and medium size enterprises (less than 249 employees) represent 94.0% of the total number of enterprises in 2013. On the other hand, micro -enterprises (1-9 employees) are representing 88.0% of the total number of enterprises in accommodation and food service sector. We found these numbers in correlation with OECD (2014) countries data where between 70% and 95% of all firms are micro-enterprises (firms with less than ten employees).
Table 3 gives overview of accommodation and food service sector in 2013, by number of employees, per business size. In 2013, 73.16% were employed in micro enterprises with less than 19 employees. Also, in 2013 accommodation and food service sector employment number represented 2.87% of the total employment in Macedonia[65].

According to data of the State Statistical Office of the Republic of Macedonia, only 42.8% of companies in Macedonia have implemented some kind of innovation in their work during the period from 2010 to 2012. The others 57.2% did not dare to do it. The highest percentage of the innovators is for large companies, or 75.8%, while the smallest percentage is for the small firms - only 39.9% (table 4).

The results are in line with Keller (2004) observations about barriers for STEs innovation activities: high transaction costs, lack of funds, lack of qualified personnel for setting social bond enabled networking, and high level of imitability of tourist innovations.

From the total number of innovative enterprises in the Republic of Macedonia, 24.7% have introduced innovation of products and processes, 46.4% have introduced organizational and marketing innovations, and only 18.2% have introduced a product and process as well as organizational and marketing innovation (table 5).

[65] Source: http://makstat.stat.gov.mk/pxweb2007bazi/dialog/statfile18.asp; Total employment number for 2013 is 678 838.

Macedonian tourism industry enterprise structure is micro and small. The number of registered active enterprises in Macedonia notes steady growth. Most of them belong to the category of small and medium enterprises. This category is particularly important for the economy and represents the main driver of the economic activity in the country. Seeing the fact that small and medium enterprises in the country in general and in the tourism sector especially employs most of the active working population, have the largest share in the realization of turnover and in the generating of value added, it can be concluded that these enterprises have great importance for the economy and for economic development of the Republic of Macedonia (Nikolovski, Dimoska, 2015).

Table 2: Macedonia, total number of active businesses, accommodation and food service sector total number of active businesses, and by number of persons employed in 2014

Sector of activity	Total	%	Enterprise size by number of employees					
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Total	70659	100.0	3972	60215	3092	1869	1305	206
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Source: _____ (2015): Business entities, Number of active business entities, 2014- News Release No: 6.1.15.14. State Statistical Office, Republic of Macedonia, p. 2;

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	Total	0-9	10-19	20-49	50-249	250 +
2013	19479	10386	3865	3197	1747	284

Source: _____ (2015): Structural business statistics, 2013-final data- News Release No: 6.1.15.23. State Statistical Office, Republic of Macedonia, p. 4;

[66] Including business entities with unascertained number of persons employed

Table 4: Enterprises according to innovativeness, by sector and size

	All sectors	Innovators	Not Innovators
Total	4 818	2 060	2 758
Small	3 967	1 583	2 384
Medium	719	337	342
Large	132	100	32

Source: _____ (2014): Innovative business entities in the period 2010-2012- News Release No: 2.1.14.25., State Statistical Office, Republic of Macedonia

Table 5: Enterprises according to the type of innovation

	2010-2012		
	Innovators in product or process	Innovators in the organization or marketing	Product/process and organizational/marketing innovators
Total	509	956	374

Source: _____ (2014): Innovative business entities in the period 2010-2012- News Release No: 2.1.14.25., State Statistical Office, Republic of Macedonia

CONCLUSION

In order to enhance destination competitiveness, we must understand how entrepreneur shapes and remodel destination-based innovation systems by mobilizing tourism networks and focusing system dynamics towards commercialization of products and services. Cross-sectoral nature of the tourist industry requires building an innovative culture among tourism stakeholders as a long-term initiative, not as a quick fix by policy-makers. STEs in general tend to be imitators, not innovators. Thus, public sector intervention fosters change in the innovation culture. Looking at the destination level, innovation can still occur without state intervention, based on individual entrepreneur venture decisions to size the business

opportunities. But collaborative and cooperative innovation behavior between competitors at a destination level, will lead to flourishing clusters of products and experiences that raises destination competitiveness significantly.

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POSITIVE DISCRIMINATION AND REPRESENTATIVE BUREAUCRACY[67]

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Abstract

In this paper, in-depth considerations and through critical prism are observed reflections and implications of the principle of parity in employment of (un) professional view of the administrative entity.

The intention of the author is that the administrative apparatus reflects the multi-ethnic coloration of a particular state. The commitment echoes the principle of parity to be incorporated into the substrate of the administration as a substantial element for establishing institutional expert and professional staff from all social groups, which would provide a real service in order to meet customer needs.

Equitable representation is not a synonym for „proportional representation“ in an arithmetic sense, that it should not be understood as filigree representation of minorities in the public sector according to their share in the total population and based on some rigid quota system, but with term primarily accentuate the tendency to achieve a gradual movement towards general proportional representation based on personal skills and professional competencies.

Key words: positive discrimination, parity, representative bureaucracy, professionalism.

INTRODUCTION

The choice, their deployment of additional jobs and determining their powers and duties in the work, is keeping personnel policy, whose essence is summarized in the motto “the right man at the right place”[68].

[67] review scientific paper

[68] Vitanski, D, Selection of civil servants, Yearbook 2007 of the Institute for sociological, Political and Juridical Research, Skopje, p. 248, 2008

,,Individualism and equality“ are fundamental ideals, they should lie at the heart of decisions about who will be employed and through what process will be effected as employment .

The value of individualism should encourage competitive and to establish a competitive recruitment process, in order to recruit the person who is most qualified for a given position. Concept, equality, however, requires the Staff policies to ensure equal opportunity and access to employment authorities for all significantly relevant" groups in society[69].

PRINCIPLE OF EQUALITY OF EMPLOYMENT IN PUBLIC ADMINISTRATION

In the crux of discrimination stands intolerance in the workplace to those who are different. In employment it is manifested in the failure to treat equals equally. Whether intentionally or unintentionally, any action which has the effect of limiting opportunities for employment and advancement because of one's sex, race, color age, national origin, religion, physical handicap, etc., constitutes discrimination and is illegal.

In this context, for example, I would emphasize Afro-american discrimination that was established as a tradition, and in some countries has been legal, permissible. The de facto segregation was rooted in the north and legal in the south of the U.S[70]. The majority of African slaves in 1789 in the United States were not treated for citizens until the adoption of the fourteenth amendment after the Civil War[71].

Today, still prevails feeling among African Americans of isolation and perception that there are barriers that limit their opportunities for education and employment compared with whites[72].

The concept of equal opportunities in employment has political, cultural and emotional overtones. It is a set of procedures and practices that

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[69] Management of Local Government, Public Administration in practice (translation), Magor, Skopje str.95 2009

[70] Carr-Ruffino, Norma, Diversity and Affirmative Action in Public Service, Boulder, CO: Westview Press, str.133, 1999

[71] ibid, str. 140

[72] Charles, Joann,,,Diversity Management: An Exploratory Assessment of Minority Group Representation in State Government ", Public Personnel Management 32 (4), p.570, 2003

effectively protects people not to be excluded from the opportunity for employment because of their race, color, sex, religion, age, national origin or other factors , which could not legally be considered for selection candidates.

In France, the principle of equal access to public services is formulated in the Declaration of the Rights of Man and Citizen of 1789 (Article 6): ,,Because all citizens are equal before the law, they are equally acceptable to all the dignity, and the lay public duties according to their capacity and without taking account of any one else but their characteristic virtues and talents". This principle is accented in the Universal Declaration of Human Rights. Article 21 of that document explicitly states: "Every person has the right in terms of equality to participate in public service of his country"[73]

In the United States, Title VII of the Civil Rights Act of 1964 provided: "Employers who hire or lay off people from work or make other decisions regarding the conditions of employment, should not do so on the basis of race, color, religion, sex or national origin"[74]

POSITIVE DISCRIMINATION

By executive order of U.S. President Kennedy 10925 of March 6, 1961, was first established "positive discrimination" in order to operationalize the policy of non-discrimination in employment by the federal government and its contractors.

The intention of positive discrimination in its infancy was removing ,,artificial barriers" to employment of women and members of minority groups. In particular, emphasis was put on hiring more minorities in the federal service.

Despite the establishment of the contours of positive discrimination for effective practical implementation of this concept needs time, consistent political will and uncompromising struggle against prejudices and stereotypes that have been deeply rooted in the social milieu. In this context, would notate sequence of the speech of U.S. President Lyndon Johnson at Harvard University in 1965: "You cannot take a person who for years has been fettered with chains and brought to the starting line of a race and tell

[73] Quote by Grizo, N, Gelevski, S, Davitkovski, B, Pavlovski - Daneva, A, Administrative law , Skopje, p. 270-271, 2008

[74] Allred, Stephen, Employment Law: A Guide for North Carolina Public Employers, 3th ed. Institute of Government: The University of North Carolina at Chapel Hill, p.13, 1999

him/her, now you are free to compete with the others, and believe you are quite fair"[75].

Through the process of evolution, the idea of positive discrimination received quite zealous supporters. For example, according to one of civil rights activists in the U.S., Roger Wilkins: „Whites - sexist and racists who are unable to accept other people are damaging themselves , they are morally backward people". They also are victims of racism and sexism, even if the issue is their own life. Affirmative action programs, which allow contact with a different group of collaborators will help them get rid of their own ignorance. They may „morally backward" to become "morally elevated"[76].

The basic premise in the context of positive discrimination is that it would contribute to the institutional integration of the members of „marginalized groups", improve their economic and social status, emancipation, a sense of loyalty and belonging to the state system and so on.

The essential argument, however, against positive discrimination is that it is unfair. It destroys the dream of Martin Luther King: "The dream that my four little children will one day live in a country that will not be judged by the color of their skin but by their character."[77]

REPRESENTATIVE BUREAUCRACY

The term representative bureaucracy means the right to participate in the institutions of the system of all social groups. As synonym of representative bureaucracy it is also used the term principle of parity, which means employment in the administration of various social groups in proportion to their numbers in the total population, ie establishment of so-called national chain, primarily in countries with heterogeneous national structure. Thus, depending on the country, can be run for groups of ethnic, religious, racial, regional, social or other grounds.

Ethnicity and representativeness are often subject to agreements in those societies who try to neutralize ethnic confrontations. For example, in Belgium, ethnic divisions contributed several important ministries are

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[75] Shafric, DZH. M, Russell E.V, BORICA, K. P, Introduction to public Administration (translation), Academic Press Skopje, p. 606, 2009

[76] ibid, str.607 – 608

[77] Shafric, DZH. M, Russell E.V, BORICA, K.P, Introduction to public Administration (translation), Skopje, Academic Press, p. 609, 2009

divided according to ethnic basis, which created two ethnically homogeneous units, as a substitute for an integrated unit that rules should work in favor of the one and the other ethnic group. Another variant of the same pattern is subtle Austrian method of separation of the positions in each ministry, depending on ethnicity or, in this case, depending on the religious or non religious preferences[78].

The U.S. programs for affirmative action employers (especially government) are required to make positive advances for hiring women and members of racial minorities[79].

The principle of parity in a big way was established itself in the R. Macedonia. Thus, the selection of civil servants, despite compliance with the criteria of expertise and competence, must be taken into consideration for the application of the principle of equitable representation of citizens belonging to all communities that the Framework Agreement and the amendments to the Constitution in November 2001 was promoted as one of the fundamental values of the constitutional order of the Republic[80].

Framework agreement can be qualified as' "awkward attempt to combine civil and equal rights for all citizens, with elements of consensual democracy"[81]. According to Bieber, this agreement is conceived as, "mechanism for institutionalizing ethnicity"[82].

The implementation of the principle of adequate and equitable representation of minorities in Macedonia's administrative system is an initial burst of birth of many frustrations. Frustrations with Albanian ethnicity because a good part of civil service employees sit at home and take a salary, waiting to be allocated to specific jobs. Resignation occurs in Turkish, Roma, Vlach and Bosnian other minorities who feel discriminated negatively. Finally, anger and resignation occurs in the majority Macedonian

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[78] Peters, Guy B, Policy bureaucracy, Comparative Introduction to Public administration (translation), Academic press, Skopje, p. 142, 2009

[79] Katz, Judith H., and Miller, Frederick A, The inclusion Breakthrough: Unleashing the Real Power of Diversity, San Francisko: Berrett-Koehler Publishers, Inc, str.5, 2002

[80] Framework Agreement, Clause 4.1, Constitution of the Republic (2002), PE Official Gazette of RM"

[81] Farimah Daftary "Conflict Resolution in FYR Macedonia: Power – sharing or the civic approach", Helsinki Monitor, str. 291-312 Vol.12, No. 4 (2001)

[82] Florian Bieber "Institucionalizing Ethnicity in the Western Balkans: Managing Change in Deeply Divided Societies", ECMI Working Paper, 2004

community for double standards in recruitment of minority groups[83]. Additional problem that occurs is inequality, which is generated by the fact that the male representatives of ethnic groups that are employed in the implementation of the Framework Agreement outnumber women representatives of these ethnic groups.

Ministry of Information Society and Administration there is not officially disclosed data on the total number of public servants, as well as the representation of minorities in the public sector. In this context, the European Union placed data of those who take wage budget, even 30 percent are members of minority communities. European Commission recommended the government pay attention to the quality rather than the quantity of employees framework[84].

The main intention of the concept of representation were to be hiring skilled and competent personnel from minority communities, for the administration not to be ethnically monolithic device, but it can reflect the multi-ethnic landscape of the state.

No need to cherish illusions that administration can be ethnically monolithic. Rather, as in other spheres of social life, and within the administration it should reflect heterogeneous national structure, but only and exclusively on the basis of a consistent set criteria such as educational qualifications, personal skills, professional competences, etc. , not just based on what the candidates have a certain ethnic origin[85].

CONCLUSIONS

1. The evaluation of a person should not be made on the basis of an innate or her personal attributes, such as nationality, religion, age, sex or status, but on the professional background and value - mental habitus of that person.
2. Governments have a special responsibility to promote equality in employment and, over time, lead to greater social equality. This form of staff selection should be established to effect social equality per se, as well as to improve efficiency and effectiveness in the delivery of administrative services.
3. Bureaucracies are supposed to be representative for their democracy, institutional integration of members of, marginalized groups “enhance their

[83] Vitanski, D, Public and state administration, first edition, Skopje, str.95, 2013

[84] www.novamakedonija.com.mk/ NewsDetal Asp.asp? Vest = 101711811301 @ id

[85] Vitanski, D, Public administration - conditions, problems and challenges, Grafomak Kicevo, p. 32-33, 2012

economic and social status, emancipation, a sense of loyalty and belonging to the state system and so on. However, the basic intention of the concept of positive discrimination should be hiring the most competent candidates and within the group in order to avoid a situation eliminating discrimination to generate another.

4. The essential argument against positive discrimination is that it is unfair. Affirmative action programs generate stigmatization of members of minority communities, because the jobs they received are not because of their competence and merit , but primarily because of the pressure to complete the formal or informal quota.

5. Representativeness of the bureaucracy should not be perceived through arithmetic diopter or it should not be reduced to mechanical meeting some quota system.

It should incorporate a multi-ethnic state substance in professional and administrative architecture. It should not be a source of amateur amateurism and bureaucratic insufficiency, but a tool for institutional integration of professionals from all ethnic background, who should represent genuine customerservice.

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341.638(497.7)

RECOGNITION AND ENFORCEMENT OF DECISION OF FOREIGN COURTS AND

ARBITRAL AWARDS IN THE REPUBLIC OF MACEDONIA[86]

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ABSTRACT

Nowadays, the international trade of goods and services is a dynamic process which includes legal, but also natural persons, that is to say in that process, between the legal person and the natural person there are often disputes which the parties want to settle as fast as possible or to waste as less time and costs as possible. Arbitration is one of the most effective and fair ways of resolving the disputes which are not diplomatically resolved. In fact, the arbitration is the way of determining the differences between the countries by application of legal decisions of one or more arbitrators. Foreign arbitral award is the one which is not settled in the home country and its origin is from the country where it was settled.

Keywords: arbitral awards, recognized, enforcement, Republic of Macedonia, court.

INTRODUCTION

[86] original scientific paper

When considering the opportunity for recognition and enforcement of the foreign arbitral awards, it is necessary to start from the sovereign right of each country, according to which every country has the right to perform the judicial (as well as other) authority. The sovereignty of a country does not tolerate any foreign authorities to determine or carry any action (especially executive action) on its own territory. However, the intensive development of the international trade of goods and services imposes that isolation oriented to sovereignty, could be replaced with cooperation.[87]

Nowadays, it can be considered as a rule that the decisions adopted by the judicial authorities in one country, could under certain assumptions be performed also at the territory of another country. As a result of this, the decisions of the foreign courts and arbitrations, which have permission for execution given by the domestic court, have the power of execution.

THE TERMS RECOGNITION AND ENFORCEMENT OF FOREIGN ARBITRAL AWARDS

In order to have legal effect, the foreign arbitral award should be recognized by the country which performs the enforcement. In fact, it is a decision which is equal with the decisions adopted by the national courts, but with a condition not to exist obstacles for recognition of the foreign arbitral award. With the recognition of the foreign arbitral award, the country allows a foreign award to carry a legal action on its territory, that is to say the foreign award to be performed.

According to Vukoviкj, the recognition of the foreign arbitral award means that it is accepted as effective arbitral award.[88] According to Dzunov, the recognition of the foreign arbitrary award means its homologation – the recognition of the foreign arbitral award is an action in the home country in the sense that one thing is resolved with arbitration and that for that one person a new complaint could not

[87] Deskoski, T, International Law on Arbitration, p.169. 2010 Skopje
[88] Duro Vukovikj, Recognition and Enforcement of the Foreign Judgments and Other Decisions that areEequalized with them, Banja Luka, 1986, p.2.

be initiated by the arbitration or the court of the home country, that is to say the case is recognized as res iudicata. [89]

From the cited paragraphs, it can be concluded that the conclusion, according to which the country accepts the recognition and allows the foreign arbitral award to perform legal action[90], is totally justified. The enforcement of a foreign award includes recognition of the possibility the foreign arbitral award to have legal power in the country of execution and the foreign arbitral award to be recognized for execution. According to that, for a foreign arbitral award to be executed, it is necessary for it to receive execution, that is to say the foreign arbitral award to be recognized in the country where the enforcement would be conducted.

PROCEDURE OF RECOGNITION OF DECISIONS OF FOREIGN COURTS AND ARBITRAL AWARDS IN THE REPUBLIC OF MACEDONIA

In the Republic of Macedonia, the procedure for recognition of the foreign decisions and arbitral awards was regulated by the Law on Resolving Conflict of Laws (LRCL), with the regulations of the other countries in certain relations, until 2007, that is to say until adaptation of the new Law on Private International Law. According to the Law on Resolving the Conflict of Laws, a system of limited control was accepted, with help of a procedure for simple execution.

By adopting the Law on Private International Law, the procedure for recognition of the decisions of the foreign courts and arbitral awards is regulated by this law, which provides a procedure for recognition of arbitral awards. There are certain differences between these two laws and they are as follows: Firstly, in the Law on Resolving Conflict of Laws there is no provision for which procedure applies in regard to the recognition of the decision of the foreign courts and arbitral awards, that is to say whether the procedure will apply according to the provisions of the non-contentious proceedings or according to the legal procedure. However, the Law on Private International Law and Article 115 in 2007 stipulates that the

[89] Todor Dzunov, (1995), International Private Law, temporary textbook, op.cit., p.303
[90] Deskoski, T (2010), international Law on Arbitration, Skopje p.16

procedure for recognition of the foreign arbitral awards is a non-contentious proceeding. Secondly, according to the provisions in the Law on Resolving Conflict of Laws, the court is limited to examine only if there are conditions for recognition of the arbitral awards. When the conditions are examined, the court adopts a decision for refusing or recognizing the decisions of the foreign courts and arbitral awards against the decision, the parties have the right of complaint for which the court of second instance decides.

In the Law on Private International Law in 2007, the court examines whether the conditions for recognition of the decisions of foreign courts and arbitral awards are realized, so it makes a decision which is submitted to the opposite side, that is to say to the other participants, and the court advices them that against the decision they can submit a complaint for which the court of three judges that made the decision decides upon. If the decision after the complaint depends on disputed facts, the court decides after a hearing, so this non-contentious proceeding becomes contentious. [91]

The above mentioned new things that are introduced in the Law on Private International Law in the legal theory of the Republic of Macedonia, the opinions about whether the procedure for recognition of the decisions of the foreign courts and arbitral awards is a procedure of a simple execution or it is a delibation procedure, are divided. Some authors claim that it is a procedure of a simple execution, while others claim that it is a delibation procedure.[92]

The opinions are the same about whether the procedure is contentious or non-contentious. However, Republic of Macedonia has adopted a Law on Non-Contentious Procedure, according to which Article 1 has specified for which relations the courts act and decide upon. When there are amendments to the Law on Non-Contentious Procedure, the court should provide special procedure for execution.

[91] Non-contentious Proceedings that Contain Contentious Relations Between the Parties are Called Contentious, Georgievski, S, Non-Contentious Proceeding, Skopje, 1975, p.21

[92] Gavroska, P / Deskoski, T. International Private Law, Skopje, 2011, p.473

COMPETENCE FOR RECOGNITION OF THE DECISIONS OF THE FOREIGN COURTS AND ARBITRAL AWARDS

The real competence for recognition of the decision of the foreign courts and arbitral awards is regulated by the Law on Courts. The basic courts are competent for deciding upon the requests for recognition of the decision of the foreign courts and arbitral awards of the first instance. The judges decide for their recognition. My personal opinion is that the competence for recognition of the decisions of the foreign courts and arbitral awards should be under the jurisdiction of the basic court with extended jurisdiction. Thinking logically (although the recognition of the decision of the foreign courts and arbitral awards is non-contentious proceedings) the basic court with basic jurisdiction and the basic court with extended jurisdiction decide for the non-contentious things, and it would be illogical the court with basic jurisdiction to decide for the recognition of the decisions of the foreign courts and arbitral awards because the Law on Courts from 2006, Article 30, paragraph 2 line 1 and 7 provides that the basic courts with basic jurisdiction decide in first instance for disputes about property legal and other civil legal relations of individuals and legal entities, whose value is 15.000 Euros in denar counter value. In the Law amending the Law on Courts form 2010, the amount of 15.000 Euros is replaced with the amount of 50.000 Euros in denar counter value, so it would be illogical the basic court with the basic competence, which is limited to decide for the disputes worth 50.000 Euros in denar counter value, to recognize decisions of foreign courts and arbitral awards whose disputes may be worth more than 50.000 Euros.

Besides this legal gap in terms of recognition of the decisions of the foreign courts and arbitral awards, there is one more illogical thing which is connected with the arbitration in the Law on International Commercial Arbitration of the Republic of Macedonia. The competence of the court about the complaints and about the annulment of the arbitral awards, according to the Law on International Commercial Arbitration, Article 6, paragraph 3, the Basic Court Skopje 1 in Skopje will have exclusive jurisdiction to deal with the claims for annulment of the arbitral awards, which is a contradiction with Article 32, paragraph 3 of the Law on Courts, where it is determined that: Basic Court Skopje 1 in Skopje is a criminal court with basic and expanded jurisdiction, which in any case could not act upon complaints for annulment of arbitral awards.

BRINGING ACTION AND COURSE OF THE PROCEDURE FOR RECOGNITION OF THE DECISIONS OF FOREIGN COURTS AND ARBITRAL AWARDS

The procedure for recognition of the decisions of the foreign courts and arbitral awards is instigated with a proposal. The proposal may be submitted by an authorized subject. As a rule, it would be the party in the procedure from which the decision originates, that is to say the party which has a legal interest to perform a legal action in the country where the recognition of the decision of the foreign courts or arbitral award is needed, or its universal singular successor.

The proposal for recognition of the decisions of the foreign courts for personal things could be submitted by everyone who has a legal interest for that. The procedure for recognition of the decisions of foreign courts and arbitral awards starts by submitting a proposal for the interested party to the basic court which is competent to act upon the proposal of the non-contentious proceeding. After receiving the proposal, the court starts controlling the formal assumptions, as well as the assumption that must be taken into consideration ex officio.

The applicant of the request, that is to say the proposer for recognition of the decision of the foreign court or arbitral award is obliged to submit the original decision of the foreign court or a certified copy, and to submit a certificate from the competent foreign court for the validity of that decision regulated by a law of the country where it is made. If the decision of the foreign court is not made in the language which is official in the court where the procedure for recognition is instigated, the party which seeks a recognition of the decision of the foreign court must submit a certified translation of the foreign decision in the language which is official in that court. If the initiator for the recognition of the decision of the foreign court, besides the recognition of the decision of the foreign court also seeks for recognition of its enforceability, it is necessary for him/her to submit also a certificate for enforceability of the decision of the foreign courts, in accordance with the country where it is made.

Besides these formal conditions for the recognition of the decisions of the foreign court, which the court investigates, the court is also obliged to examine the assumptions only after the complaint of the party is submitted. The court examines the conditions ex officio, that is to say it examines whether there are obstacles for its recognition,

such as: exclusion of the competences of the court in the Republic of Macedonia, violation of public order, and whether the dispute for the recognition of the decisions of the foreign courts is arbitral.

When the court determines that there are no obstacles, that is to say when it determines that the conditions for recognition of the decisions of the foreign courts and arbitral awards are fulfilled, the court makes a decision for recognition of the decisions of the foreign courts, it submits it to the opposite side and makes it clear that a complaint can be submitted within a period of 15 days from the receipt of the decision against the decision for recognition.

If a complaint for the recognition of the decision of the foreign court is submitted, the court of three judges decides for that complaint, against the decision with which the court rejected the proposal and against the decision for the complaint, the competent court has the right of a complaint within a period of 8 days. The validity of the decision for recognition of the decisions of the foreign courts is equal with the decision of the domestic court and it gains an enforceability title, but not enforceability.

According to the Law on Enforceability, none enforceable title could be a basis for enforceability if it has not acquired capacity of enforceability.[93] The enforceability is a capacity which is necessary for one document, so on the basis on that, a compulsory enforcement can be required, so that we will get an enforceable document with the capacity of enforceability.

When the party receives the decision for recognition of the decision of the foreign courts with the capacity of enforceability, the party submits it together with the claim for enforcement to the competent executor, which will conduct the enforcement without prior permission.

When it comes to the recognition and enforcement of the decisions of the foreign courts and arbitral awards, it is desirable that the party that received the dispute to previously examine where or in which country the opposite side has property, and from that property the requirements will be charged because where there is property, the

[93] Janevski A / Zoroska Kamilovski-T, Civil Procedural Law (Executive Law), Skopje, 2011, p.47

claim for the recognition of the decision of the foreign courts is submitted and only there it can be executed. A proposal for recognition of a decision of a foreign court and arbitral award cannot be submitted in one country, and the enforcement to be carried in another country where the property of the debtor is.

CONCLUSION

The entire process of the arbitral procedure would be meaningless if there is no concern about the recognition of the enforceability. Because of this, there are instruments which are applicable in case of not fulfilling the adopted arbitral awards, such as the weakening of the diplomatic ties, the strengthening of the restrictions for visa regime, freezing of the assets of the party which does not realize its obligation, selling of a property of the party and etc.

As element of the efficiency of the foreign arbitral award, besides the simplicity of the procedure, the small costs and information and versions of the arbitrary, the possibility for easier recognition and enforceability of the arbitral awards is necessary in the country where the claim can be charged.

The arbitral procedure is a complex process of joint activities of the court and the parties that take part in the dispute which ends with making a decision. By finishing the arbitral procedure and adopting the arbitral award, the dispute in fact is formally legally finished, so an arbitral council is constituted.

However, the contentious relation between the parties is not finished with this act, nor the interest of the party which won the dispute is satisfied. This is so because of the implementation of the arbitral award, that is to say because of its enforcement in accordance with the deposit of the decision. Sometimes it is quick and it is voluntary by the party which lost the dispute, but sometimes the intervention of the public bodies is necessary. However, in most of the cases of arbitral procedure, the arbitral awards are executed voluntarily by the party that lost the dispute.

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HUMAN RIGHTS IN INTERNATIONAL COMMUNITY[94]

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Abstract

Today the international community consists of numerous organizations in which countries as subjects of international law are taking participation. Numerous regulations of these organizations are norms of the entire international community. Among these standards there are many for human rights that are well defined in the Universal Declaration of Human Rights of the United Nations (1948) and the European Convention on Human Rights (1950).
Keywords: declaration, convention, law, human

INTRODUCTION

The concept of human rights is based on the idea that man has universal natural rights or status, regardless of some circumstances such as ethnicity, nationality and gender. There are some features that are related to human rights. They are universal, they belong to every human being in the same manner and they are protected by the Constitution, laws, treaties and international agreements. Another characteristic is that they are inalienable, of the individual. The concept of human rights is gradually raised by different ideologies, organizations and countries to eventually get universal significance codified in the Universal Declaration of Human Rights of 1948 the United Nations and the European Convention on Human Rights which was adopted in 1950. Today the issue of human rights transcends national boundaries. This process begins with the founding of the United Nations and by creating various international organizations open to almost any international entity and almost to a man because he can be included as a subject of international law. The purpose of this paper is to explain the contribution closer to the aforementioned conventions as an international "law" in the field of protection of human rights.

[94] professional paper

Universal Declaration of Human Rights

Universal Declaration of Human Rights was adopted on December 10, 1948 based on the monitoring of the experience of the Second War and expresses the protection and promotion of human rights. It was adopted by the UN General Assembly. The intention of its authors, as stated in the introductory provisions, where it is set as "common standard of achievement for all peoples and all nations, to every individual and every organ of society, keeping this Declaration in mind." In its structure begins with Preamble which is composed of seven positions, and consists of 30 members who are elaborated later in the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights and its two Optional Protocols.

Brief overview and meaning of "ideal of all people and nations to achieve"[95]

The following text will elaborate the basic rights and freedoms mentioned in this declaration. As first mentioned ideal are equity and freedom of all people[96]. This declaration in its spirit promotes equality regardless of race, color, sex, language, religion, political or other opinion, origin, property[97]. It Guarantees the right to life, liberty and security of person[98]. An important provision of this Declaration is that explicitly defines the equality of all before the law and protection from any kind of discrimination, and the right to legal advice before the competent courts[99]. Regarding the behavior of the judiciary is defined right to a fair and public procedure before an objective judgment and respect of the presumption of innocence[100]. It is determined that no one can be arrested, imprisoned or exiled from their own country[101]. On the international categories definitely asylum in another country, in the case of prosecution[102]. Citizenship as a legal category, must not be unreasonably denied, and it is provided the change of nationality of each

[95] Preamble of the UDHR
[96] Article 1 of the UDHR
[97] Article 2 of the UDHR
[98] Article 3 of the UDHR
[99] Article 7 and 8 of the UDHR
[100] Article 10 and 11 of the UDHR
[101] Article 9 of the UDHR
[102] Article 14 of the UDHR

person[103]. The Declaration defines marriage as the free will of the marriage partners and family as the basic unit of society[104]. The right to property, freedom of thought and expression, conscience and religion and the right to peaceful assembly and association associations are integral rights of this international template[105]. In terms of public works has the right to equal access to public services and has the right to elect the government through general and equal elections by secret ballot[106]. The right to work, to free choice of occupation, protection against unemployment, the right to equal pay for equal operation, the right to form trade unions, the right to rest and leisure as well as a periodic holidays are essential rights of man are definrani in this Declaration[107] . Guaranteed is the living standard that is explained further as a way of man where is guaranteed health and welfare (food, clothing, housing, medical care social conditions), and mothers and children are defined as a category entitled to special prevention and certainly illegitimate children are defined to enjoy the same social protection and others[108]. An important provision is that of education as a powerful tool, which UDHR guarantees everyone the right to education that is free (primary and basic education) and includes values of understanding, tolerance and friendship among nations and that of cultural life in which everyone has the right to participate equally[109].
The above rights are increasingly important in a global society and a model for how to look legal orders of any state. UDHR in Guinness book is described as "most translated document" of the whole world. This declaration, although not legally binding, was adopted by most states. It serves as the basis for a number of international treaties, international, regional and national institutions and state laws in the role of human rights. Scientific doctrine it describes as moral and diplomatic pressure on governments that violate.

European Convention on Human Rights

European Convention on Human Rights was adopted in 1950 by the Council of Europe. In its structure contains a Preamble and 59 articles. The Convention later has adopted several protocols. In continuation of the text

[103] Article 15 of the UDHR
[104] Article 16 of the UDHR
[105] Article 17, 18, 19 20 of the UDHR
[106] Article 21 of the UDHR
[107] Article 23 and 24 of the UDHR
[108] Article 25 of the UDHR
[109] Article 26 and 27 of the UDHR

follows a brief elaboration of the Convention in order to realize the importance of this Convention.

Starting from the Preamble of the Convention, it is important to note the importance of the UDHR which is mentioned as an important international document in direction of human rights. The Preamble mentiones the aim of the Council of Europe to achieve unity among its members right through the issue of human rights and fundamental freedoms. First mentioned is the obligation to respect human rights by member states that joined[110]. Then comes the first part of certain rights and freedoms. First is the right to life which is described that is protected by law[111]. Explicit below is the ban on torture which means inhuman or degrading treatment or punishment[112]. The right to liberty and security is guaranteed in a way that no one shall be deprived except in certain legal proceedings detailed in Article 5 of the Convention. Another right which is of particular importance is the right to a fair trial, which involves a fair and public trial that should be within a reasonable time by an independent and impartial tribunal. It is determined exclusion of the public is part of the procedure or completely when it could offend morality, public order or national security. In the area of fair trial it is defined the presumption of innocence and minimum rights of any accused[113]. Convention clearly and unambiguously provides that the offense to be criminal or punishable should be determined by international law or regulation or general principles of law recognized by civilized nations[114]. Later it is determined the right to respect for private and family life, freedom of thought, conscience and religion, freedom of expression, freedom of assembly and association similar to the Universal Declaration of Human Rights. The right to marriage and the prohibition of discrimination is regulated similarly as in the UDHR.

The second part of the ECHR defined the European Court of Human Rights as a guarantor of respect for the obligations of the Convention and its Protocols[115]. In terms of the number of judges determines that it is equal to the number of countries that have signed the Convention[116]. Regarding the performance of their function it is planned the court to obtain professionals of high moral character, who will work independently, with its own independent capacity and in a way that will not run anything else while they

[110] Article 1 of the ECHR
[111] Article 2 of the ECHR
[112] Article 3 of the ECHR
[113] Article 6 of the ECHR
[114] Article 7 of the ECHR
[115] Article 19 of the ECHR
[116] Article 20 of the ECHR

perform this function[117]. Regarding the choice it is provided that the Parliament elected by a majority vote from a list of three candidates proposed by the member-state[118]. Regarding the duration of the mandate it is provided a choice of six years renewable[119]. Secretariat as a body, it is set to disposal to the court[120]. The Convention defines the Committee, Chambers and Grand Chamber as bodies that consider cases composed of three judges, seven and seventeen respectively[121].

The Convention stipulates that if it is violated any norm of the provisions of the Member States, the court is competent to decide[122]. Apart from member states as applicants, court protection may occur individuals, non-governmental organizations, and groups of people who are considered victims of damage provided by the Convention[123]. Regarding the admissibility Court can decide if exhausted all domestic remedies[124]. At the hearing before this Court may involve state whose citizen applicant by submitting written comments or participation in the discussion[125]. Convention provides the public debate and access to documents[126]. After the verdict within three months either party may request the matter be reviewed by the Grand Chamber[127]. The judgment of the Grand Chamber is defined as final[128]. The judgments are binding and have the force of enforceability of Countries that signed the convention parties to the dispute[129]. Court may give advisory opinions on questions of interpretation of the Convention, by the request of the Council of Ministers[130]. Judges for the duration of their term enjoy privileges and immunities[131].

This Convention as newer document of the Universal Declaration of Human Rights is more represented at regional level and concerns the European countries apart from the UDHR whose action is universal. As mentioned above can be emphasized once again that if there is an injury of

[117] Article 21 of the ECHR
[118] Article 22 of the ECHR
[119] Article 23 of the ECHR
[120] Article 25 of the ECHR
[121] Article 27 of the ECHR
[122] Article 32 and 33 of the ECHR
[123] Article 34 of the ECHR
[124] Article 35 of the ECHR
[125] Article 36 of the ECHR
[126] Article 40 of the ECHR
[127] Article 43 of the ECHR
[128] Article 44 of the ECHR
[129] Article 46 of the ECHR
[130] Article 47 of the ECHR
[131] Article 51 of the ECHR

any kind of human rights this Convention determines a body that will act in the event of injury or the European Court of Human Rights.

Conclusion

In this paper above are mentioned international instruments in different ways that international community can produce pressure on governments to respect human rights and the various instruments through which the state can be called to account for human rights violations. However, pressures and punishing states for violations of these rights are not enough. The international community must not and can not be the only one responsible for the protection of human rights. The obligation to protect human rights lies in the jurisdiction of the states that have to move the legal orders to guarantee them. Unfortunately in the 21st century, there are numerous states that does not respect the rights of women and children, then the rights of the employee, private rights, the right to a fair trial.

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CLUSTERS AND THEIR CONTRIBUTION TO THE NATIONAL ECONOMIES DEVELOPMENT[132]

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Abstract

The formation of clusters, allows to encourage the involvement of a number of small and medium-sized companies that are developed through joint action towards the realization of the objectives. The development of a common strategy among several small or medium-sized companies, often is critical to fostering economic growth and development of the country especially in developing countries, where are undertaken comprehensive economic reforms. In this way, the family businesses have had open prospects for increased production, increased employment, innovative development, improve the expertise of staff, improved product quality, increased exports and better use of their own potential through collaboration with other companies in the cluster. Thats means that the clustering will contribute to strengthen family business positions in the international market.

Key words: Cluster, Family Business, Competition, Innovation

1. INTRODUCTION

The existence of the cluster as a form of organization of businesses is known long time ago in a different economies as geographical concentration of businesses, but without significant impact on national economies. In fact, the existence of crafts of an geographical area that cooperated in certain areas as part of the laws of nature, is a fact which

[132] review scientific paper

shows that this form of organization existed across centuries in many regions. This means that the clusters have long been an integral part of national economies, but with significantly limited role.

In the economic literature, the term ***cluster*** becomes prominent in the 90s years of last century with the publication of the book "Competitive advantage of the nation" by Michael Porter, professor of Harvard University. From the Porter analysis of the competitiveness of companies, can be concluded that the leading companies do not operate in isolation from other businesses, they operate as part of a wider group of complementary companies. Such a group of related companies are called clusters.

So, the concept of cluster association is not new. Some authors started to think for a cluster in the early twentieth century, when arise and corporation which main aims was to increase company productivity. After that, on the cluster began to be seen as an opportunity to introduce innovative thinking for a company or business, and opportunity for the region development. This considerations recently to expand the national and multinational level.

2. ACTORS IN THE FORMATION OF CLUSTERS

The main perspective in which we need to focus in a modern economic conditions and at the same time to provide prosperity and development of companies, is their connection to science. The clusters in today's economic conditions represent a central part in the creation worldwide of industry, region, national and innovation of policy . Especially important is their role in the recovery and strengthening of national economies and promoting the need for the industry to science. This is interesting for the companies involved in the cluster and all those actors that contribute to the formation of this cluster. Above all, think of the local and national government as well as research and educational institutions, which are also part of the cluster.

When we say that the cluster has to be adapted to conditions in the region or area in which it works, we do not think only of the existence of the resources required for its normal functioning, we think and on to its organizational structure and implementation of the cluster in the society, and the need to follow the interests of local politics and tradition in the industry. Those involved in the formation of cluster the companies, the government, the academia, the financial institutions and the body which will organize and coordinate activities that will result in further activities-institution collaboration, are graphic displayed in Fig. 1.

Fig. 1 Actors in the formation of clusters[133]

Source: www. Cluster observatory.eu

The Companies, are central to the policy and activities of the cluster and they are directly involved in market processes. According to Anderson (2004), on companies should be seen as conduct their activities and their participation in the cluster should be recognized as a tool to improve sales and profit growth. Companies have valid reasons to stay away from this kind of cooperation as a security measure to protect their data and preserve competitive advantage. But Anderson agrees with the fact that many clusters have a great company that functions as an anchor and around it are located greater number of small companies.

The Government, whose action can be international, national, regional / local level undertaken a significant role in creating policies for economic progress. When we said internationally level we mean on the EU states. Despite the respect of national legislation, must be adjusted and the EU regulation. The distribution of funds refers to regional actors, support for extensive modernization of infrastructure and transnational cooperation on research and development. National government has a impact on effects on coordination of capacities, but missing the proximity of local clusters. The government is expected to provide the infrastructure to support the growth and competitiveness. The role and the intensity of the actors in the public

[133] Jukka Teräs, Regional Science-Based Clusters A Case Study Of Three European Concentrations, 2008, стр.39

sector is supporting regional cluster initiatives, because each one offers opportunities to improve productivity and increase support for the pay.

The Research community (universities, laboratories, research institutes), are generally characterized by in-depth knowledge and analytical skills. Research community in many countries initiated initiatives for inclusion in commercial companies (Andersson)[134]. Breshanan & Gambardella (2004) emphasize the importance of a highly skilled workforce, as a prerequisite for the growth of companies and cluster, and yet the initiative universities and scientific research centers to be the initiators in starting cluster association, saying that the university itself is not is essential for the emergence of a successful cluster. They point to the fact that in developing a skilled workforce, universities play crucial role.

The Financial actors - banks, insurance companies, public pension funds, mutual funds, business angels, venture capitalists - all have their own goals, constraints, and use. Government and industry have been identified as major sources of funding for the cluster initiatives (Sölvell et al. 2003), but still the financial actors, particularly private investors play a key role not only in the channeling of funds, but also in the provision of human capital.

The Institutions for collaboration (IFSc), are formal or informal actors for promoting the initiative to form a cluster. IFSc may consist of several different stakeholders who can complement each other. The idea of such institutions is to explore interest stakeholders as mediators who advocated for organizations with specific knowledge and interests, allowing them to respond to supply, demand, and the need for labor, information, knowledge, and technology. Their abilities and roles can be developed during the life cycle of the cluster.

3. POLICY IN THE FORMATION OF CLUSTERS

The formation of clusters created as an initiative of the economy, government or academia, with the assumption that, over time will create a strong base and a greater commitment of partners. This is why the need for frequent communication between industry, those responsible for policy-making and those directly involved in the activity of the cluster formation. Such cooperation should be continuous and occurs in all areas of operation of the cluster.

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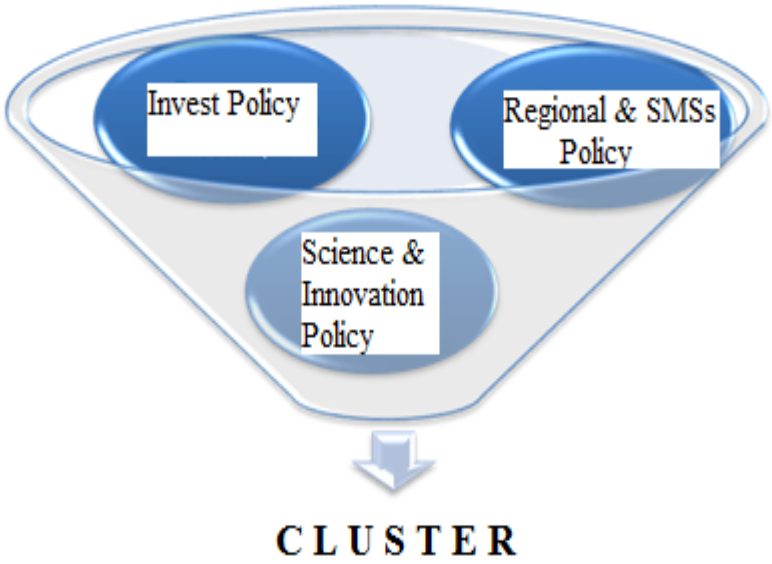
[134] *Jukka Teräs* REGIONAL SCIENCE-BASED CLUSTERS, Faculty of Technology, University Oulu, p. 40

Fig. 3 Three main policies in the formation of the cluster[135]



Source: www.clusterobservatory.eu

On the formation of clusters affect three types of policies that should be part of the interest in the formation of clusters. The first refers to the policy for the regional level and relates to regional industry and operation of SMEs, the second relates to attracting investments, which are an important element in improving the economic climate in the country and the third refers to the science and monitoring latest innovative research activities. So, all activities undertaken in terms of clusters, aimed towards research and functioning of the cluster.

The success of the clusters lies in more dimensional involvement of various stakeholders, especially the scientific research centers and higher education institutions. It allows the use of joint forces and assets and joint activities require a shared vision, common goals, while strengthening the trust will allow for faster flow of information.

Clusters are complex forms of organization, with decisive impact on competition and emerge as expressed features of the market economy.

[135] http://www.clusterobservatory.eu

Clustered in an economy give significant contribution to the production potential and limits as to their future economic development.

4. GOALS FOR CLUSTERS FORMING

The Modern knowledge economy allows to clusters, much more structured role in the economic development of a country. Because the clusters are involved in a wider dynamic theory of competition, we can noted the broader role of clusters in competition in society. The clusters occupy more complex and more integral role in the modern economy. Clustered in an economy, they give significant contribution to the production potential and limits as to their future economic development. So we can say that essential elements for the formation of clusters are:

- Improving competition
- Increase productivity
- Encourage innovation

The competitive advantage of clusters will be equally great in all areas although they are widely represented in the economy. The significance of the clusters usually increases when the economy develops. The reasons that lead to increase the competitiveness of the clusters are different such as: location, innovation, flexibility, specialization, interdependence, a process aimed at learning and monitoring of new technologies, the availability of capital.

The Productivity is the second purpose for which the small and medium enterprises are choosing to be part of the cluster. Locating within the cluster can provide better and cheaper access to specialized factors needed in the production process. Cluster therefore presents a spatial organizational form, which therefore can be more efficient and effective means of collecting production factors. Thanks to stakeholders within the cluster, reducing transaction costs, reduces the need for reserves and eliminate import costs and delay. Purchases, inside the cluster simplifying communication, reduce costs, and facilitate joint procurement of ancillary services.

The Encouraging innovation is closely related to productivity. Potential advantages of clusters are important in the perception of the need for innovation and the ability to achieve them, but equally important may be the ability and flexibility for quick action. Thus, the cluster companies can obtain faster components they need to introduce innovation whether it is a new line, a new production process or a new logistics model. An essential element in all of this experts and experts from other companies that can be included if a need for it. Therefore, as part of the company within the cluster

can experiment with low cost and great obligations to be delayed until sure that their product, process or service will fail.

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BUSINESS ETHICS AND RESPONSIBILITY IN THE INTERNATIONAL BUSINESS OPERATIONS[136]

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Abstract

The ethics as medial area between the field of codified laws and free decision in the last decades is given special attention, especially in the international business in terms of globalization. The time is passed when the mission of the company was exclusively economic, and its sole purpose was profit. Today the managers act in a pluralist society and they face the competition on an international scale, where their interests require them to respond to the interests of many national institutions and the wider international environment. They need to meet the demands of the shareholders, employees, suppliers, customers, government and the public. To respond to the requirements are diverse and vary according to their geographic range. As a result, to the managers is imposed the need to behave ethically in the decision-making and to take social responsibility. The categories of ethics and social responsibility, today, are accompanied by another very important category, a social reaction ability. The successful business relationships in the 21st century require honest and fair relations that are based on moral principles and values.
The emphasis in this paper is on the management of the ethical issues in the international business, the existence of inter-national differences in

[136] review scientific paper

approaches to ethics and dealing with them, some of the problems in dealing with codes of conduct and ethical issues and dilemmas in the countries in transition.
Key words: ethics, social responsibility, social ability to react, international environment, inter differences.

INTRODUCTION

Working in modern conditions imposes different rules than previously. Namely, with the fall of the international barriers and the expanding of the international trade, it is no longer enough only to respect for legal norms and political rules. Many companies that are operating internationally already are facing with complex ethical issues that require further knowledge and willingness by international managers. They have to know first of all the legal and policy framework in the country in which they are expanding their business. However, just because some activities are legal or politically tolerated that does not mean that you can go unpunished by consumers and the wider environment, which can affect the success of the business. In many cases, such activities may have some effects on personal, organizational or higher social levels. Therefore, on long-term for the companies is best to act within a wide defined set of ethical values. Although such a set of values is difficult to define and implement, without to impose many ethical dilemmas, and following a voluntarily imposed rules could raise the goodwill of the customers, help in avoiding the misunderstandings and affect the benefits of the Company and the wider social benefits. Having in mind the basic commitment to ethics as a stand for what is right or wrong, ie the individual moral judgment, this paper focuses on how the multinational companies can serve to the societies and states in which they are operating. There are even thoughts on explicit construction of corporate social responsibility of the multinational companies in their international strategies. Despite the great attention that is paid to these issues in recent years, however, the concept of business ethics and social responsibility, is mostly unclear. Partly because of the different approach to ethics by different cultures. What is ethical for one environment may be contrary to the ethical standards and unwritten rules in another environment in which the international business is expanding. There are also major differences in the form of organization of the political system in certain countries. That kind of organization, in turn, has a direct or indirect impact on the moral values of the people involved in international business. The system of moral values of

the management and the other staff involved in the business, reflected in their real behavior in terms of the many ethical issues, such as environmental protection from a various forms of pollution; care for the life and health of consumers; suspicious payments; bribery and corruption; stealing ideas from the competition; directly or indirectly attacking the competing firms; care for the life and health of employees; support / unsupport of the humanitarian actions; raising ethical questions etc.

SOCIAL RESPONSIBILITY AND SOCIAL REACTIVITY

The social responsibility and reactivity can be considered for all types of entities (commercial, non-business, profit, non-profit, domestic and international). In that sense, any organization, whether it is a business entity or other organized community of people has an obligation, in parallel with the exercise of their own interests through the activities undertaken to protect and promote the welfare of the society as a whole. This is included in the society and all our actions should be undertaken carefully, taking care to protect the interests of its stakeholders and the society in general. Responsibility towards the community have the schools, hospitals, nonprofit organizations, foundations, associations, sports clubs, religious organizations, cultural and artistic organizations, a primarily business entities with their business activities. As a result of the impact that the businesses have on all its stakeholders and the society and it can positively or negatively be used to achieve their economic objectives, in particular literature emphasizes corporate social responsibility. For many years theorists and managers express their views on the responsibility of companies towards society. Although we can not pinpoint a single definition, however, it can be said that the social responsibility (social reactibility) of the business entities doing their duty and all its activities and actions undertaken to exercise them are aimed at protecting the interests of the various stakeholders. That their obligation is determined by the prescribed legal norms or determined by the norms and principles. The essence of the social responsibility is that the business entity should asses the consequences of their own decisions adopted on society.

Today, in addition to the term social responsibility are increasingly talk of social reactivity of business entities (social reactivity) as their ability to respond to the requests for protection and promotion of the wider community. Although it occurs more recently, the term is inseparable from the social responsibility and it represents explanation of its practical application. Therefore, when we talk about social responsibility in the theory and practice of management thinking simultaneously and social

responsiveness. The notion of social reactivity indicates the degree of effective and efficient implementation of procedures leading to social responsibility. Simply put, it is a response to a business entity in respect of obligations to its stakeholders, the local community and society as a whole. This term can be defined as the ability of a business entity its policy and actions to be developed towards the social environment in ways that will be of interest for the company and for the society. Before the managers to face the task to develop such a process of decision-making in companies with which they will anticipate, respond and manage the individual areas of social responsibility.

UNIVERSALISM AND RELATIVISM OF THE ETHICS IN THE INTERNATIONAL BUSINESS

Despite major differences in terms of how to act and what behavior of others is considered acceptable, basically all they can be grouped into two main approaches: universalism and relativism.

Universalism assumes that there is objective, widely-disseminated rules placed within the code of ethics of business can be applied in different countries and cultures. According to this view, there are many moral rules that inevitably all, without exception, should follow. The basic starting point of this system of thinking is that there are some universal humane values that are unique in all cultures, regardless of the differences that exist between them, such as: do not steal, do not kill, do not lie, do not bear false witness, etc. . On this view continues to display some basic principles for executing any business, and it is supported by the fact that in all countries there are more or less stringent legal requirements by which prohibits certain forms of business activities such as: bribery, theft , lying and so on. So here it is not about the legal rigor of those rules and the degree to which they are observed, but only notorious fact that they exist in almost all countries worldwide. So the fact is that there are "rules" which can be widely applied in the execution of all forms businesses. Members of this conviction (univerzalistite) do not practice to be back and expect that the subjects, according to their beliefs freely, they will try to find such rules and adhere to them. Rather, the most common strategy for which they advocate is to actively develop rules of conduct that would constitute a universal manual. In practice, they made several attempts to develop a "transnational" or "global" code of ethics that managers in multinational companies should follow. In that sense, univerzalistite have developed a set of minimum rights for employees in international business, among which are included; the right to physical security, the right to freedom of speech, the right to fair

compensation and the right to non-discriminatory treatment. The following table lists some of the basic international legal acts for companies operating internationally must comply to meet the basic ethical requirements and thereby synergistically to link the rights of individuals and corporations.

Table 1: Rulebook on ethical responsibilities of the companies involved in the international business[137]

• Universal Declaration of the Human Rights Council. • Rulebook for the MNCs by the Organization for Economic Cooperation and Development (OECD). • European Convention on Human Rights. • Helsinki Final Act. • Declaration of Principles concerning MNCs and Social Policy of the International Labour Organization. • International Declaration on Economic, Social and Cultural Rights. • International Declaration on Civil and Political Rights. • Code of Conduct of the UN transnational corporations. • Code of Conduct of the European Economic Community (EEC) for companies with interests in South Africa. • Sullivan Principles - Rules introduced by Rev. Leon Sullivan (Leon Sullivan) for US companies managing in South Africa during the era of apartheid regimes (before 1994).

These conditions apply to various areas of the basic human rights, safety, environmental care, and to illegal activities (bribery, corruption etc.). A more broaden rule of conduct in the international business follows below:

Table 2: Seven basic ethical principles for MNC from De George (1993)[138]

• MNC should not intentionally cause harm. • MNC should produce more benefit than harm in the host country. • MNCs, with their activities, should contribute to the development of the host country.

[137] K.T. Jackson, "Jurisprudence and the Interpretation of Precepts for International Business", Business Ethics Quarterly, 4 (1994), page. 291-320.
[138] Dean B. McFarlin & Paul D. Sweeney, International Management- Trends, Challenges and Opportunities, South- Western College Publishing, ITP Publishing, 1998, стр. 591.

- MNC should respect the fundamental human rights of their employees.
- To the extent to which local culture does not violate ethical norms, MNCs should respect local culture and operate in accordance with it.
- MNC should pay taxes.
- MNC should cooperate with local authorities in the development of ethical institutions.

It is about the seven ethical principles that MNCs should follow to achieve a basic level of social responsibility. But the basic problem with the definition of ethics arises in this case. First, this breadth and universality of the rules leave room for imprecision in their broad interpretation. That, in turn, leads to a significant level of inconsistency in the implementation of these rules by various MNCs. Much of this imposed rules can be met in a very different way in different countries. For example, deliberate or inadvertent cause damage is very questionable and, in many cases, can be challenged. Another problem that arises in this regard, is that many states and companies have not officially adopted all (or some) of this aforementioned ethical requirements.

Such problems will imply the acceptance of cultural relativism, as a popular alternative to universalism. Promoters of relativism believe that ethical behavior in one particular country is conditioned by its unique practice of culture, law and business. This approach is best defined by the old saying "when in Rome, Act as a Roman," is justified by several arguments. Thus the most important argument is that if someone behaves differently to offend the culture of the country in which practically guest. This means that, under this approach, international managers should follow the practice of the country in which they work. But on the other hand, the relative behavior can cause major problems for international managers. Just because the country operates differently from that of the manager wont, not exempt from the obligation to analyze ethical dilemmas and good judgment in terms of ethical issues. For example, exceeding the number of weekly working hours, limiting the political and other freedoms of employees or disregard of their personality, etc., Means equally unethical behavior of international managers, whether it happens "in Rome", Paris or London from one hand, or in Burma, Kenya and Macedonia on the other side. When it comes to such extreme behavior, most people still accept universalism.

DIFFERENCES IN APPROACHES TO ETHICS

Numerous studies show that countries in the world, greatly differ in terms of attitude and action on ethical issues. Americans, for example, show

a high degree of individualism and consequently believe that individuals are the main source of ethical values. Europeans are collectively oriented and business ethics in European countries increasingly described with respect to businesses and their local environment. A survey shows that managers from the United States are less willing to pay bribes than their European colleagues, however, they vary according to the reasons why I made it. About 50% of respondents in the US said they would not pay bribes, because it considered unethical, illegal or contrary to company policy. This answer was given by 15% of French respondents and 9% of German respondents. As main reasons that European managers would pay bribe cite: Competition forces also act ("that's the price to pay to be managed in that country" or "competition force us to accept the offer")[139]. On the other hand, although the relationship to specific ethical issues is similar in different countries, the differences may be the result of various processes of reflection on morality, the differences in legal frameworks and regulations in individual countries, differences in socio - economic environment or cultural values of the country. Moreover, such differences in ethical approaches may be very resistant to change in the short term, even if the political, social and economic conditions changed dramatically.

An important aspect of business ethics in international business is the issue of corruption. In this sense, here follow the quantification of the index of perception of corruption in the international organization Transparency International (TI), according to which data on the most corrupt and least corrupt countries in 2006 are as follow:

Table 3: The most corrupt and least corrupt countries 2014

No.	Country	2014	2013	2012
1	Denmark	92	91	90
2	New Zealand	91	91	90
3	Finland	89	89	90
4	Sweden	87	89	88
5	Norway	86	86	85
5	Switzerland	86	85	86
7	Singapore	84	86	87
8	Netherlands	83	83	84
9	Luxembourg	82	80	80

[139] H. Becker & D. J. Robertson, "The Influence of Country and Industry on Ethical Perceptions of Senior Executives in the U.S. and Europe", Journal of International Business Studies, 26 (1995), page. 859-879.

10	Canada	81	81	84
11	Australia	80	81	85
12	Germany	79	78	7
12	Iceland	79	78	82
...	...	...	...	...
39	Slovenia	58	57	61
...	...	...	...	...
61	Croatia	48	48	46
...	...	...	...	...
64	Macedonia	45	44	43
64	Turkey	45	50	49
...	...	...	...	...
69	Bulgaria	43	41	41
69	Greece	43	40	36
...	...	...	...	...
76	Montenegro	42	44	41
...	...	...	...	...
78	Serbia	41	42	39
...	...	...	...	...
80	Bosnia and Herzegovina	39	42	42
...	...	...	...	...
110	Albania	33	31	33
110	Kosovo	33	33	34
...	...	...	...	...
169	Turkmenistan	17	17	17
170	Iraq	16	16	18
171	Southern Sudan	15	14	-
172	Afghanistan	12	8	8
173	Sudan	11	11	13
174	North Korea	8	8	8
174	Somalia	8	8	8

Source. Trапsparency International, 2014.Web: www.transparency.org.

The latest survey of Transparency International (TI) in 2014 shows that the countries of Southeast Europe, including Macedonia, showed improvement of their situation in terms of corruption. The census countries, released by TI in late 2014, 174 countries are ranked on a scale from 0 to

100. Zero is the highest level of corruption and a houmdred meaning very low level of corruption. Countries in the region have a good position, the best ranked Slovenia on 39 place with 58 points, while compared to the previous year has seen a rise in points, followed by Croatia and the 61 place with 48 points, which has not changed in terms of points from the previous year. Macedonia annually rank is higher, it is now the 64th place with 45 points and more points than last year, which is at par with Turkey, which unlike Macedonia has cut the points on the previous year. Greece and Bulgaria share the 69 place with 43 points and both countries have made increasing points compared to the previous year. The place is 76 Montenegro with 42 points and which have ranked with fewer points than the previous year. Serbia is ranked 78th place with 41 points, which is by 1 point compared to the previous year. Bosnia and Herzegovina is the 80 place with 39 points, which decreased the number of points in relation to previous years. Albania and Kosovo ranked 110 place and also a reduction of points on the previous year.

Another aspect of the different level of attention that is paid to ethics in various countries concerning the existence or non-existence corporate code of conduct in the countries. Research shows that a significantly larger number of companies in the United States have such a corporate code of conduct in writing, apart from European companies. There are differences in the content of such codes. In this regard, 100% of European companies mention in their codes of behavior employees; while only 55% of US companies treat the issue. Given their focus on marketing, they are much more inclined to mention consumers in their codes.

Differences exist between countries in terms of the attitude of companies towards taxation. A global distinction would apply to US companies that want to abide by fiscal laws, but they do not have absolute confidence in the role of the state in business. In contrast, European companies have a general positive attitude towards the state. The situation in Macedonia in regard to this issue is moving in a positive direction, ie It works on building a positive fiscal position in the natural and legal persons.

A special aspect of the ethical problems arise in countries transiting to market economy. Mostly such problems pushed privatization as a global trend, especially in the former USSR, Eastern Europe, South America and China, and lately in some African countries. MNCs tend to see this as an opportunity to purchase state-owned companies, thus providing a potential starting position in emerging markets. The low cost of labor in these countries is an additional incentive for MNCs. But privatization is causing many social problems and creates a huge army bodied edge of existence, increasing unemployment rates, causing a negative effect on the working

morale and causing instability poses ethical dilemmas. The paradox is that the transition causes economic growth and poverty at the same time, that growth also provides growth in the delinquency and the crime.

CONCLUSION

When it comes to the ethics and the responsibility, there are no easy answers. Evenmore on international level. Intertwining cultures, customs, beliefs, habits, laws, social arrangements, political systems. Ethics, belief and practice as "good", it is difficult to implement in practice. The functioning of the systems is mixed, so that every move causes, despite positive also and negative side effects. In this sense, only the goodwill of ethics is not enough. MNCs offer many advantages of the emerging economies. But their actions can cause social problems that accompany the market in the economy in transition. Therefore, part of the ethical conduct of MNCs is that they should be aware of the positive and negative phenomena that cause the spread of their businesses. What MNCs can do is to develop and observe strict codes of conduct for their activities to raise awareness of the various forms of environmental pollution in the countries in which they operate; to invest in a local efforts to protect the environment; to invest in the community in order to overcome the social problems that arise (investment in schools, hospitals, rehabilitation programs, etc.); to finance programs to help the unemployed, programs to support entrepreneurs and so on. It would improve the environment for doing business in all countries, regardless of differences in levels of development and ethical approaches.

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THE BRICS: A QUEST FOR COMMON VALUES[140]

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Abstract

This paper investigates the basic premises of the BRICS group, and its capacity for generating common values, as a precondition for acquiring a political coherency, both internally and externally. Also, this paper elaborates the existence of a value dissonancy, both inside and outside the BRICS compared to the values of the current liberal world order. Considering that, it is concluded that BRICS does not possess any preconditions for creation of its own common value system, but it refers to the United Nations values, and thus taking a role of derivative holder of values. Also, it is concluded that the BRICS cooperation is an important phenomenon in terms of future development of international relations, especially in terms of their decentralization, pluralization, and democratization.

Key words: BRICS, values, liberal order

INTRODUCTION TO THE BRICS

The BRICS is a relatively young grouping of nations and fast-growing economies. At first, the foreign ministers of the initial four BRIC nations (Brazil, Russia, India and China) "met in New York City in

[140] review scientific paper

September 2006, beginning a series of high-level meetings".[141] The BRIC diplomatic meetings focused on international challenges and "on joint efforts to fight the global economic crisis".[142] The leaders of the BRIC nations got together for the first time "on the side-lines of a G8 summit at Tokyo, Japan, in July 2008, and soon after that […] Russian President Medvedev said during a visit to Rio de Janeiro that BRIC leaders would like to have a separate summit in Russia".[143] The Republic of South Africa (RSA) joined the group in December 2010 and BRIC finally became BRICS. As a curiosity, Jim O'Neill, a senior economist at Goldman Sachs, proposed the very acronym BRIC, using it "to denote the four major fast-growing economies, the combined power of which might exceed that of the West sometime in the future – Brazil, Russia, India, China [and later the RSA]".[144]

Considering the importance of this cooperation for the future development of international relations, the online survey was conducted on a small sample of 78 respondents. *The results of this survey are indicative*, nor representative; they only indicate a general mood of the public for the importance of this cooperation. Namely, 42.1% of respondents answered that this cooperation is very important, while 27.6% evaluated this as moderately important (Table 1). Hence, it can be concluded that the BRICS cooperation is an important phenomenon for the future development of international relations.

The BRICS group is constituted on the following documents: 1) First Joint Statement; 2) Second Joint Statement; 3) Sanya Declaration; 4) Delhi Declaration; 5) eThekwini Declaration; and 6) Fortaleza Declaration.[145]

[141] *First BRIC summit. Yekaterinburg*, 2009, http://archive. kremlin. ru/eng/articles/bric_1. shtm[2015].
[142] Alexander Lukin, *BRICS: Multi-format Cooperation, 2009*, http://en. russ-ind. ru/navigator/analytic/454, [2015].
[143] Ibid.
[144] Ibid.
[145] *BRICS Information Centre*, http://www.brics.utoronto.ca/ [2015].

Table 1.

How important do you think is the Brazil, Russia, India, China and South Africa (BRICS) cooperation?		
	Response percent	**Response count**
Extremely important	10.5	8
Very important	**42.1**	**32**
Moderately important	27.6	21
Slightly important	14.5	11
Not at all important	5.3	4
Total:	**100%**	**78**
Source: Goran Ilik, *Normative power interrupted: the EU, BRICS and the Republic of Macedonia*, New Balkan Politics: Journal of Politics (ISSN 1409-8709), Issue No. 14 – 2014, p. 109		

At the First Summit held in Yekaterinburg (Russia), the BRIC nations stated: "We are convinced that a reformed financial and economic architecture should be based, *inter alia*, on the following principles: 1) democratic and transparent decision-making and implementation process *at the international financial organizations*; 2) solid legal basis; 3) compatibility of activities of effective national regulatory institutions and international standard-setting bodies; and 4) strengthening of risk management and supervisory practices.[146] Regarding this statement, it can be concluded that the principle of democracy is affirmed only in terms of international financial organizations and their structuring and functioning, urging for a greater involvement of the BRIC nations in them. The Second Summit held in Brasília (Brazil), promoted the need "for corresponding transformations in global governance in all relevant areas".[147] At this Summit, the BRIC nations underlined their support and will to create "*multipolar*, equitable and *democratic world order*, based on international law, equality, mutual respect, cooperation, coordinated action and *collective decision-making of all States*".[148] This is illustrative example of how the BRIC(S) political elites understand democracy. Democracy is understood as

[146] Joint Statement of the BRIC Countries' Leaders (Yekaterinburg, Russia, June 16, 2009), http://www.brics.utoronto.ca/docs/090616-leaders.html, [2015].
[147] Second BRIC Summit of Heads of State and Government: Joint Statement (Brasília, April 15, 2010), http://www.brics.utoronto.ca/docs/100415-leaders.html, [2015].
[148] Ibid.

legitimacy for equal participation in the world affairs, based on the sovereignty rights of all states. This stance is in compliance with the Russian (semi – autocratic sovereign democracy concept) and Chinese (autocratic) understanding of international relations. While, the term *multipolar* is used as legitimacy basis of such reasoning, hoping that Russia and China will impose themselves on the international political scene as great powers, entitled to its share in the international affairs, as a separate political poles (as opposed USA and EU). The Sanya Declaration, promulgated on the Summit held in China, acknowledged that the BRICS (and other emerging and developing countries) "have played an important role in contributing to world peace, security and stability, boosting global economic growth, enhancing multilateralism and promoting greater democracy in international relations".[149] While, at the Summit held in India on 29 March 2012, BRICS nations adopted the Delhi Declaration emphasizing their vision for "global peace, economic and social progress and enlightened scientific temper",[150] as well as the urgent need for greater involvement of the emerging and developing countries in the institutions of global governance (especially in the UN). Shortly after, at the Durban Summit (South Africa), BRICS nations adopted the eThekwini Declaration, reaffirming their commitment to the "promotion of international law, multilateralism and the central role of the United Nations",[151] and stressing the BRICS contribution in the maintenance of "global peace, stability, development and cooperation".[152]

And finally, the Fortaleza Declaration, adopted at the BRICS Summit held in Fortaleza (Brazil) 15-16 July 2014, reaffirmed their views and commitments to "international law and to multilateralism […] global peace, economic stability, social inclusion, equality, sustainable development and mutually beneficial cooperation with all countries".[153] The BRICS nations emphasized that they align with the UN system and values, while seeking to enhance the role of its members in it, especially their efforts for strengthening Brazil, India and South Africa's status and role both in the UN and international affairs. This stance is previously defined at the Second BRICS Summit, stating: "We express our strong commitment to multilateral diplomacy with the UN playing the central role in dealing with global

[149] Sanya Declaration (Sanya, Hainan, China, April 14, 2011), http://www.brics.utoronto.ca/docs/110414-leaders.html [2015].
[150] Fourth BRICS Summit: Delhi Declaration (New Delhi, March 29, 2012), http://www.brics.utoronto.ca/docs/120329-delhi-declaration.html [2015].
[151] BRICS and Africa: Partnership for Development, Integration and Industrialization: eThekwini Declaration (Durban, South Africa, March 27, 2013), http://www.brics.utoronto.ca/docs/130327-statement.html [2015].
[152] Ibid.
[153] Sixth BRICS Summit: Fortaleza Declaration (July 15, 2014, Fortaleza, Brazil), http://www.brics.utoronto.ca/docs/140715-leaders.html [2015].

challenges and threats. In this respect, we reaffirm the need for a comprehensive reform of the UN, with a view to making it more effective, efficient and representative, so that it can deal with today's global challenges more effectively. We reiterate the importance we attach to the status of India and Brazil in international affairs, and understand and support their aspirations to play a greater role in the UN".[154] The Fortaleza Declaration confirmed this with the following statement: "We reiterate our strong commitment to the UN as the fundamental multilateral organization entrusted with helping the international community maintain international peace and security, protect and foster human rights and promote sustainable development (…) We reaffirm the need for a comprehensive reform of the UN, including its Security Council, with a view to making it more representative, effective and efficient, so that it can adequately respond to global challenges".[155]

INNER DIVERGENCES

Considering the inner state, the value systems of one part of the BRICS nations are in contradiction with the other part of the BRICS. Some of them accept the values of the liberal world order (democratic freedoms and human rights, identical to those of the US and EU), while others; anticipate more or less autocratic, illiberal values. Only Brazil, India and the Republic of South Africa (RSA) can be considered as states that highly appreciate today's liberal order values. Russia and China are different from the other states. Both states seek to improve their political, economy and military performance, seeking to gain power to impose their influence on the international political scene. Moreover, the creation of a BRICS common value system would appear to be a luxury for Russia and China, and an obstacle to the intensification of their political, economic and military power. The Director of EU-Russia Centre in Brussels, Fraser Cameron, acknowledged: "two democracies, Brazil and India [and later the RSA], a democracy with authoritarian leanings [Russia] and an outright authoritarian state [China] cannot rally around the 'shared values' that such gatherings like to espouse"[156] (Table 2). The grouping of India, Brazil and South Africa is a "much more natural grouping"[157], compared to Russia and China, as

[154] Second BRIC Summit of Heads of State and Government: Joint Statement (Brasília, April 15, 2010), http://www.brics.utoronto.ca/docs/100415-leaders.html [2015].
[155] Sixth BRICS Summit: Fortaleza Declaration (July 15, 2014, Fortaleza, Brazil), http://www.brics.utoronto.ca/docs/140715-leaders.html [2015].
[156] Cameron Fraser, *The EU and the BRICs*. Jean Monnet Multilateral Research Network: The Diplomatic System of the European Union, 2011, p. 3
[157] Elise Stern, *Why the West is wary of the BRICS*, 2013, http://blog. tehelka. com/why-the-west-is-wary-of-the-brics/ [2015].

stressed by the former Ambassador of India in Brazil, Amitava Tripathi. BRICS is "heterogeneous lot, consisting of energy exporters and importers, democracies and autocracies, aspiring hegemons and demographic disasters. This is not an easy group to keep together, and the evidence suggests that they don't have much of a common policy agenda".[158]

Table 2.

DEMOCRACIES	AUTOCRACIES
Brazil	Russian Federation
India	PR China
Republic of South Africa	
Source: *own depiction, based on the statement of Fraser Cameron (Director of the EU-Russia Centre in Brussels)*	

The political scientist Robert Gilpin emphasized that as a nation's power increases; it "will be tempted to try to increase its *control* over its environment. In order to increase its own security, it will try to *expand* its political, economic, and territorial control; it will try to *change* the international system in accordance with its particular set of interests".[159] The more BRICS become part of the "globalised world the more they want to keep their distance from western values. It is both a matter of identity and interest because they fear that the infringement of sovereignty might be used against them".[160] Or as Ben Cormier acknowledged: "BRICS are too economically various and politically conflictual to form a cohesive and politically meaningful entity".[161] The BRICS thus looks like a club that seeks to protect the political sovereignty of its states, in relation to the West (USA and EU), aiming to gain more political and economic influence in the international affairs. Based on that, it can be concluded that three (Brazil, India, RSA) of five BRICS nations share same or identical values with those of the EU and USA (liberal values), which additionally make this group of nations more controversial in terms of common values. The liberal order currently "overrides state sovereignty, to a certain degree, in the name of values such as democratic freedoms and human rights".[162] The political integration of BRICS is something that will have to wait a while, considering

[158] *Loose BRICs*, http://nationalinterest. org/article/loose-brics-3158, 2009, [2015].
[159] Fareed Zakaria, *The Post-American World.* New York: W. W. Norton & Company, 2008, p. 114
[160] *BRICS keep distance from western values*, http://www. ft. com/intl/cms/s/0/0a1c962e-7a99-11e1-9c77-00144feab49a. html, 2012, [2015].
[161] Ben Cormier, *Why the Values of the BRICS Matter* (Presented in partial fulfillment of the requirements for the Degree of MRes International Politics University of Glasgow), 2012, p. 28
[162] Ibid.

the evident political and value divergences inside. Or as is stated in the "Laying the BRICS of a New Global Order": "complicating this mix is an absence of long-term commitment to shared values among the BRICS nations. The concept of a world built on interdependence may be acceptable in the context of economic interaction, but there is a lack of consensus on the extent to which the BRICS wish to cooperate in the political sphere. There are differences in the political, economic and social paradigms that individual BRICS members are willing to follow".[163] Simply speaking, in this group *there are no common values or a value-sharing practices*, that would produce political cohesion or an unique worldview in due time. Or as the author Walter Ladwig emphasized: "[BRICS] economic characteristics are too different and political ambitions too much at odds to yield cooperation".[164]

CONCLUSION

The value provisions of the BRICS do not coincide with the basic values of the liberal order, such as democratic freedoms and human rights, but it refers to the values of the UN. Thus, the BRICS has no originary set of values, and therefore, this group emerges as a derivative title of values. Moreover, it is complicated by the internal divergences among the BRICS nations, in terms of internal value harmony or disharmony and their potential for sharing of the mutual values. The BRICS is internally "stretched" between the liberal vs. illiberal value trends, which basically disables all attempts to create a coherent political structure and common values system. The type of democracy to which implies this group, refers only to the need for strengthening of its presence in the UN and other global financial institutions, as a way for imposing the international political power of specific BRICS nations on the world political scene. Precisely, it refers to Russia and China. Under the leadership of Russia and China, this group is heavily geared towards the strengthening of its influence in the UN, and strengthening of the sovereign powers of its constitutive nations, making an efforts to reform the international financial system, and building a new, parallel financial institution, aiming, these nations to grow into global political power centers, despite the US and the EU. Currently, all efforts of BRICS nations are directed towards the creation of BRICS' New Development Bank, as a counterpart of the International Monetary Fund.

[163] *Laying the BRICS of a New Global Order*, https://books.google.mk/books?id=cd0WAgAAQBAJ&printsec=frontcover#v=onepage&q&f=false, p. 242, [2015].
[164] Ben Cormier, *Why the Values of the BRICS Matter* (Presented in partial fulfillment of the requirements for the Degree of MRes International Politics University of Glasgow), 2012, p. 27

However, founding of a political organization, based on common values, interests and political power "patterned after NATO or the EU, is impossible. China, India and Russia are competitors for power in Asia, and Brazil and India have been hurt by China's undervalued currency. Thus BRIC is not likely to become a serious political organization of like-minded states".[165] On that basis, it can be concluded that BRICS seriously lacks an originary set of common values, even in a rudimentary form. However, the BRICS cooperation is an important phenomenon in terms of the future development of international relations, especially in terms of their decentralization, pluralization, and democratization.

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[165] *Laying the BRICS of a New Global Order*, https://books.google.mk/books?id=cd0WAgAAQBAJ&printsec=frontcover#v=onepage&q&f=false, p. 125 [2015].

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FREEDOM OF WILL AS BASIC PRINCIPLE IN LAW OF OBLIGATIONS: REVIEW OF MADECONIAN LEGISLATION[166]

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Abstract

A basic criterion in the exercise of subjective civil rights is the principle of freedom of will, i.e. the free performing of the subjective civil rights, since the purpose of the exercise of any subjective civil right is precisely the realization of the interest of the holder of that right. The free will is the first principle upon which the system of norms of the civil law is built. This principle represents the free initiative of the subjects in the civil and the legal relationship and it is also called a free disposition. The principle is expressed in all the civil and legal relations, and in the law of obligations it is called a contractual freedom. The author of this article reviews the Macedonian legislation where the free will is expressed. This justifies the view that free will is a basic principle in the Law of obligations. Also, it is established that most of the legal norms in the Law of Obligations are dispositive and therefore a basic principle in the law of obligations is the free will of the subjects in the specific obligation and legal relationship. Because is not an absolute principle, the author also reviews the exceptions from the principle.

Key words: free will, freedom of contracting.

INTRODUCTION

Since the objective of the exercise of any civil right is the realization of the interest of the holder of that right (in accordance with the objective law), the

[166] review scientific paper

basic criterion in the execution of the subjective civil rights is the principle of free initiative, i.e. free disposition or freedom in the exercise of the subjective civil rights[167]. It includes the autonomy of the will of the entities to enter into contractual relations. The subjects are left to decide independently whether to perform their right or not – a principle generally known by the maxim iure sue nemo cogitur, which means that the holder of the right is not obligated to use his right.[168] The free will in the Law of obligations means not only freedom of subjects to decide whether to enter into a legal relation but also means freedom to determine the content, the parties, the duration of the selected legal relation and more.

The principle of the free will of the subjects has not always been present. Even though it has existed for a long time, it cannot be said that it has been present since the prehistory. In the early prehistoric community, the man was unaware of the ownership, of the legal actions, as well as of the ability to determine the heirs through a will. In the conditions offered by the prehistoric community, it was not the principle of free will that ruled, but it was the fight for survival. In this period the property was collective, it means, it belonged to all the members of the community. The subject obtained from the nature or produced by human labor was exclusively used for satisfying the needs of the members of that community, and as such, it only had a usability value and not any exchange value[169]. In this situation, there was no surplus of a product, because whatever was produced was a common good and thus there remained no product that would serve to exchange.

This principle becomes more prominent with the appearance of the civilization and a surplus product. With the production of a surplus product, there comes the need for exchange of goods. Humans evolved the awareness that the product which is not used for their private benefit, may be otherwise disposed, both in the person's lifetime, and also in the case of their death, by a will it can be decided who will inherit it. This developed the human awareness of an exchange of the excess product with someone who needs this product, and the freedom to choose the entity with whom to perform the exchange. However, the autonomy of the will as a philosophical and ethical

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[167] Родна Живковска, *Општ дел на Граѓанското право,* Скопје: Европа 92, Кочани, 2011, 162.

[168] Радмила Ковачевић – Куштримовић, *Грађанско право (Општи део)* Друго измењено и допуњено издање, Ниш: Сириус: 1995, 274.

[169]Гале Галев „Слободата на договарањето и нејзината економска основа – стоковното производство", *Годишник на Правниот Факултет во Скопје* " (1999-2001): 147- 165.

principle dates from the 18th century and it especially developed in the 19th century, as an expression of the political and the economic liberalism.[170]

Although the principle of a free will appears in the period of commodity production, it has not the same presence in all the periods of the development. Furthermore, with the creation of countries, this principle is not used in all of them equally, and in the same country in different periods of its development, the free will in the civil and legal relations was expressed differently.

The freedom of the will is not an absolute principle, it has its limitations. The limits vary depending on the type of the contractual relations. These limits arise from the socio - economic factors of the countries. In addition, the political and the legal organization of the given country, the ruling morale in that community, the religious dogma, the tradition, the philosophical - legal doctrine have their own effect.[171]

REVIEW OF MACEDONIAN LEGISLATION

The free performing of the subjective rights in the law of obligations as the first and fundamental principle upon which is built the system of norms in this branch is elevated to the level of main principle - the principle of freedom of the arrangement of the obligational relations, a principle generally known as contractual freedom. This principle is one of the guarantees of the Constitution of the Republic of Macedonia. Namely, the Article 55 of the Constitution stipulates that "The freedom of the market and the entrepreneurship is guaranteed."[172]

The contractual freedom in the Law of Obligations is in particularly expressed in the Article 3. It establishes that the participants in the trade freely determine the obligational relations in accordance with the Constitution, the laws and the good custom.[173] This provision should be interpreted in the sense that participants freely determine the essential, the natural and the accidental elements of the contract. The contractual freedom in the obligation relations is that the participants can independently decide

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[170] Даница Попов, *Грађанско Право (Општи део)*. Пето измењено и допуњено издање, Нови Сад: Центар за издавачку делатност ,Универзитет у Новом Саду Правни Факултет, 2007,14.

[171] Гале Галев) Op. cit. 34.

[172] Article 55 paragraph 1 from, Устав на Република Македонија, *Службен весник на Република Македониј*а, 52/1991, 1/1992, 31/1998, 91/2001, 84/2003, 107/2005.

[173] Article 3, Закон за облигационите односи, С*лужбен весник на Република Македонија* 18/2001, 78/2001, 4/2005, 5/2003, 84/2008, 81/2009, 161/2009.

whether to establish any obligation and legal relation in the first place, they can choose its type, content, form, they have the right to change and to interrupt it and to protect it as well.

The principle of contractual freedom is a basic principle in the obligation relations and this is also evidenced by the article 14 from the law of obligations Act. It establishes that the participants can regulate their obligation relations differently than what is stipulated by this Act, if nothing else appears from a particular provision of this Act or other Act or by its terms.[174] Also, an indicator of the dispositive character of the provisions is the wording "unless parties agreed otherwise" or "if nothing else has been agreed between the parties." As for example, the provision of the Article 22, paragraph 7 of the Act, where it is prescribed "Unless it is otherwise agreed, each party shall bear its own costs for the preparations for signing the contract, and the common costs will be submitted in equal parts."[175]

Regarding the Law of Obligations Act as a whole, it is determined that this principle besides in its basic form - Article 3, is also expressed in the whole content of the Act. The principle is represented in the following situations: the freedom of the subject to decide whether to enter into a contractual relationship or not, the freedom of the subject of choosing their contractual partner, the freedom of the subject for the type of the contract, the freedom of the subject for the subject matter of the contract, the freedom of the subject to the selection of the content of the contract, the freedom of the subjects for the form of the contract, the freedom of the subjects to change the incurred contractual relation, and the freedom in the manner of the termination of the contractual relationship.[176]

1. The freedom of the subject to decide if they are going to establish a certain contractual relation or not. The Act favours the autonomy of the subject's will in the conclusion of the contract, with the exceptions being the cases where the conclusion of the contract is compulsory as in the article 19

[174] Ibid, Article 14.

[175] Ibid, Article 22, paragraph 7.

[176] Also, Гале Галев, Јадранка Дабовиќ–Анастасовска, *Облигационо право*. Скопје: Универзитет „Св. Кирил и Методиј" Скопје, Правен факултет „Јустинијан Први", 2008.

from the Law of Obligations Act[177] and in article 172 from the Law of Obligations Act.[178]

2. The freedom of the subject of choosing his contractual partner. This principle is especially noticeable in the provisions of the Act where the entity can submit an offer to establish a contract to certain entities (article 24) with which it directly chooses the contractual party and other situations, except in the case of pre-emption,[179] where the subject has no freedom in the choice of the contractual partner;
3. The freedom of the entity to decide on the type of the contract. The Act allows the parties to choose the type of the contract they are going to execute, with certain restrictions, as for example, the limitation from the article 46 from the Law of Obligations Act where it is prescribed that the legal entity may conclude contracts within its legal capacity.
4. The freedom to choose the subject matter of the contract. This should be interpreted with the regards of the foregoing, the fact that the parties choose the type of contract, they choose the subject matter of the contract. The parties are free to choose the subject matter of the contract, with certain restrictions established in Articles 38[180] and 41[181] of the Law of Obligations Act.

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[177] If someone is bound by law to sign a contract, the interested person may request to conclude this contract without any delay, Article 19, paragraph 2, Закон за облигационите односи, op. cit.

[178]The person who is obliged by law to conclude a contract, is obliged to pay compensation if they fail to conclude this contract without delay upon the request of the person concerned, Article 172, Закон за облиационите односи, op. cit.

[179] For example, the co-owner who intends to sell their co-ownership part is bound to inform the other co-owners by a submission to a notary public and to offer them its part for sale and to announce the price and the terms of sale, Article 33, paragraph, Законот за сопственост и други стварни право, Службен весник на Република Македонија, *18/2001, 31/2008, 92/2008, 139/2009, 35/2010.*

[180] The contractual obligation may consist of giving, doing, omitting, or abiding. The contractual obligation must be possible, permissible, determined or determinable. Article 38, Закон за облигацоните односи, op. cit.

[181] The subject of the obligation is illegal if it is not in accordance with the Constitution, the laws and the good custom. Article 41, Закон за облигационите односи, op. cit.

5. The freedom of the parties in determining the content of the contract. The parties are free to choose the essential elements of the contract, as well as the secondary ones, within certain limitations which are prescribed in Article 24, paragraph 3 of the Law of Obligations Act[182] and that is in the case the parties have not chosen them at the conclusion of the contract.
6. The freedom of the parties in choosing the form of the contract. Article 59 paragraph 2 states that "The contract can be concluded in any form, unless it is otherwise specified by the law." This provision implies the autonomy of the will of the parties in arranging the form of the contract.
7. The freedom of the parties to change the incurred contractual relationship in relation to the party, its content, and the subject matter of the contract. The changing of the parties is regulated by the provisions on the cession, the debt takeover, the assignment of contract, the debt accession, the intercession, and the subrogation. The changing of the content of the agreement is referred to in Article 126[183] and others. The changing of the subject of the contract is governed by Articles 297[184] and 337[185] of the Law of Obligations Act.
8. The Freedom for termination of an incurred contractual relationship. The parties are free to choose the method of termination of their contractual relationship. They can access to a mutual termination of the contract, a contractual

[182] If the contracting parties have reached an agreement for the essential elements of the contract and they have left some secondary points to be decided upon later, the contract is deemed to be concluded and the secondary points, if the contractors fail to agree to them, will be established by the court, taking into account the previous negotiations, the established practice among the contractors and the custom. Article 24, paragraph 3,Закон за облигационите односи, op. cit.

[183] In case of partial inability of execution due to an event which neither of the parties is accountable for, the other party may terminate the contract if the partial execution does not suit its needs, otherwise the contract remains in force, and the other party has the right to request a proportional reduction of its obligation, Article 126 paragraph 2, Закон за облигационите односи, op cit.

[184] The obligation ceases if the creditor in agreement with the debtor receives something else instead of what he was owed, article 297, paragraph 2, Закон за облигационите односи, op. cit.

[185] The obligation ceases if the creditor and the debtor agree to replace the existing obligation it with a new one and if the new obligation has a different subject matter or a different legal basis, article 338, Закон за облигационите односи, op. cit.

compensation, a discharge of the debt, a novation and other ways of termination of the contractual relationship.

Except in these situations, this principle is also used in other provisions in the Macedonian legislation, for example, the freedom of determining the time to execute the obligation, the freedom to waiver certain circumstances in advance, extension of the liabilities of the debtor for cases for which he would not otherwise be counted responsible, the transition from work management without a warrant in a mandate contract and so on.

Although the free will in the obligation and legal relations is a basic principle, it does not mean that it is an absolute one. As the other principles, it must endure certain limitations or exceptions. In accordance with Article 3 of the Law of obligations Act, such deviation is provided by the Constitution, the acts and the good custom. In Article 5, paragraph 3 of the Constitution it is stipulated that "The free market and the entrepreneurship can be restricted by law solely for the defense of the Republic, the preservation of the nature, the environment or the human health."[186] From this provision can be drawn out the ccriteria that restrict the contractual freedom: the defense of the Republic,[187] the preservation of the nature[188], the preservation of the environment[189] and the protection of the human health.[190]

[186] Article 5, paragraph 3, Устав на Република Македонија, op. cit.

[187] See Article 14, paragraph 1, Закон за одбрана, (Пречистен текст), *Службен весник на Република Македонија* 185/2011. These entities have no choice of contractor, because it is preset to be the Ministry of Defence, no freedom of choice of the type and the scope of the contract, because they are clearly defined in the same provision, no freedom to agree on the form of the contract and its content, and no freedom in the duration of the contractual relationship.

[188] See article 29, paragraph 1, Закон за заштита на природата. *Службен весник на Република Македонија,* 67/2004. With this provision the parties are limited in performing trade with endangered and protected wild species of plants, fungi and animals.

[189] See article 19, paragraph 2, Закон за заштита од бучава во животната средина, *Службен весник на Република Македонија)* 79/2007, 124/2010, 47/2011. The entities are limited by this provision in the choice of means due to environmental protection. They are limited in their choice when buying equipment, vehicles, household appliances, installations, etc.

[190] See article 24 А, Закон за трговија, *Службен весник на Република Македонија*, 15/2004, 128/2006, 63/2007, 88/2008, 159/2008, 99/2009, 105/2009, 115/2010, 158/2010, 36/2011. This article makes an exception from the principle of contractual freedom as the parties are limited in the obligation and legal relations to certain places and to certain periods of the day.

Besides these criteria contained in the special Acts, there are restrictions on the contractual freedom in the Law of Obligations Act as well. This restrictions are stipulated in the other principles of law of obligations: the principle of equality of the parties, [191] the principle of diligence and honesty,[192] the principle prohibiting the abuse of a right,[193] the principle of ban on exploiting its monopoly position in the market, [194] the principle of equal value in giving,[195] the principle of prohibition of inflicting damage,[196] the principle of duty to execute the obligations,[197] the principle of justice,[198] the principle of conduct in the performance of the obligations and realization of the rights[199] the principle of commitments to citizens as consumers and users of services.[200]

There are also legal restrictions under the Law on Ownership and Other Property Rights: the finding of another entity's item[201] with which the finder of the item is obliged without any delays to deliver the item to the one that had lost it, that is, to the owner, and the limitations provided in the Law of Obligations Act for unjust enrichment[202]and work management without a warrant.[203] In all these situations there is a deviation from the principle, because there is no initial agreement with the other party.

Besides the listed limitations provided by the Constitution and the acts, the principle of contractual freedom endures restrictions under the good custom as well, according to Article 3 of the Law of obligations Act which sets a free arrangement of the obligation relations, but in accordance with the Constitution, the acts and the good custom. This limit of the behavior of the subjects indicates that the parties in the contracting of the specific relations should observe the good custom. Unlike the rules prescribed by the Constitution and the acts, this limitation represents a different legal concept. The custom is unwritten rule and as such is a subject to debate. It has a

[191] Article 4, Законот за облигационите односи, op. cit
[192] See Ibid Article 5.
[193] See ibidArticle 6.
[194] See ibid Article 7.
[195] See ibid Article 8.
[196] See ibid Article 9.
[197]See ibid Article 10.
[198] See ibid Article 10-a.
[199] See ibid Article 11.
[200] See ibid Article 12.
[201]Article 136, paragraph 1, Законот за сопственост и други стварни права, op. cit.
[202] Articles 199-208, Закон за облигационите односи, op. cit.
[203] Ibid, Article 209-212.

different treatment from one society to another and also a different treatment from one period to another period in the same society.

CONCLUSION

The freedom of the will is the first principle upon which the system of the civil and legal norms is built. This principle is also called a free disposition and a freedom in performing the civil and legal relations. It has been a part of the civil and legal relations even since the emergence of the commodity production and the appearance of an excess product. Since then it is present in all societies, somewhere more pronounced, somewhere less, but also variably present in the same society in different periods of its development.

The justification of this principle as a fundamental principle in the obligation relations is that if the parties regulate freely their contractual relationship with the other parties, with as little restrictions as possible, it would cause the realization of the free will, which is also the purpose of the contractual relationship. The subjects enter into the contractual relations, due to the exercise of their interests and therefore, they can regulate their relations better than if it would have been done by the legal system by setting limits. The restrictions must be covered by the above listed criteria for the exceptions to the principle of the freedom of the will, and it is only at the direction of a better legal system.

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REGISTRATION OF AGRICULTURAL LAND IN THE CADASTRE AGENCY[204]

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ABSTRACT

Two years ago a big portion of the high quality agricultural land was in state ownership. The agricultural land in state ownership could be given on lease to physical and legal entities, the privatization of the same was excluded. One of the series of reforms in the legal system of the Republic of Macedonia was the adoption of the Law on sale of agricultural land in state ownership.
A remarkable way that will meet the ambition of the entities in procedure. The tenants who have cultivated the land for a long period of time eventually will enjoy the benefit of the effort made, time and money, and the money from the sale will go into the budget of the Republic of Macedonia.
Keywords: agricultural land , sale , ownership, lease, existence.

INTRODUCTION

The decision on sale of agricultural land in state ownership resulted with series of positive reviews. It is expected that the results of this reform be experienced in the future. With this decision are satisfied all the physical and legal entities who directly or indirectly are connected with cultivation of the agricultural land. The way the agricultural land in state ownership will be sold, the sale procedure, which entities may emerge as buyers of agricultural

[204] professional paper

land in state ownership and what are the benefits from the sale of agricultural land in state ownership, will be more forthrightly elaborated in this paper.

THE POSITION OF AGRICULTURAL LAND IN THE REPUBLIC OF MACEDONIA

Agricultural land in terms of this law are gardens, orchards, vineyards, olive plantations, other crops, meadows, pastures, wetlands, reed fields, fisheries, and other used or not used land (ncultivated land) which by applying agro and agro and irrigation measures can be trained for agricultural prodaction.[205]

The Agricultural land may be privately owned by individuals and legal entities as well as state-owned. The Agricultural land that is owned by the state, by the Government of the Republic of Macedonia, can be leased, sold, or converted to private ownership. When it comes to leasing of agricultural land, the established lease shall be recorded in the Agency of Cadastre or the Department of the Agency for Real Estate, which is in charge of the area where the real estate is located.

REFORMS IN MACEDONIAN LEGAL SISTEM –SALE OF AGRICULTULAR LAND OWNED

The law on the sale of agricultural land in the state ownership was passed just a few months go. The aim of this law is to privatize part of the land that is state-owned, and which at the time of adoption of the law was uncultivated area.

In order to successfully implement a procedure for sale of agricultural land owned by the state, The Ministry of Agriculture, Forestry and Water-Supply of the Republic of Macedonia, shortly after the adoption of the Law on privatization of agricultural land in the state ownership, released draft annual program for 2013-2014 year for the sale of agricultural land that is a state property. This proposal program of the Ministry of Agriculture, Forestry and Water-Supply was adopted by the Government. With this program the Ministry of Agriculture, Forestry and Water-Supply plans to sell part of the land that it owns. Under the program, the Republic of Macedonia owns 210,000 hectares, of which 267ha 34ar 16 m2 are planned to be sold partially on blocks of 10 hectares. Agricultural land, subject to sale, can be sold to physical or legal person. However, there are certain restrictions, so that the

[205] Law on agricultural land ("Official Gazette" 135/2007, 17/2008, 18/2011, 42/2011, 148/2011 and 95/2012).

natural or legal person is limited in the acquisition of the surface of agricultural land. According to the draft program of the Ministry of Agriculture, Forestry and Water-Supply, one physical person may buy only 10% of the total area, which is planning to be sold. As for the legal entity, this limit is 20% of the total area of the agricultural land that is for sale.

What is the reason for these restrictions? The main objective of this program is to sell some of the land is state-owned. The set limits on how much agricultural land in state ownership a natural or legal person can buy is not accidental. The aim is to give an opportunity to all interested persons to acquire ownership and access to the use, processing, and production of the land instead of concentrating the overall land in the hand of one person (no matter whether physical of legal)

Forecasts for the next year are that the procedure for sale of state-owned agricultural land will be accomplished, so that will satisfy both parties: the state which on one hand appears as a seller of land, and on the other hand any natural or legal person that is interested in buying agricultural land.

Natural or legal persons who have contracted lease of agricultural land in state ownership have the right to initiate a sale of land, subject to a lease agreement with the Ministry, as determined by the law, at any time during the period the lease agreement, whereby the Ministry is obliged to accept the initiative to the tenant within 20 days and proceed to sell the land in accordance with this Law. [206]

If the Ministry does not act upon the leaser initiative to buy the land and does not accept it, it is liable to a fine, as well as the person responsible for it, the Department Manager and the Minister himself.

After making the decision on the sale of agricultural land owned by the state, The Ministry of Agriculture, Forestry and Water-Supply shall announce call for public sale of agricultural land by public auction.

The Announcement contains the following data:

- area in hectares of the land to be sold,
- cadastral data contained in the deed or title deed or information about where they are published,
- appraised value of the land which is the starting price of the public bidding,
- easement and other loads of land,

[206] the Sale of agricultural land owned by Official Gazette of the Republic Macedonia, no.87 of 17/06/2013 year art.7p.4

- condition in which the land is(in culture or not)
- evidence that the bidders have to submit,
- deadline for submission of bids for participation in the public auction and
- proof of payment of deposit or bank guarantee amounting to 5% of the appraised value of the land. [207]

The public announcement should be published in the Official Gazette, and in three daily newspapers that are distributed throughout the country, one of which is in the language of the citizens who speak a language other than Macedonian and are at least 20% of the population.

Next is the procedure for public auction as a starting price, the value at which the area is estimated. If the agricultural land is not sold at the first auction, on the following initial the value can be reduced by 20% and a maximum of 10% extra.

The Right to participate in the announcement is entitled to individuals who are nationals of Macedonia and legal persons who are residents of the Republic of Macedonia. The ownership of the shares or shares in percentage of at least 51% should be owned by individuals Macedonian citizens or legal persons resident in the Republic of Macedonia. [208]

Those who have not settled the obligations related to lease of agricultural land, or who have not paid taxes and contributions and that are registered to perform agricultural activities, have no right to call the published advertisement. Also, legal entities on which bankruptcy proceedings is active, have no right to reverse the published advert. Legal entities and individuals who intend to reverse the announcement, despite the previously mentioned ability, should attach an appropriate documentation as proposed in Article 12 of the Sale of agricultural land owned Government Gazette of the Republic of Macedonia, no.87 from 17.06.2013 year.

The procedure for sale of state agricultural land is conducted by the Commission for sale of agricultural land owned by the state, appointed by the Government for a term of 4 years. After completion of the procedure for submission of bids by interested parties for the purchase of agricultural land owned by the state, the commission sets up a list of interested persons to participate in the public bidding. As criteria for selection of best proposer is

[207] the Sale of agricultural land owned by Official Gazette of the Republic Macedonia, no.87 of 17/06/2013 year .art.10 Paragraph 2

[208] the Sale of agricultural land owned by Official Gazette of the Republic Macedonia, no.87 of 17/06/2013 year art. 11p.1

considered the one who offered the highest price of the public bidding. The selection of the public bidding shall be announced to all the participants in written form within 3 days of the completition. Special attention should be paid to the priority right which I mentioned earlier. In case of sale of the agricultural land in state ownership, legal lessee has a priority, but only if the obligations in the lease agreement are filled. After the bidding, he is offered to buy the land at the highest bid price, which must be pleaded in the specified period. If the deadline has pleaded and it is not considered that the tenant has used the right of priority for purchase of agricultural land in state ownership, after the decision is in force, a contract for purchase of agricultural land in state ownership is signed with the best bidder. The price at which the land is sold can be paid at once or in several installments. If the payment of the agreed price is not on time, it causes legal consequences for the buyer, as well as possibility of termination of the purchasing. The gained funds go to Budget. The acquired ownership of agricultural land is registered in the title deed in REC. Authored Office is The Department of Agency for Real Estate, which is located in the territory, where the agricultural land is.

LEGAL STRUCTURE OF AGRICULTURAL LAND OWNED BY REPUBLIC OF SERBIA

Unlike the Republic of Macedonia, agricultural land in The Republic of Serbia can only be a state property. The manner and conditions of usage should be in accordance with the Annual Program of the Organization for Protection and use of agricultural land. This program is made at local level, each municipality divided. The program for the usage of agricultural land in state property, local government must submit it by 31 March of the current year in the Ministry of Agriculture.

The program contains the following data: the total area of agricultural land, the beneficiaries of agricultural land, the total area of agricultural land in state property, which is planned to be leased, the state and development of land in state property.

Similar to RM, agricultural land of RS can be leased without any compensation. The difference between the legislation is in subjects, who can enjoy the benefits of this allotted land. So, in The Republic of Serbia, the agricultural land in state ownership can be available for use without paying for: schools, agricultural and social and institutions, higher education institutions established by the state, research institutes and institutions of criminal sanctions. Institutions that perform criminal law sanctions, most of the prisons and penitentiary homes have the right to use agricultural land in state ownership up to 1000 hectares.

The right of use of agricultural land in state ownership is registered in the real estate cadastre in Serbia.

Macedonian and Serbian legislation overlap regarding the leasing of agricultural land in state ownership. Macedonian legislation provides the right of priority, it is also provided by the law of agricultural land in state ownership, except that in Serbia the right to have physical and legal entities that have a functional system for irrigation, land with cultures, individuals and legal entities dealing with stock breeding. The decision of the legislator right to them to have the right priority is clear. These entities are faced with problems such as not having enough land to feed cattle, their activity might be expanded, so they require additional land and so.

Agricultural land in state ownership and operator can be leased according to the Law on Agricultural Land of RS if the annual program for editing, use of agricultural land in state ownership provides lease to physical persons or legal entities for a period that cannot be shorter than a year or longer than 20 years.[209]

The Law on Agricultural Land of RS took a step forward regarding the division of revenues derived from giving lease of agricultural land.

The funds received from leasing of state agricultural land amounting to 60% go to the budget of the Republic of Serbia, part of the 40% go to the budget of the local self-government where the agricultural land is placed[210]

Both laws, the Law on privatization of agricultural land in state ownership and the Law on agricultural land in the Republic of Serbia, in some parts overlap in other parts not. It's perfectly fine if you are able to take into account that both laws regulate the same matter. The differences that we have incorporated in the content subject laws provide space each state to see and to be able to adapt to its social position. Positive results of each new legal amendment plus benefit for each state.

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[209] Law of agricultural land "Official Gazette of RS", no. 62/2006 and 41/2009 (see and Art. 33). See Art. 51. Touch. 4. Law - 65 / 2008-3. Article 6

[210] Law o f converting agricultural land from public ownership into other types of ownership "Official Gazette of RS" no. 42/92, 54 / 96.62 / 06th

Conclusion

It considers real estate, which long has been neglected, sitting fallow, which do not contribute and do not provide agricultural input. The decision on the sale of agricultural land in state ownership has very positive benefits such as:

1. Processing neglected agricultural land;
2. The land is suitable for processing, because it is a large area suitable for planting large quantities of agricultural products, e.g. vineyard;
3. The privatization of agricultural land, the owner is entitled to ownership of agricultural land;
4. The future owner is free to exercise the right of ownership of real estate, because no agricultural land is not burdened by the easement, real burden;
5. With the acquisition of the property, the owner acquires the property list, which has constitutive action;
6. The opportunity for the unemployed, in such a way to provide subsistence for themselves and their family, and as a mechanism to support their projects of the Government and the Ministry of Agriculture, Forestry and Water-Supply, Support and Development of agriculture;
7. Will reduce the area of uncultivated agricultural land;
8. The decision for limitation of how agricultural land can buy a natural and how much hectares a legal entity is not accidental. This measure actually prevents concentration of agricultural land in the hands of a few subjects.
9. Positive reviews for the decision that the tenant of agricultural land, while it is under lease, to give proposals for sale of land. One should take into account the fact that the tenant knows well the value and quality of the land, as already set according to time, behaved to him as a good businessman, but the benefits may be even greater if he privatizes that land. In this way one can afford to adapt to its needs, but without any restrictions and the positive effect would be even greater.
10. The funds received from the sale go to The Budget of Macedonia, which comes to an increase of the budget.

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12. Law o f converting agricultural land from public ownership into other types of ownership "Official Gazette of RS" no. 42/92, 54 / 96.62 / 06th

334.72.012.63/.64:001.395

INNOVATION AS A COMPETITIVE ADVANTAGE TO SMALL AND MEDIUM-SIZED ENTERPRISES[211]

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ABSTRACT

'Artistic works and inventions are made by human spirit. These works make the human life worthy. Responsibility of the country is to protect art and inventions'[212]

This inscription shows the importance of the mental activity in improving and easing the entire life.

Innovations have always been the key to success in big enterprises, but also in the small and medium sized enterprises and they remain to be the lifeblood of the economy based on knowledge, which is a challenge for every country. The effort for increasing the innovation of the companies and the SMEs appears as the only mechanism for resolving the big social challenges which many countries in the world face.

Key words: innovation, competitiveness, inventiveness, entrepreneurship, small and medium sized enterprises.

INTRODUCTION

The entrepreneurship, especially its most important characteristic – the innovation, is the fourth development factor, besides the land,

[211] review scientific paper

[212] Inscription in the dome of the building at the headquarters of the 'World Intellectual Property Organization' (WIPO)

labour and the capital. In the Schumpeterian theory, the entrepreneur is the pivot around which everything oscillates. He or she is an innovator, and the innovation takes the economy of the state of equilibrium and hence the cyclical movements of the economy, that is to say the expansion of the recession continues.

The innovations, which people apply, may be different as follows: inventing a new product, new way of production, finding a new source of raw material, finding a new market, as well as finding a new, more efficient way of organizing the company. In order to undertake this venture, the entrepreneurs have to take risk, but the most important thing for them is to be persistent, energetic, and brave and to believe in the viability of their own idea. Only in this way, they will come to innovation. And what will innovation provide to the entrepreneurs and the companies?

Schumpeter explains this very well. He says that after the innovation appears, it provides the economic profit to the entrepreneurs, and the achieved development will take the economy out of the state of equilibrium. Seeing this example where the entrepreneurs realize profit which is above average, the other entrepreneurs will engage in investment activity.

In this way the economy will revive and thus will cause inflationary tendencies. But later, the high prices will begin to absorb the available funds, and the entrepreneurs who earlier took cash to realize the innovations, will have to return them. So, the economy with the period of expansion will turn into depression. The economic profit will disappear, and the re-invigoration of the economy will be made with the appearance of a new innovation.

This fourth factor of the production, that is to say the realized income is known before Schumpeter.

That is why Schumpeter writes: ‘ that occasionally Ricardo and Marx acknowledged fourth kind of income which is temporary and belongs to the businessman. Namely, it is an income that the businessman receives a certain period of time because he/she first introduced the new improvements in the economic process, such as the new machine. In this way they discovered the special case, in other words the most typical kind of all entrepreneurial benefits.’[213]

[213] Joseph Schumpeter, History of Economic Analysis I, publishing house ‘Informator’, Zagreb, 1975 p. 534

DISTINCTION OF THE TERM INOVATION FROM THE TERMS CREATIVITY AND INVENTION

Innovation is a continuous and organized process because it requires establishment of an organized system of support and encouragement of the entrepreneurs who create new ideas and existence of a team which considers the idea and gives an opinion for the opportunity for its realization as well as for access of its realization.

Creativity, inventiveness and innovation are needed for innovation. So, one should distinguish between creativity, inventiveness and innovation.

Creativity is a possibility for creation of a new content, occurrence or a process combined with the existing factors of production. Harvard Business School Professor Theodore Levitt said that 'creativity is thinking about new things, and innovation is doing new things'. Hence, the success of the entrepreneurs is based on 'thinking and doing new things, or thinking and doing old things in a new way.'[214]

Inventiveness is a process of creating something new.

Innovation is definitely marketing of a new product, service or technological process, which is a result of inventiveness. This means that innovation is very important for the development of the businesses and for improvement of the performances of the enterprises. Different entrepreneurs differently define innovation. The following definitions could be mentioned:

- Innovation distinguishes between a leader and a follower. – Steve Jobs
- Innovation is the specific instrument of the entrepreneurship. It is an act that endows resources with a new capacity to create wealth. – Peter Drucker
- Innovation is not the product of logical thought, although the result is tied to logical structure. – Albert Einstein

[214] Thomas Zimmerer, Norman Scarborough, *Essentials of Entrepreneurship and Small Business Management,* Fourth Edition, Pearson Education International, p. 35.

Primarily, innovation always was identified with some technological discovery. However, for a company to be successful, it does not mean that it should rely on high-tech innovation. Sometimes, it can be based on plain wit which is not technological, so the company will acquire a competitive advantage. David Bercea talks exactly about this:

'Let's start with the statement that innovation goes together with high-tech, but there is a lot of innovation also in the operations that apply lower technology. Then, let's specify the statement that innovator is the one who modernizes some common product or service, but also innovator is the one who produces something completely new. Moreover, it can also be done with low technology; even it can be done without technology. So, Mrs. Fields and the famous Amos simply produce wonderful chocolate biscuits, and not electronic devices.'[215]

CLASSIFICATION OF DIFFERENT TYPES OF INOVATIONS

Types of innovation, based on technology may refer to:

1. The product which is made, for instance, Google's Android mobile phone;
2. The process which is involved, for instance mini ironworks as opposed to integrated ironworks;
3. The used additional technologies, such as the new IT infrastructure;

Types of innovations based on business models refer to:

1. The proposed values created for the customers, such as direct delivery as opposed to buying goods in retail;
2. Supply chain through which the product is delivered. For example, the phases that make the chain of values the traditional way of selling, as opposed to the companies for electronic commerce, such as amazon.com;
3. The target consumers for which the product was originally designed on the basis on some schemes of market segmentation. Samsonite has different target consumers for their travel bags, compared to those of Louis Vuitton.

[215] David Birch *Job Creation in America – How Our Smallest Companies Put Most People to Work,* New York 1987, p. 64.

Finally, in terms of their impact on the market, the types of innovations that exist refer to:

1. *The incremental innovations* which are certain credits of already existing product or a process of designing, such as faster car engine or faster computer microprocessor;
2. *The radical* or *breakout* types of innovations, which replace the existing products, services or processes. Typical examples are personal computers or mobile phones, while as a process which involves radical innovation, the mini ironwork for production of steel or waste metal of the Toyota Just–in-Time system for production management or for management with supplies, could be mentioned;[216]

THE INOVATION AND SMEs

Unlike the era of industrialization where the most important issue was the development of the industrial work, in the post-industrial era (information society) one of the most current issue is the development of the small and medium-sized enterprises.

The factors that primarily determine the development of the small and medium sized enterprises are: development of the information technology, development of other technologies (telecommunications, transport, bioengineering and genetic engineering, etc.), but also the globalization of the world economy which requires new modern forms of business work, usage of new knowledge, new technology and business cooperation for providing competitive production and servicing at the world global market for goods and services.

They contribute for the employment that is to say for the usage of knowledge, skills and entrepreneurial skills of thousands of people. Furthermore, they contribute for activation and valuation of the local natural resources, for multipurpose usage of technology and for fast production reorientation, for reducing the costs of the work of the big enterprises, for strengthening the process of innovations during the

216 http://eprints.ugd.edu.mk/6738/1/Matlievska_Paceskoski,%202010,%20Prilep.pdf , 02.12.2014.

competitive pressure of the economy and for development of the entrepreneurial spirit in the society, etc.[217]

SMEs are independent market entities, exposed to competition which forces them to be open for accepting new ideas or new products and services, new technologies, new way of distribution, risk and lucrativeness.

⇨ Specialization, which means production of a narrow or small segment or phase of some kind of complex production through cooperation with big companies.
⇨ Innovation, that is to say, creation of high (higher) given value per unit of production
⇨ Rationalization or spending less recourse per unit of production.
⇨ Adaptability or adoption to new types of resources, new types of energy, new work organization.
⇨ Flexibility and mobility, that is to say willingness for change and moving from one work to another or from one location to another.
⇨ Labour intensity, which means absorbing the work force through self-employment.[218]

Today, in the developed countries, the small and medium-sized enterprises (SMEs) are most common economic entities which take part with a high percentage of the gross domestic product (GDP). The SMEs are characterized with high degree of entrepreneurship and innovation, especially in the developed countries, which contributes a lot for the development of the competitive advantage in the economy. However, unlike them, in the countries of transition, the small and medium-sized enterprises (SMEs) are focused mostly to the imports and trade, which means importing products from a foreign country and selling them in their own country. This creates a good position in the market, but the economy does not require that. Productive and entrepreneurial oriented SMEs are needed for the economy, and they

[217] Taki Fiti, Verica Hadzi-Vasileva Markovska, Milford Bejtmen, Entrepreneurship, University "Ss. Cyril and Methodius" - Skopje, Second Edition, Faculty of Economics - Skopje, 2007, p. 58
[218] Junior assistant Emilija Mitevska, Technological Development of the Small and Medium-Sized Enterprises in Macedonia Through Programmes for Cooperation with Foreign Partners, p. 4

move it forward. This issue is extremely important and that is why the state, especially the local government, should influence and encourage the creation of the entrepreneurial spirit as well as financially support the creation of the SMEs.

CONCLUSION

From the above mentioned, we can conclude that if there is a globalization of the world economy, the sector of the small and medium-sized enterprises is necessary to be internationalized and for that to be done it should be adequately prepared. Only the competitive enterprises, which include utilization of modern knowledge and new technologies, could become part of the world market of goods and services through business cooperation, partnership and contracts. Within that context, the managers should create conditions for accepting the news offered by the technical-technological development. Their effective work and economy depend on their speed of the decision making, their acceptance of new knowledge and experiences in using the latest techniques and technologies. Only the SMEs that are oriented this way are benefit for the development of the domestic economy, which would become international economy if it is full of innovation and entrepreneurial oriented small and medium-sized enterprises (SMEs).

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INSURANCE OF RISKS - PART OF MODERN MODEL OF RISK MANAGEMENT IN THE COMPANIES[219]

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Abstract

Risk management is a very broad term and completely different from the classic risk management in means of how risks are treating, as well as in terms of the methods that companies apply in dealing with them. One of the methods that companies are using frequently is the *insurance*. This is not just about the classic insurance, but insurance which covers financial losses and insurance management, which in the modern world are accepted as daily business practice. How and in what extend is this model of risk management applied in Macedonian business climate is the question which is elaborated through the lines of this paper work. There are presented different types of insurance that companies apply in their quest to deal successfully with some of the risks that they face in their daily operations, such as protection of employees, anticipating and coping with indirect risks, financial losses, managerial insurance etc.

Key words: risk management, insurance, financial losses of the companies, indirect risks

Introduction

For quality risk management within the company, primarily is necessary to recognize the types of risks and how to hedge its.

Risk management means cost optimization run in a way that no one will be damaged. Good management risk is focusing on the identification, regulation and elimination of risk.[220] Insurance is one of the methods that

[219] review scientific paper

[220]Neskoska, Marietka; "Osiguruvanjeto vo R. Makedonija", Ekonomski Fakultet, Prilep, 2012, pp. 58

provide efficient risk management with focus on valuation and transformation of the risk. There are several methods for risk management:

1. *The risk could be avoid* - but it is almost impossible to avoid all risks;
2. *The risk can be reduced* - in some cases can be reduced if you take some preventive measures, but does not mean that it will be completely removed;
3. *The risk can be preserved* - but this procedure could result in financial consequences for the insured in case of damage;
4. 4. The risk can be transferred - one of the ways to transfer risk is exactly insurance as a method.[221]

In addition through the lines of this paper work is made review of different types of insurance in the various domains of functioning of the companies as one of the methods which are in the hands of managers when it comes to the risk management.

Mandatory liability insurance

The liability insurance is a very frequent trend in Norway, Germany, Sweden and also in USA. In Macedonia the situation is quate different, although the statistics show that in the last three years, this type of insurance is steadily increasing.[222] Most of the companies that are operating in service sector, whether it is industrial or service enterprise, are required to possess liability insurance as a compulsory obligation. This applies to auditors, accountants, designers, notaries, lawyers, travel agencies, and even companies that are registered for cleaning. Part of the growth in this market segment is mostly due to the laws that imposed liability for such insurance, and not a consequence of increased awareness and the need of the companies.[223]

The liability insurance market is driven by the latest trends where one of the mandatory condition for the companies that apply for tenders, is to have liability insurance of the activity which they are performing. For

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[221] Karadzova, Violeta; "Upravuvanje so rizici ", avtorizirani predavanja, Ohrid, 2008, стр. 78

[222] *"Осигурете ги имотот, луѓето, приходот и менаџерските одлуки"*; Капитал магазин; http://www.kapital.com.mk/mk/prilozi_edicii.aspx/94764/osigurete_gi_imotot,_lugjeto,_prihodot_i_menadzherskite_odluki_ako_sakate_mirno_da_spiete!.aspx?iId=3107, Последна посета: февруари 2015

[223] Ibid,

example, a construction company that takes any project must have liability insurance of activity. This insurance guarantees that any deviation from the contract will cover the insurance company. The companies engaged in production of consumer products that may cause adverse effects in consumers must be insured. For example, these types of companies are restaurants that serve food or smaller stands and pastry shops. Recently also, wine producers cannot export abroad if they don't have contracted insurance of the product in a case of negative implications on the consumers. Small producers of beverages also are beginning to insure, because it becomes a major precondition to be able to compete on foreign markets. In liability insurance of activity, also very important is insurance from medical error in health sector, and in some countries it is even compulsory. Thus, the insurance company covers the damage of the patients caused by any error in treatment. In Macedonia, although poorly, this type of insurance as a method of risk management has seen steady growth every year, so in 2014 it amounted to 1.661 million MKD.[224]

The situation mentioned above is supported by the fact that the business experts as the most important insurances list following:[225]

- **Insurance of employees** - this type of accident insurance is primarily in the world, because human capital is the largest capital owned by a company;
- **Property Insurance Company** - especially is important to be insured buildings, factories and equipment from fire and other damage;
- **Liability insurance** - companies must ensure that any deviation from the services or products will be carried out borne by the insurance company.

Employees are the biggest capital that companies must to ensure

Insurance of employees is primarily obligation worldwide, but also it becomes mandatory in the Macedonian companies. Social responsibility to

[224] *Izvestaj za dejnosta na osiguritelnite drustva za 2014 godina, Agencija za supervizija vo osiguruvanjeto,* http://www.aso.mk/dokumenti/izvestai/kvartalni/4Q%202014_Osiguritelni%20kompanii_mak.pdf , Last reviewed: may 2015

[225] Belicanec, Tito, Klimovski, Aleksandar, Korporativno upravuvanje, ucebno pomagalo, poslediplomski studii po delovno pravo, Praven Fakultet Justinijan Prvi, Skopje, pp. 118

the people who create business and the profit is more than huge, so according to this fact, insurance of the employees as a cost is still small.[226]

There are several ways and methods how the employees could be ensure in the company from injury or other risk. For example, some companies decide collectively to ensure all employees, but some of them, however, enter into separate contracts for each of them. Also, it can also be defined timeframe that covers insurance of the worker from accident and it may be only during working time of eight hours, or 24-hour protection even outside the workplace.

Besides employees, accident insurance is typical for secondary and higher management in companies or so-called managerial insurance. This managerial insurance concluded not only the standard accident insurance for employees, but also insurance that includes additional risks and benefits as a financial bonus which is covered with agreement and decision if this bonus stay in the company or will be transferred to the manager if there will be no risks in the annual working of the company. Managerial insurance is very important because it is the management that creates value in the companies. It is therefore important for managers to be insured against accident or other risks, because each risk may affect of the continuous and successful leading of the company.

As well as there is a insurance of the managers from accident or other physical risk, there is also a management liability insurance covering errors that managers could done and on that way to cause negative impact on the working of the company or the investors. That means that are ensuring even wrong decisions made by the managers also, including the members of boards of the companies. Such type of insurance is far developed worldwide, especially in large and global corporations and according to the last report of Federation of European Risk Management Associations, from all countries worldwide it is considered that improvements are needed only in Turkey, Japan, France, but also in USA.[227] unlike in the case of the Republic of Macedonia, where this type of insurance is still in its initial inception. To be sure if this type of insurance is necessary or not for the companies, we should always have in mind the fact that management is one that creates value in companies, so each risk that they could cause may affect to the continuity and success in managing of the company.

Regarding the insurance of employees in certain companies, primarily in the US, the corporations are going one step further, a step that in our country and in neighboring Balkan countries is avoided even to mention

[226] Ibid,

[227] European Risk Management Insurance Report 2014, Federation of European Risk Management Associations, 7th edition 2014, pp. 7

it. Namely, the insurance of employees in the case of bankruptcy or insolvency of the company is present in larger frames in big companies and corporations worldwide even in the cases where it implicate bigger financial costs of the company. Also, this insurance covers the negative implications that could be caused as a due to wrong decisions of the management team especially if that decision results in firing employees and job loss. This type of insurance is particularly advocated in neighboring Serbia because of the huge number of closing factories during the global economic crisis during and after the 2008.[228] However, due to the inability of the insurance companies to bear this risk from the one side, and the financial weakness of the companies from the other side, this type of insurance has not offered by any company except those benefits that the employee is entitled as an individual with his health and social security.

Indirect risks often fatal for the company's operations

Apart from the basic risks of economic or political character (breaking machines, a problem with suppliers, fire and explosions, stealing etc.), which can cause damage to the operation of a company, there are also indirect risks that can appear as a consequnece of some other risk, but to cause devastating effect on the main functioning of a business or company's working. For example, in the case of fire, aside from burning the hole company or machinery in it, is direct financial loss for the company, it will also occur and indirect losses that are connected with returning back of the company in original condition (building new factory, supplying of new machinery etc.) . Meanwhile, the company will be not able to continue with daily working, production will be stopped, ordering deadlines will be unsaved, so the company can permanently lose the cooperation with stakeholders or even can be faced with the risk to lose access to that market permanently. These indirect costs may be even higher and from the material. Therefore as one of the most important insurance that companies use in the largest scale is the insurance against financial losses in addition to managerial insurance. In this way, the company not only protects from loss or damage of machinery or any other segment of the manufacturing process, but also the company will be paid some of the funds that are calculated as a profit that company would achieved if operated under normal conditions. Businesses that invest in the future of their company and care for its successful operation, see the insurance as required obligation without can not

[228] *Mogu li se menadzeri osigurati od stecaja?;* http://www.politika.rs/rubrike/Ekonomija/Mogu-li-se-menadzeri-osigurati-od-stecaja.lt.html; September 2014

imagine a business process in present context. The above mentioned facts explain why it is important for a company to be insured, even from and indirect risks that many are not aware of.

Insurance of financial losses

Insurance against financial loss cover financial losses that occur as a result of: risk employment; insufficient income (general); weather troubles; lost income; unforeseen overheads; unforeseen trading expenses; loss of market value; loss of rent or revenue; indirect trading losses or other indirect costs; financial losses (except commercial) and other types of financial loss.[229]

In insurance there is a class insurance against financial losses which became actual and interesting for the companies after the 2008 when global economy entered in a major crisis, and many companies began to record losses. Recently on the insurance market, companies are looking for new types of financial insurance in particular in the part of protection and coverage of company's claims. In Western European countries and US market this insurance from financial losses is functioning very well for decades, but in extreme conditions as in our country, where companies very difficult settle debts, and where is no sufficient functionality of the legislation, insurance of claims go much harder and it is quite a small number of insurance companies that are the ready to take this type of risk. According to the data from the Macedonian Bank for Development Promotion (MBDP), in 2010 about 20 companies have insured their claims worth about 4 million Euros and in 2013 these amount is 5 million that leads to the fact that this type of insurance as a method of risk management notes very small growth. Firstly, the Bank assesses the creditworthiness of a company that takes risks, and then decides whether to accept to ensure claims, but also and to limit who can do it. It is interesting that insurance of claims from domestic companies the Bank charged higher fees ranging between 0.8 and 0.9%, while the export insurance, where commission is fluctuating of 0.3% up to 0.7%.[230]

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[229] Article 5 of Supervision law in insurance (Official Gazette 27/2002)

[230] Annual report for 2013; http://www.mbdp.com.mk/images/finansiski-izveshtai/godishni-izveshtai/mak-godishni-izveshtai/2013-godishen-izveshtaj-tmp.pdf, Last reviewed: June 2015

Conclusions

Risks in business companies may represent one of the most difficult challenges facing managers because of their unpredictability, but also and because of the making decisions for the right and proper way to deal with them. In the frames of this paper work were exported different types of company's insurance as one of the models for risk management which can be applied in the business by the companies and on that way to contribute to a safer, more complete and more comprehensive approach to the organization and functioning of the business entity. Insurance as a model has a broad scope which contributes a lot in the prevention of contemporary risks that companies are facing in today's business world. The form, manner, the range in which the insurance as a risk management method will be applied depends mainly from management decisions, the size and activity of the company, but in any case it is significant to conclude that insurance as a method of risk management is more than necessary for the successful operation of any business entity.

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341.023

THE INDIVIDUAL AND ITS POSITION AS A SUBJECT OF THE INTERNATIONAL LAW[231]

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ABSTRACT

This work is one short, but clear and precise analysis of the question that causes the debate among the experts of international law and refers to the subjects of international law. The term subjects of international law through the text of this work are considered as entities that carry international rights and obligations. Special emphasis is put on the subjects in statu nascendi, in this case the individual because her position in international law is more specific and complicated than the position of the classical subjects of international law – states and international (governmental) organizations.

Key words: subject, state, individual, ius cogens.

INTRODUCTION

States that carry out the criteria for statehood written in the Convention of Montevideo are subjects in the international law with entire subjectivity and that means capacity for the possession of rights and obligations according to the international law, making the law, sue before the international courts and concluding contracts with states or international organizations. Vatican City State is sui generis because her territory is in a deformed shape, but is subject to international law with an entire subjectivity.

[231] review scientific paper

International (governmental) organizations are subject of the international law. One of the most powerful organizations that possesses entire subjectivity is the United Nations, which has approximately 193 member states.

With the development of the international law appears the need of elaborating and analyzing the question about the subjects in statu nascendi. There are many entities with limited subjectivity, but in the center of this research is the position of the individual and the cases when the individual gets part of the space in the international law like a subject.

DEFINING THE TERM SUBJECTS OF INTERNATIONAL LAW

The question about subjects of international law opens wide debate among the experts of international law. One simple definition of this question is impossible to be given because this theme is really complicated. In the following text, you can find more definitions about the concept of subjects of international law.

One of the most popular definitions is given by Bartosh. Subjects of international law are the carriers of international rights and obligations, which directly realize their rights in the international relations and are directly responsible for the performance of their obligations.[232]

Subjects of international law are entities that may own international rights, obligations and ability to realize their rights and obligations in the international relations, to set up legal requirements and fulfil legal obligations.[233]

The term subjects of international law refers to entities, owners of legal subjectivity, capable to be holders of rights and obligations according to the international legal system.[234] Not all subjects of international law have the same legal capacity. For example, there are three subjects 1, 2, 3. Subject number 1 has the ability to perform action A and B, but not action C. Subject number 2 has the ability to perform action B and C, but not action A. Subject number 3 has the ability to perform all actions (A, B, C). If we elaborate this example better, we will conclude that the state is the only subject that is capable to assume the three actions. In Reparation case, the International court of justice determined that: "subjects of the law are not identical in every legal system nor with their nature or with their rights. Their nature depends on the needs of the community."

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[232] Vasil Tupurkovski, Vladimir Ortakovski, Ljubomir D. Frčkoski, *Meǧunarodno javno pravo,* Skopje, str. 51, 1995.

[233] Ljubomir D. Frčkoski, Sašo Georgievski, Tatjana Petruševska, *Meǧunarodno javno pravo,* Skopje, str. 109, 2012.

[234] S.K. Verma, *An introduction to Public international law,* Delhi, page 69, 1998.

The term subjects of international law means: holders of rights and obligations in accordance with the international law, possibility to sue before an international court, the ability to create the law, capacity to conclude agreements with states and international organizations.[235]

Subjects of international law with entire legal subjectivity are: states and international (governmental) organizations and the best example of a global international organization is the United Nations. For one state to be a subject of international law must achieve the criteria for statehood that are stipulated in the Convention of Montevideo (brought 1933): defined territory, a permanent population, the sovereign authority, self - government or capacity to relate with other states.

Specific cases of mini - states like Vatican city - state (in the following text Vatican), state that achieve the criteria for statehood but they are deformed and in a miniature shape. Vatican City - state stretch on 44 hectares and 800 people are living in it, but just 450 of them have Vatican citizenship.[236] Despite all specific features, Vatican is subject to international law. Contrary to Vatican, another mini - states like San Marino, Monaco, Andorra, are under protectorate of huge, powerful states and they don't achieve the criteria of statehood so they haven't got an entire subjectivity yet. They have a subjectivity, but not entire. Other examples of subjects of international law in statu nascendi are individual, non – governmental organizations (NGO-s), political movements and rebels. In the text below clearly are defined three cases when an individual gets the title subject of international law. The state represents the interest of the individuals so the international capacity of the individual is smaller and more different from the capacity of the states.

THE INDIVIDUAL AND HER POSITION IN THE INTERNATIONAL LAW

States and international (government) organizations like the United Nations have entire subjectivity, the other subjects have limited subjectivity and they are subjects in statu nascendi. The individual has a special position in the international law and may appear as a subject of international law in specific cases.

Dominant subjects in the international law are states, but they are governed by individuals. State with territory, but without population

[235] Joseph Gabriel Starke, *Introduction to International Law*, London, 1989.
[236] Home page of Vatican City State, http://www.vaticanstate.va/content/vaticanstate/en.html, online available: 06.12.2014.

wouldn't exist because she doesn't achieve the criteria for statehood that are stipulated in the Convention of Montevideo. Take a look back to the history and you can conclude that there were some rules for defending the diplomatic envoy. The individual starts to get her position in the international law in the last half of the XX century – a time when human rights were proclaimed and international humanitarian law was developed. The question about the status of the individuals in the international law is related to the international protection of the human rights.[237]

There are many scientific discussions about the international status of the individual. The traditional theory accepts only states as subjects of international law. According to supporters of this theory the individual is not capable to appear in the international law as a subject because she can't be owner of rights and obligations and because of that is object of the international law.[238] This theory is supported by Oppenheim. He wrote that the state is only responsible for international crimes or for nonperformance of the obligations because she has a position as an international person. This theory doesn't agree with the current conditions because it's born in a period when the international law wasn't developed to this degree as it is today.

Despite the point of view of the traditionalist, the others including Kelsen consider that the individual may appear as a subject of the international law. Not just states are subjects of international law; the individual is subject too, but in one specific way.[239] Kelsen's theory is supported by Westlake and he thinks that "the obligations and rights of the states are only obligations and rights of the people who have created them."[240]

There are three situations when the individual may become the subject of the international law: first, when the individual would break a norm known as ius cogens.[241] In that case, the individual appears as a carrier of obligations in the international law. The obligation to be responsible for his/her acts. There are the cases known in the international law as individual

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[237] Malcolm Shaw, *International law*, Skopje, page 206, 2009.

[238] S.K. Verma, *An introduction to Public international law*, Delhi, page 84 – 85, 1998.

[239] Hans Kelsen, *Principles of International law*, New Jersey, page , 2003.

[240] S.K. Verma, *An introduction to Public international law*, Delhi, page 85, 1998.

[241] Ius cogens are norms in the international law with imperative power. The states can't change these norms with contract because, in that case, the contract will be worthless. In contrast to imperative norms, there are dispositive norms without imperative power and that means they are left in the will of the subjects of international law. They need to decide whether to accept or not the dispositive norms but if they decide to accept the norms they have to respect them.

criminal responsibility for piracy, slavery, genocide, war crimes, crimes against humanity and terrorism.[242] The Latin name of this kind of criminals is hostis humani generis – enemy of the mankind. In this case, the individual is participating in the process before the International court, but with the limited procedural ability.[243] Finally, the individual gets her position in the international law after the Second World War. Two tribunals were formed: International military tribunal in Nuremberg and international military tribunal in Tokyo. Individual responsibility was stipulated in the Statute of the International military tribunal in Nuremberg. The tribunal in Nuremberg established that "the international law imposes obligations for states and individuals too. Crimes against humanity are committed by persons, not by abstract entities and by punishing individuals who have made that kind of crimes, acts of international law will be applied."[244] This is how the individual becomes hostis humani generis – enemy of the mankind.[245]

The individual may look for her rights (for example, when they are violated) before the European court of human rights, but before that, she must use all legal remedies in her own state. Protocol number eleven to the European convention for the protection of the human rights and fundamental freedoms that enter into force 28 November 1998 established the European court of human rights.[246] This is the second way through which individual may get the position subject to the international law.

Special cases when the individual may appear as a subject of the international law is succession of the states (it refers to the actual change of sovereign authority over a certain territory and may appear in the following cases: connection of two or more states in one, absorption of one state to another, separation of one state to two or more, secession of part of one state to form new, affiliation of part of territory of one state to another, creation of a new state through decolonization)[247] due to which individual loses her citizenship. In that case, human rights are violated and the individual may

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[242] Ljubomir D. Frčkoski, Sašo Georgievski, Tatjana Petruševska, *Meǧunarodno javno pravo,* Skopje, str. 211, 2012.

[243] Vasil Tupurkovski, Vladimir Ortakovski, Ljubomir D. Frčkoski, *Meǧunarodno javno pravo,* Skopje, str. 100, 1995.

[244] S. K. Verma, *An introduction to Public international law,* Delhi, page 87, 1998.

[245]The term hostis humani generis has Latin origin and means enemy of the mankind, not humanity, we must make a distinction between these terms. The English translation is enemy of mankind, not enemy of humanity.

[246] Vladimir Ortakovski, *The rights of minorities within the Council of Europe and in Republic of Macedonia*, Skopje, 2009.

[247] Ljubomir D. Frčkoski, Sašo Georgievski, Tatjana Petruševska, *Meǧunarodno javno pravo,* Skopje, str. 144, 2012.

acquire refugee status or need of political asylum. There is one situation when a group of people may be owner of rights and obligations in the international law, for example, the groups like Bosnian Serbs, Kurds from Iran, Iraq and Turkey, they weren't able to establish their own countries, but they can participate in negotiations for their future.[248] The real name of this group is minorities. The term minorities mean groups that have cultural, religious, linguistic and racial identity different from that of the majority. There is no place for native in this group because their rights are protected by special conventions.

CONCLUSION

The question about subjects of international law is complicated and differently interpreted by theoreticians of international law. Theories that represent the view that the only subjects of international law are states should not be used nowadays when some new entities try to get a position in the international law. Individual after the Second World War fixes her position in the international law in inglorious way, by getting the epithet hostis humani generis – enemy of the mankind, executor of war crimes, crimes against humanity, genocide and other crimes.

The positive side of the evolution of the status of the individual as a subject of international law is the opportunity to appear like a person that looks for the rights (guaranteed by the European convention on human rights and fundamental freedoms) before the European court for human rights. The biggest advantage of the view of protection of the human rights and the prevention of violation is recognition of the status of the individual as a subject of the international law.

With the development of the human rights in the future, the individual will get a better position in the international law.

[248] Sean D. Murphy, *Principles of international law*, Skopje, page 61, 2011.

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THE EFFECTS OF THE ELECTORAL SYSTEM ON THE REPRESENTATION OF WOMEN IN MACEDONIAN PARLIAMENT[249]

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Abstract

The purpose of this paper is to analyze the impact of the Macedonian electoral rules on the representation of women in Macedonian Parliament. Macedonia is very manageable example of such analysis, because in its relatively short democratic experience, it has experimented by using three electoral models (in the 1990 and 1994 election – majoritarian model, the 1998 parallel model, and ever since 2002 the proportional model), and when there was an introduction of a proportional electoral model that is where the gender quotas were introduced. To what extent did the electoral rules affect the representation of women in Macedonian parliament as an important socio-demographic group, and how well did the Macedonian experience fit into the debate that exists in scientific circles on electoral systems that the majoritarian system is extremely non-favorable, that the mixed electoral system is somewhat more favorable and the proportional is the best for women candidates (especially if it is proceeded by gender quotas) are just some of the questions that we will try to answer in this paper.

Key words: women's representation, the Assembly of Republic of Macedonia, electoral models, gender quotas, affirmative action.

INTRODUCTION

The impact of electoral rules on representation of social and demographic groups in the highest representative body has always been an important chapter in the science of electoral systems. One of the most

[249] review scientific paper

extensively studied socio-demographic groups regarding their representation is the group of women.[250]

The interest to study the representation of women in politics is not chosen by chance, especially knowing that "women represent more than 50% of the world's population but continue to be under-represented as voters, electoral candidates, officials and political leaders."[251]

This piece of data suggests a conclusion that "gender equality in politics has stayed an ideal rather than becoming a reality."[252]

There are many factors which lead to women's under-representation in politics such as the democratic capacity of some societies, some social stereotypes, attitudes, customs and behaviors which disempower, discredit, and discriminate women in public life as "not suited" for decision-making in politics.[253]

Achieving gender equality and empowerment of women is one of eight Millennium Development Goals that the UN outlined in 2000. The UN framework for securing the rights of women was adopted in the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) in 1979, which was upgraded to the Beijing Declaration and Platform for Action in 1995.[254]

This paper aims to examine the representation of women in Macedonian Parliament, the highest legislative body, in light of "The most important factors affecting women's representation such as: (i) the basic electoral formula that determines how votes are counted to allocate seats and (ii) the use of legal strategies for affirmative action."[255] The Republic of Macedonia is a very interesting case for a comparative study on the effect of the electoral system to describe the representation of women in Parliament,

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[250]Метју Соберг Шугарт, "Истражување за компаративните изборни системи: Созревање на едно поле и нови предизвици што претстојат,"во М.Галагер и П.Мичел (ед.) *Политиката на изборните системи*, Скопје: Академски печат, (2009): 48.

[251]Sabine De Bethune and Els Van Hoof, "The Gender Issue in Belgian Party Politics and Elections," *European View* (June 2013) 12: 113.

[252]Lydie Err, *Impact of electoral systems on women's representation in politics*, Rapporteur of Committee on Equal Opportunities for Women and Men in Council of Europe (2009):1.

[253] See Ibid.

[254] For more see in the Publication of the Commission for equal opportunities for man and women in Macedonian Parliament, forming, activities and results (2006-2013) from December (2013): 5.

[255] Pippa Norris, "Women's Representation and Electoral Systems," in Richard Rose (ed.) *The International Encyclopedia of Electoral Systems*, Washington DC: CQ Press (2001): 348-351.

"Because the change of the electoral system provides for quasi-experimental condition to examine the effects of electoral systems."[256] This attitude of Wolfgang Wagner is quite correct, because the Republic of Macedonia, in its relatively short democratic tradition, has experimented with a majority system (1990, 1994), a parallel model (1998), a proportional electoral model (since 2002), and along with the introduction of proportional representation gender quotas were introduced.

THE ELECTION SYSTEM, GENDER QUOTAS, AFFIRMATIVE ACTON AND THEIR IMPACT OF WOMEN'S REPRESENTATION

If we summarize the literature which examines the matter of women's representation in Parliament, and that correlates with the electoral system, the position of the science of electoral systems is very clear:

- Proportional representation has a direct analytic advantage over other electoral models, especially if is applied in multimember constituencies where list submitters can provide gender-balanced approach regarding the proposed candidates. Its advantage for women candidates is even greater if the lists are closed, previously structured, as oppose to open lists where voters can express preferences.
- Elections who are held in single member districts (SMD) continue to be a reason for lack of female representation. The majority system "creates an incentive for party bosses to stand lowest common-denominator candidates in geographical districts; these rarely turn out to be women or minorities."[257] Also in SMD, unlike multimember districts, there remains less room for maneuver to provide sexual, racial, ethnic or locally balanced draft candidate.
- The combined electoral system, or mixed electoral systems uniting elements of the vote in SMD and the list of candidates, is something more favorable for female candidates than the plural or the majority electoral models, but slightly less favorable than proportional representation. This electoral system can instinctively lead to the conclusion that the driving of women in Parliament will be greater through a candidate list then in SMD.

[256] Wolfgang Wagner, "Electoral systems and the Representation of Minorities. The case of ethnic Albanians in Macedonia, "Paper presented at the *Peace Science /International Studies Association Joint International Conference*, Budapest, June 27-29, (2013): 2.

[257] Rob Salmond, "Proportional Representation and Female Parliamentarians," *Legislative Studies Quarterly* Volume 31, Issue 2, May (2006): 117.

However "the mixed electoral systems are not uniform… In the case of Russia, women perform better in the SMD tier, than in a PR tier."[258]

According to Pippa Norris, „the relationship between the electoral system and women's representation is influenced by many factors and is not automatic."[259] What this reflects on is not only on the electoral system, but also on legally established quotas or affirmative action.

Two approaches should be mentioned in this regard. The first is through the quotas stipulated in the statutes of major political parties, demanding that a certain minimum of the parties' candidates for election of national parliament must be women, often 30 percent. The second approach is by introducing mandatory, legal quotas for national parliament that may vary to the minimum percentage of each gender among the candidatures, often from 15% to 40% of required minimum of both genders.[260]In some countries there are "legal sanctions for non-compliance that may lead to non-approval of the list."[261] The Republic of Macedonia and some other countries like Armenia, Serbia, Slovenia, Spain, are the countries that have most effective sanctions for violation of such legal provision.[262]

MACEDONIAN ELECTORAL SYSTEM AND ITS IMPACT ON WOMEN'S REPRESENTATION IN PARLIAMENT

The decision to construct the specific electoral system is one of the most important decisions that have been adopted within each political system. The adoption of such a decision in the Macedonian political system was particularly important if we consider the fact that the country in the early 90's faced the transition from one socio-political milieu to another. Also "At the start of the 1990s, women in Republic of Macedonia confronted a new set of challenges as a result of the introduction of a multiparty system as a part of the democracy-building process in the Republic of Macedonia. They faced up with a great deal of energy, hoping to construct a society that would continue to advance equality."[263]

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[258] Robert G, Moser, "The effects of electoral systems on women's representation in post-communist states," *Electoral Studies* 20 (2001): 353-359.
[259] Norris, *op cit.*
[260] Err, *op cit.*, 3.
[261] Ibid., 4.
[262] See Ibid.
[263] Daniela Dimitrievska, Quotas: The Case of Macedonia," A paper presented at the International Institute for Democracy and Electoral Assistance (IDEA)/CEE Network for Gender Issues conference The Implementation of Quotas: European Experience Budapest, Hungary 22-23 October (2004): 1.

As each one young democracy, which 'starts walking' on the road to set Western European liberal and democratic values, development of multipartism was unthinkable without establishing an adequate electoral system, and, it should be noted that the decision on its establishment was accompanied by stormy debates and controversies on this issue.

Regarding the Macedonian experience in the context of determining the nature of the electoral system we can safely conclude that the parties had a decisive impact on the choice of electoral system. They opted for the ***majority system in two rounds***, with the option of an absolute majority in the first round.

Two election cycles in 1990 and 1994 were held under this electoral system. The adoption was considered as "most fitting to the current social, economic and political situation."[264]

However, the application of this electoral system did not meet the expected advantages of the majoritarian electoral system, but on the other hand, the expected disadvantage of this electoral model for female-candidates was met.

In the first parliamentarian composition (1991-1994) out of 120 MPs that were elected in SMD, only 5 were women.[265] In the second parliamentarian composition that was elected by the same rules (1994-1998) only four women were selected.[266] In neither of these two parliamentary compositions was there an election of a woman MP from the smaller ethnic communities in the country, especially among the Albanian community, as a significant minority community in the country.

This once again confirms the correctness of the thesis that the SMD remains to be the cause of women's lack of representation. The two rounds system can be considered one of the factors that have contributed to maintaining a low level of representation of women in some far more established countries that apply this electoral model, such as elections for the National Assembly of France.[267]

Two election cycles organized by majoritarian electoral system "exposed a number of irregularities and illogicalities, directly resulting from the application of the clear majority system (…) the need for the introduction

[264] Јовевска, Анета, Изборните концепти во теориите на демократија, Скопје: Институт за социолошки и политичко правни истражувања, (1999): 209.
[265] For more see: http://www.sobranie.mk/ Parliamentary composition 1991-1994.
[266] For more see http://www.sobranie.mk/ Parliamentary composition 1994-1998.
[267] Роберт Елци, "Франција: Изборно 'лажирање' " М.Галагер и П.Мичел (ед.) *Политиката на изборните системи*, Скопје: Академски печат (2009): 142.

of a parallel electoral system was directly motivated by the outcome of the two previous election cycles.“[268]

In 1998, with adoption of the Law on Election of Members of the Macedonian Parliament, the political elites agreed to a ***mixed electoral system***[269], where 85 seats were distributed by the majority, and the remaining 35 were allocated according to the proportion, i.e. the ratio of mandates was 71% against 29% in favor of the majoritarian model.

Socio-demographic effects, in terms female representation resulted in doubling of female MPs, compared with the previous parliamentary compositions. In these parliamentary elections four women were elected under the proportional list and 5 in SMD. No female candidate managed to win absolute majority in the first round. All five were selected in second round. Three of the female MPs elected by the proportion list, later participated in the Government. Thus, the number of women MPs originally elected from 9 decreased to 6. Later in SMD due to the termination of the mandate of MPs on various grounds 10 additional reruns were organized and only one woman won. Two female MPs additionally entered Parliament under the proportional list. Again a single women MP from second largest ethnic group in the country – Albanian was not elected to the Parliament.[270] Here, as in the two previous elections, as noted by Rizvan Sulejmani “among Albanians there was a trend (…) for absence of women in the political and voting process, or at least they were not sufficiently involved.“[271]

The reason for the under-representation of women in Macedonian Parliament elected under this model lies in the fact that when applied to this electoral model that unites elements of voting in SMD and for the proportional list, it is logical to expect that the proportional list would be more suitable for women candidates. But the share of votes redistributed according to the proportional as stipulated in the Law on Election of

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[268] Саво Климовски и Тања Каракамишева, *Политички партии и интересни групи*, Штип: 2-ри Август, (2006): 117.

[269] Reynolds and Reilly, have qualified the Macedonian mixed electoral system as a model in which the two round system (or majority run-off) prevails; for Massicotte and Blais it was a superposition system, whereas for Shugart and Wattenberg it was mixed model with a predominantly majority component. See in: Paul E. Johnson and Erik S. Herron, “Assessing Variation in Mixed Electoral Rules Using Agent-Based Models,” Paper presented at the *Midwest Political Science Association Conference*, Chicago Illinois, April, (2005): 14.

[270] For more see http://www.sobranie.mk/ Results of the elections for Member of Parliament, October and November 1998.

[271] Ризван Сулејмани, “Консоцијалната демократија и поделбата на моќта во Македонија,“ во *Поделба на власта и спроведување на Охридскиот рамковен договор* (ед.) Скопје: Фондација Фридрих Еберт (2008): 192

Representatives from 1998 was very small, only 35 seats, regardless of the fact that in the time of its adoption some advocated the share of these mandates to be in ratio 60:60 or 80:40 in favor of mandates awarded in SMD.

A parliamentary election only in one election cycle was held under this electoral system. In 2002, only one year after the conflict developments in the country and the signing of the Ohrid Framework Agreement, the electoral system was changed, regardless of the fact that the reform of the electoral rules were nowhere explicitly mentioned in the treaty. On the other hand, the excessive change to the electoral model had been considered to have brought some instability to the political system because the electoral system in one of its major subsystem. But as Klimovski and Karakmisheva note, an electoral system "itself can never produce good or bad electoral effects."[272]

From the introduction of the proportional system in 2002 until 2014, a total of 5 election cycles, two regular in 2002, 2006, and three early ones in 2008, 2011, 2014, were organized into six electoral regions, which redistributed 20 seats, according to the formula of D'hondt, with the application of closed lists. Through the reform of the electoral law of 2011 the number of MPs increased from 120 to 123 because of the introduction of 3 MPs from the diaspora that were elected in 3 constituencies Europe and Africa, North and South America, Asia and Australia, according to the first past the post.[273]

Socio-demographic implications of the electoral system on women's representation in Parliament provided extremely favorable. The reason lays not only in the fact that it a proportional model was introduced with a closed electoral list, but in the introduction of gender quotas. Ever since 2002 a total of three quotas were introduced: (1) each gender shall be represented with at least 30% in the proposed list of candidates (2002);[274] (2) 30% of women at the upper and the lower half of the list for local election (2005); (3) a 'zip

[272] Климовски и Каракамишева, *op cit*., 124.

[273] See: Article 4 paragraph (3) of the Electoral Code, the Official Gazette of Republic of Macedonia in 2014, no.32, p.3.

[274] This provision was referred to Article 37 paragraph (3) of the Law on Election of Member of Parliament, Official Gazette of Republic of Macedonia, no. 42 from 25.06.2002. Also „those political parties that do not meet 30% criterion will not be registered for elections. The penalty therefor, is that the party will not have an opportunity to win any seats in Parliament."See Dimitrievska, *op cit.*, 3.

system' which mandates that every third place on the list will belong to the less represented gender (2006).[275]

In 2002, 21 women were elected MPs from the candidate list,[276] and also the first Albanian woman was elected to the Parliament. The share of women in this Parliament made after this first election under the proportional model was 17.5%[277]. In 2006, 33 women were elected MPs, and as far as the second largest ethnic group in the country goes the Albanians had 6 seats. The two female MPs ended their mandate due to transfer in executive power. By the end of this Parliament due to the termination of the mandate on various grounds, a total of 4 new female MPs took up seat in the Parliament, bringing the total number of women MPs in the fifth parliamentary composition in pluralism up to 35.[278]

The three extraordinary parliamentary elections in 2008, 2011, and 2014 were marked by identical female representation in Parliament, whose share was 34.1%, which was also the largest in comparison with all the previous parliamentary compositions.

Table1. Representation of female MPs in Macedonian

Composition	elected	Termination of the mandate	Additionally placed	total	%
1991-1994	5			5	4,1%
1994-1998	4			4	3,3%
1998-2002	9	-3	+3	9	7,5%
2002-2006	21	-3	+6	24	20%
2006-2008	33	-2	+4	35	29,1%
2008-2011	33	-2	+10	41	34,1%
2011-2014	38	-2	+6	42	34,1%
2014	40	-4	+6	42	34,1%

[275] This so called 'zip system' was introduced after amendment intervention on the Electoral Code from 2006, when Article 64 was modified. See: Electoral Code, Official Gazette of Republic of Macedonia, no 40 from 31.03.2006.

[276] In the 2002 general election the female cantatas were distributed on the list as follows position 1 to 5 (4.53%); position 6-10 (7.81%); position 11 to 20 (19.84%). See Dimitrievska, *op cit.,* 3.

[277] Three female seats were emptied because of government posts (two of them), and one due to taken of diplomacy post. Additionally in this Assembly, attended 6 new female MPs bringing the total number to the end of this composition of the Parliament to 24 women–MPs. See: http://www.sobranie.mk/ Parliamentary composition 2002-2006.

[278] See http://www.sobranie.mk/ Results of the Election of Members of Parliament Julay 5, 2006.

After the parliamentary elections in the three electoral districts in diaspora were introduced, it was characteristic that not a single woman was elected, regardless of the fact that in the 2011 elections there were two women candidates, one at 7th electoral district (Europe and Africa) and another at the 9th electoral district (Asia and Australia). At the election in 2014 there were no female candidates for the reserve seats for diaspora.

CONCLUSION

From the above analysis made for representation of women in Parliament in all eight parliamentary composition in pluralism, it can be concluded that the Republic of Macedonia, with all previously tested electoral models (the majority in 1990, 1994, the parallel in 1998 and the current proportional one) well fits the theoretical debates about the benefit or disadvantages of certain electoral models in terms of female representation.

With only 5 or 4 elected MPs in the parliament composition of 1991 and 1994, the majority electoral system proves to be extremely unfavorable for female candidates in these elections. It was even less favorable for women belonging to other ethnic groups in the country, such as Albanian women, since no women MPs from the second-largest ethnic group were introduced in Parliament in the 90's of XX century.

The introduction of the parallel electoral system in 1998 doubled the female representation in Parliament, but it was still unsatisfactory. More female MPs were elected in SMD than under the proportional list 5:4. When there are electoral models that unify voting for a candidate and a list of candidates, it is logical to expect that the list would be more favorable to women candidates. At the 1998 elections this was simply not the case in the Republic of Macedonia, because the share of seats allocated by proportionality were less than 1/3 of the total Assembly, 35/120, and the Law on Election of Members of Parliament from 1998 did not provide gender quotas for a more balanced proportional list.

Ever since 2002, when the proportional model was applied with a closed list previously structured with clearly defined legal gender quotas, the representation of women MPs in Parliament has constantly been increasing. In the last three extraordinary parliamentary elections it reached almost 1/3 of the total of the Parliament. In particular, with regard to quotas in Republic of Macedonia, according to representatives of the Macedonian Women's Lobby three important things were provided: (1) Quotas have allowed Macedonian women to become 'visible' in the political sphere; (2) Quotas have made history: the first ethnic Albanian woman has been elected to the

Macedonian Parliament; (3) Quotas have resulted in political parties paying more attention to their women members. Even women from rural areas are being listed as candidates.[279]

Combining proportional model with closed list and gender quotas make Macedonia an extremely positive example globally as a country, that is 26th in the World and 13th in Europe to the percentage of women MPs in parliament, according to the Inter-Parliamentary Union Report from 2015.[280]

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[279] Dimitrievska, *op cit.,* 4.

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INTERNATIONAL DOCUMENTS ON JUDICIAL INDEPENDENCE IN TERMS OF THE DILIGENCE AND HONESTY OF JUDGES[281]

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ABSTRACT

The following reading covers the international standards for judicial independence in terms of the application of the principle of diligence and honesty, and relates them to the situation in the Macedonian judiciary. Diligence and honesty, as values and principles, are essential to the exercise of every profession and activity, and they are of special importance in the work of judges as a personification of law and justice. Apart from judges and other judicial factors, lawyers and public prosecutors play an important role in the practical application of the principle of diligence and honesty in the judicial system. The existence of a sequence of international conventions and declarations, adopted by the most important factors of international law, are basis for the implementation thereof within the national legislation and the enhancement of the capacity for judicial independence, as well as for the practical application of the principle of diligence and honesty.

Although Macedonian judiciary approves part of the standards which are covered in the present reading, additional normative precision thereof is required in respect of the issue of essential application and the manner of complying with the standards, especially when taking into account the recommendations established in the last Progress Report on the Republic of Macedonia prepared by the European Commission.

Key words: Diligence, honesty, judge, independence, international documents.

[281] review scientific paper

INTERNATIONAL DOCUMENTS AND THE DILIGENCE AND HONESTY OF JUDGES

The international standards for independent and impartial judiciary, regardless of their global, regional and local character, have an important role in the promotion and affirmation of the principles and values of laws and proceedings. Regional organizations and national legislations elaborate and explain general norms adopted in the past, which are the basis for acting and applying the law. Diligence and honesty, as principles during judicial acting and decision-making, are not separately defined but they are incorporated in the law or the principles of independent and impartial tribunal and in the right to an access to a tribunal in general. Without having confidence in the independent and impartial decision-making of the tribunal, which also includes the diligent and honest conduct of the judge, there is no logic in the citizens addressing to the tribunal or asking for the realization of their rights.

One of the main documents at international level which guarantees the independence and objectivity of the tribunal is the Universal Declaration of Human Rights, adopted by the United Nations on 10.12.1948. Article 10 of the Declaration lays down that "Everyone is entitled in full equality to a fair and public hearing by independent and impartial tribunal in the determination of their rights and obligations and merits of any criminal charge against him."[282]

The European Convention of Human Rights from 1953, in Article 6, Paragraph 1 sets out that "In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing with a reasonable time by an independent and impartial tribunal established by law (…)"[283] Despite the fact that this provision has become a legal standard in most of the European countries during the period as of adopting the Convention until present date and that part of its goals were accepted in the Constitutions i.e. the laws of other non-

[282] The Universal Declaration on Human Rights of the United Nations was adopted on 10.12.1948 in Paris with Resolution 217 A (III), For more information refer to: *Independent Judiciary, Collection of Documents,* Skopje, National Judicial Council, 1997, 1-7.

[283] European Convention for Human Rights amended with Protocol no.11, Skopje: Council of Europe, 2000, 9. The European Convention was adopted on 05.01.1953. The Republic of Macedonia signed it on 09.11.1995, and it was ratified in compliance with the Law on Ratification of the Convention for Protection of Human Rights and Fundamental Freedoms (including the Protocols), published in the "Official Gazette of the Republic of Macedonia" on 10.04.1997.

European countries, it meets it true meaning through the decisions of the European Court of Human Rights in Strasbourg, which interprets the goal through its attitudes and decisions, thus realizing the function of this provision.

The International Covenant on Civil and Political Rights was adopted with the Resolution of the United Nations General Assembly no.220A from 16.12.1966, which entered into force on 28.03.1976. According to this act which is of great international importance (Article 14), "All people shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law..."[284]

Article 8, Paragraph 1 of the American Convention of Human Rights[285], which was adopted on 22.11.1969, guarantees that "Every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law, in the substantiation of any accusation of a criminal nature made against him or for the determination of his rights and obligations of a civil, labor, fiscal, or any other nature."[286]

The African Charter on Human and Peoples' Rights[287], which guarantees the right to an impartial tribunal, was adopted in Africa, in 1981. Article 7, Paragraph 1 of the present Charter states that "Every individual shall have the right to have his cause heard." This also comprises the right to be tried within a reasonable time by an impartial court or tribunal. Pursuant to Article 26, State Parties to the present Charter shall have the "Duty to guarantee the independence of the Courts."[288]

The Model Code of Judicial Conduct of the American Bar Association which was adopted in 1990 and the Model Rules of Professional Conduct of Lawyers adopted on 2002 by the USA Bar Association pay significant

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[284] The International Covenant on Civil and Political Rights of the United Nations was adopted on 16.12.1966 and entered into force on 28.03.1976.

[285] The full text of the Charter is available under the following link: http://www.oas.org/dil/treaties_B-32_American_Convention_on_Human_Rights.htm

[286] *International Documents on Independent and Efficient Judiciary Volume 3. Skopje:* Academy for Judges and Public Prosecutors, 2014,151.

[287] The full text of the Charter is available under the following link: http://www.humanrights.se/wp-content/uploads/2012/01/African-Charter-on-Human-and-Peoples-Rights.pdf

[288] *International Documents on Independent and Efficient Judiciary Volume 3. Skopje:* Academy for Judges and Public Prosecutors, 2014,152.

attention to the diligent and honest conduct of judges and lawyers. According to point 5 of the Comments to these Canons, a judge must perform judicial duties impartially and fairly "A judge who manifests bias or prejudice in a proceeding on any basis whatsoever impairs the fairness of the proceeding and brings the judiciary into disrepute. Facial expression and body language, in addition to oral communication, can give to parties or lawyers in the proceeding, jurors, the media and others an appearance of judicial bias…" In this wide scope of specific actions which are defined as a conduct that could be considered as partial, apart from his obligation to pay attention to his conduct towards the parties, the manner of communication and gesticulations, a judge is also obligated to pay attention to the, so-called additional elements in his everyday conduct which could be considered as a basis for his partiality and violation of the principle of a diligent and honest conduct. A judge is obligated to act Sine ira et studio. (Without anger and fondness. Objectively.)

The Consultative Council of European Judges adopted the Opinion no.3 on the principles and rules governing judges' professional conduct, in particular ethics, incompatible behavior and impartiality, in Strasbourg on 19.11.2002. This opinion arises from several international documents of global and great importance, which refer to the ethical principles and elements of impartiality.[289] Opinion no. 3 consists of several points. [290] Pursuant to Point 22 of the present Opinion "Public confidence in and respect for the judiciary are the guarantees of the effectiveness of the judicial system: the conduct of judges in their professional activities is understandably seen by members of the public as essential to the credibility of the courts. Judges should therefore discharge their duties without any favoritism, display of prejudice or bias. Judges should also discharge their functions with due respect for the principle of equal treatment of parties, with diligence and honesty, by avoiding any bias and any discrimination, maintaining a balance between the parties and ensuring that each receives a fair hearing." According to Point 27 thereof, judges should not be isolated from the society in which they live, since the judicial system can only

[289] These international documents are the following: Basic Principles of Judicial Independence from 1985; The Recommendation R (94) 12 of the Council of Europe; The European Charter on the Statute for Judges; The Bangalore Code of Judicial Conduct. These principles strive, among other things, towards the harmonization of the existing principles with the requirements of the European Court of Human Rights' practice.

[290] They refer to: Impartiality and conduct of judges in the performance of judicial duties; Impartiality and external conduct of judges; Impartiality and other professional activities of judges; Impartiality and relations of judges with the media;

function properly if judges are in touch with reality. They should therefore remain generally free to engage in extra-professional activities of their choice, which do not obstruct their impartiality and their independence. (Point 28). According to the Conclusions of the Opinion no.3, the CCJE is of the opinion that the principles should offer judges guidelines on how to proceed, thereby enabling them to overcome the difficulties they are faced with as regards their independence and impartiality, as well as that judges should at all times adopt an approach which both is and appears impartial. They should discharge their duties with due respect for the equal treatment of parties, by avoiding any bias and any discrimination, maintaining a balance between the parties and ensuring each a fair hearing. Judges should refrain from any political activity which could compromise their independence and cause detriment to their image of impartiality.

According to the Resolution of the United Nations Economic and Social Council on strengthening basic principles of judicial conduct –Bangalore Principles[291], propriety, which is essential to the performance of all of the activities of a judge, shall mean that "A judge shall, in his or her personal relations with individual members of the legal profession, especially those who practice regularly in the judge's court, avoid situations that might reasonably give rise to the suspicion or appearance of favoritism or partiality." According to Point 1.5, "A judge shall not allow the use of his residence by a member of the legal profession to receive clients or other members of the legal profession in circumstances that might reasonably give rise to the suspicion or appearance of the judge's improper conduct." "A judge (1.14) may engage in other activities, such as civil and charitable activities, if such activities do not detract from the impartiality of the judicial office or otherwise interfere with the performance of judicial duties." The third principle is dedicated to integrity as a value[292]. According to this principle, "Integrity is essential to the proper discharge of the judicial office". According to the explanation of this principle, a judge shall ensure that his or her conduct is irreproachable in the view of a reasonable, just and informed observer. The behavior and conduct of a judge must reaffirm the people's faith in the integrity of the judiciary. Justice must not merely be done but must also be seen to be done. Apart from personally complying with the Code's standards, a judge must stimulate and support other people to comply with it.

On 17.11.2010, the Committee of Ministers of the Council of Europe adopted a Recommendation CM/REC (2010) 12 on the independence,

[291]Available on http://www.unodc.org/pdf/corruption/corruption_judicial_res_e.pdf
[292]It is often analyzed as a value by A. Schopenhauer (1788-1860) according to who honor is external conscience, and conscience is internal honor.

efficiency and responsibilities of judges.[293] According to Point 11 of Chapter II, "The independence of judges should be regarded as a guarantee of freedom, respect for human rights and impartial application of the law." Judges' impartiality and independence are essential to guarantee the equality of parties before the courts. In the General aspects of this Recommendation, Point 5 states that "Judges should have unfettered freedom to decide cases impartially, in compliance with the law and their interpretation of the facts." In point 11 of the referring to the internal independence, it is concluded that "Judges' independence and impartiality are essential to guarantee the equality of parties before the courts." According to Point 13, "All necessary measures should be undertaken in order to respect, protect and promote the independence and impartiality of judges." Point 60 of the Recommendation establishes that "Judges should act independently and impartially in all cases, ensuring that a fair hearing is given to all parties and, where necessary, explaining procedural matters." Judges should act and be seen to act with diligence and honesty, without any improper external influence on the judicial proceedings.

Part of these international standards is directly incorporated in the legislations of most democratic countries, including the Republic of Macedonia, but the need of their practical application remains to exist in the future.

ABOUT THE OBLIGATION OF DILIGENT AND HONEST CONDUCT OF A JUDGE IN THE REPUBLIC OF MACEDONIA

The reform of the Macedonian judicial system, which was implemented in 2004, has led to significant changes in the tribunal's obligations and competences, and part of them have been transferred into other legal professions. The legislator believed that, with the new (re)defined role of the tribunal, it shall become more efficient and diligent. This prognosis came true and the judiciary was released from all indisputable proceedings and cases. Same as in the period before the reformation of the judicial system, as well as after it, during the execution of the working obligations of a judge when acting and deciding upon the cases, it is of essential importance to respect the ethical principles which have their legal definition in the ethical codes. One of the most important principles is the principle of diligence and honesty which arises out of a person's conscience, by defining what is right and what is wrong. The obligation to take care of this principle as regards the judge's work in the scope of the Macedonian judicial system belongs to

[293]*International Documents on Independent and Efficient Judiciary Volume 1. Skopje:* Academy for Judges and Public Prosecutors, 2010,179.

the Judicial Council which, as an autonomous and independent judicial body[294], provides and guarantees the independence of the judicial authority and which pays attention to the fulfillment of the constitutional, legal and ethical principles and goals. Pursuant to the law, judges protect human rights and fundamental freedoms by applying the law. "The realization of the right to a proper hearing through an independent, impartial and professional judiciary is the basis for the rule of law in every contemporary democratic country. Every country which is oriented towards the above said shall justifiably be expected to do everything in its power for the purpose of providing what the international instruments recommend." [295] The Macedonian society, as any other society which considers itself as a democratic one, should allow and recognize the tribunal's role as a key role to the development of the civil concept and the respect of human rights and fundamental freedoms, especially considering the fact that the tribunal stands between the state's or the state authority's interests and the citizens' rights.

The obligations to provide complete application of these principles arise out of a sequence of positive legal provisions, as well as of many international acts being applied within the national legislation.

In the last Progress Report on the Republic of Macedonia as of 08.10.2014, in the part referring to the conclusions on meeting the political criteria, i.e. the judicial system to be more precise, the European Commission of the European Union established that the basic rule of law principle, that justice must not only be done but must also be seen to be one, is not fully understood or respected by the authorities in terms of law enforcement actions targeted at specific persons or sectors. Questions continue to be raised both inside and outside the country about possible political influence over certain court proceedings. According to the Report "Although the judicial structure is formally independent from external influence of the parliamentary and executive branches, individual judges must also appear to be acting independently of any form of pressure, otherwise public trust will be lost and the rule of law called into question." In addition, the Report sets out that systemic improvements to the quality of justice are also required, notably clearer argumentation and transparency of court judgments (to increase public trust and address concerns about independence); greater and more consistent use of superior courts and the

[294] Law on the Judicial Council of Republic of Macedonia ("Official Gazette of the Republic of Macedonia" no. 60/2006, 69/2006; 150/2010 and 100/2011)

[295] Margarita Caca Nikolovska, Analysis of Judicial Independence in the Republic of Macedonia, Skopje, Institute of Human Rights, 2013, 5.

case-law of the European Court of Human Rights and more widespread implementation of the existing Codes of Ethics.[296]

It is also confirmed in this Report that a complete and consistent respect of specific principles from the positive law is required, as well as their definition and explanation as regards specific working and life situations for the judge as a person, with the purpose of preventing extensive and inconsistent interpretation of the principles of work.

CONCLUSION

The international standards and guarantees which are justified in the present reading are an excellent basis for their complete incorporation in the national legislation by implementing their essence in national laws or by legal reference to their direct application. In most of the laws the Macedonian legislation lays down the guarantees which are preconditions for a diligent and honest conduct of the judge, but the development of mechanisms for their practical application is strongly required. The principle of diligence and honesty, which the court often makes reference to in its decisions of civil matter and obligations, should be continuously and entirely applied by every judge, court official, as well as lawyer, public prosecutor or participant in a proceeding. Apart from the normative-legal establishment of some legal decisions, it is necessary to conduct continuous education and raise citizens' awareness regarding their rights.

This is one of the best ways for the public perception of the court, as an institution applying the law and taking care of the justice, to be improved and the reputation of the judicial profession to be built, which nowadays is of significant importance for the strengthening of public confidence in the judicial system and law in general.

[296] For more information, refer to: Progress Report on the Republic of Macedonia for 2014 as of 08.10.2014, p.12, available on: http://www.pravdiko.mk/wp-content/uploads/2013/11/Izveshtaj-na-Evropskata-komisija-za-napredokot-na-Republika-Makedonija-za-2014-08.10.2014.pdf

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WAY BILLS - COMMODITY SECURITIES IN COMMERCIAL LAW[297]

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Abstract

The securities in which the obligation is a commodity character documents play an important role in commercial transactions. In commercial law, transport documents are evidence that define and enable the rights and obligations of the parties to the contract of carriage.

Commodity Securities transportation in legal practice are known as: CIM and way bills. In commercial law, specifically for the transport of goods by sea, despite CIM , there are used board bill of lading, and also the security.

With clear and precise elaboration of terms related to commodity securities, and in that context the way bills, which is improperly neglected, is removing barriers that are an obstacle to the development of this segment of the legal practice and doctrine in the commercial law of the Republic of Macedonia.

Keywords: Waybill, board bill of lading, sea transport;

Introduction

Transport documents as specific commodity securities, which play a very important role in modern commercial transactions . The transport documents are particularly important in circumstances where the goods are

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charged with credit, which they are proof of the rights and obligations of the parties to the contract of carriage in circumstances when the purchased goods are to be transported from the point of sale, to the place of dispatch which usually appointed by then buyer.

International maritime transport of goods is regulated by the International Convention for the Unification of rules of way bills from August 25, 1924 adopted in Brussels and also called Hague rules.[298]

Way bills basically a security, which skipper confirming the user, based on a contract for the carriage of goods declared by sea, its reception of the ship. The way bills skipper takes responsibility after shipping cargo (declared goods) to deliver to the holder of the security.[299]

In another similar definition: Cargo way bills or a document that skipper confirmed that the ship received some goods because its transport by sea and put forward the authorized person who owns it with respect to the conditions specified therein.[300]

According to the Swiss professor Walter Miller, "a way bills nonnegotiable (portable) tool for property that meets two different functions:

- It is a symbol of constructive possession, by endorsing and transmission
- Although the document itself can lead to a direct transfer of property (property) rights over the goods represents through its delivery (lecture) and endorsement, but no matter what it may be part of the mechanism of transferring property rights. "[301]

Content and types of board bill of lading

Board bill of lading is a receipt for the goods and proof that a contract of carriage by sea. Handling of way bills means available to transport the goods delivered. As security it states if the name is passed by itself, and if the bearer says its transmission is done by simply teaching.

In the Hamburg rules way bills are defined as: "a document that proves the (record) the contract of carriage by sea and the taking or loading

[298] Hague Rules of 1924, amended by the Visby Rules of 1968 and SDR Visby Protocol 1979. Visby rules are the result of extensive discussion in the International Maritime Committee (CMI) of the Stockholm Conference in 1963.

[299] Дукоски Саша, Меѓународно трговско право , Графомак, Кичево, 2014, стр.91.

[300] Drakšić Mladen. Međunarodno privredno ugovorno pravo.. Savremena administracija , Beograd 1980, str.388

[301] Walter Müller , Binnenwasserstraßen, Basel, 2010, str.37.

of the goods by the carrier and that the carrier is obliged to deliver the goods at the handing over of the document.[302]

Although in legal practice, because of the different legal systems can be said that this document as security has certain characteristics:

- Way bills is always a security, whether used as evidence for the conclusion of a specific contract of carriage by sea;
- It is causal security, because behavioral clearly show the link with the main activity, or contract for the carriage of goods by sea, as a result of the issuance of such securities;
- At the same time it is presentational security, because based on it the recipient of the goods it can be taken only by presenting or teaching the way bills the skipper, the kind and quantity that is clearly stated;
- This document belongs to a group of traditional papers, because with her lecture at the same time transfer or create some real rights or property right or lien on the goods that are marked in the way bills.

Under the Hague and Hague / Visby Rules[303], way bills are issued at the request of the supplier by the carrier or by his representative or by the captain of the ship.[304]

Between way bills which are issued in maritime traffic and one for transport of goods in inland waters there is no essential difference.

Specificity of the document that is used in the transportation of goods in inland waters is that, way bills in sailing in internal waters are issued upon request to the loader, but if it is as if his issue, both parties (seller and buyer) are entitled to require issuing waybill.[305]

When this document states the name skipper is obliged to deliver the goods to the designated port of the person whose name is indicated as a receiver and return it with the original copy of the way bills. In this case, the rights may be transferred to civil - legal cession where designates the name of the person to whom the rights are transferred;

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[302] Article 1, paragraph 7 of the Hamburg rules. UN Convention on maritime transport of goods, Hamburg, March 31, 1978 (in force from 1 November 1992).

[303] International Conference on the unification of certain rules for the way bills, Brussels, August 25, 1924, as amended by the Visby rules of February 28, 1968, as amended by the Protocol of Brussels December 21, 1979.

[304] Article 3, paragraph 3 of the Hague / Visby Rules, SDR Visby Protocol 1979;

[305] Дукоски Саша, Меѓународно трговско право, Графомак, Кичево, 2014, стр.89-90.

When board bill of lading states the bearer, the skipper's responsibility to incoming port to deliver the goods described in the document and handed the person will appear and legitimize the upright board bill of lading. Skipper (carrier) in this case, it does not have to determine the identity of the person, unless it has no doubt that the person owns the way bills in an illegal way.[306] Otherwise this kind of document for maritime transport is transferred by simply handing over "from hand to hand" from the old to the new owner.

When the way bills after the 'order' skipper is obliged to deliver the load of incoming port that person to present a neat original document - and only the person who is in the order specified.

There are so-called clean and dirty way bills.

Clean board bill of lading when skipper upon receipt of goods for transport is not written in it not anything observations regarding the condition, quantity, weight or packing of goods. When skipper or carrier determines that the product or its packaging with no flaws, then he will issue a so-called "clean" board bill of lading. This document is very important for both parties: the seller and the buyer, because it is a guarantee that the goods will be charged according to the agreed price, and the possibility it easier to sell or to give as security (mortgage).[307]

Unclean board bill of lading when skipper of the board bill of lading put objections kind of concern about the condition, quantity or packaging of goods. Observations frequent placed for obvious and visible defects of goods, such as damaged packaging, wet goods irreparably or improper packaging and the like. When there is such a document responsibility of skipper (carrier) is only for the damage that is a result of unethical and improper behavior: the commander or persons present on board, as well as for improper transportation: This type of board bill of lading Nah suitable for transmission of because the goods for which it is issued is difficult customer, and therefore its price is lower.

If this compares with the national legislation, although we cannot speak for the board bill of lading, packing the goods are placed in transport is solved in a similar way. The sender is obliged to pack the subject of the prescribed or usual way to avoid the occurrence of any damage or endanger the safety of people or goods. The carrier is obliged to turn its attention to the sender of the shortcomings of packaging that can be observed; otherwise

[306] Stankovič dr.M, Propisi robnog prometa, Beograd, 1985, str.93
[307] Antonijevič Z. Ugovori u privredi, Beograd, 1968, str.504

you will be liable for damage to the shipment that would happen because of those deficiencies.[308]

In the practice of the international carriage of goods by sea and meet: way bills loaded, way bills received for loading, Direct Group board bill of lading and board bill of lading.

Way bills loaded (Shipped on board Bill of lading) is issued after we perform loading of goods in the ship set on moorings in the harbor.
Way bills received the loading (Received for shipment Bill of lading) is issued when skipper will receive the goods from the sender and subsequently loaded on the ship.

Direct board bill of lading (Trough bill of lading) is issued when shipping goods participate skipper or more different when it comes to so-called mixed transport or when shipping is done partly by boat and partly by another vehicle.

Group board bill of lading (Groupage bill of lading) is issued when the loader goods appears a company for international shipping, which a board bill of lading sends goods to a number of its clients and different recipients.[309]

With the development of information society and electronic communications, inevitably have a need for the emergence of so-called electronic board bill of lading (electronic bill of lading), which are increasingly used in international transport by sea instead of the classic - hard.[310]

Because the electronic form of this document shall not transport a physically tangible document (if it is not printed on paper), appearing on the transfer problem, because the classic paper document is transmitted in physical possession of the buyer together with the goods. These things successfully overcome by the use of electronic key (code), and more recently with the electronic signature. But the legal holder of the electronic document may at any time before delivery of the goods, ask the transporter issuing board bill of lading in paper form. Newly issued (paper) document states the name that is specified or the bearer, it gets character of securities, and once

[308] Член 714 став1 и 2, Закон за облигационите односи, СЛ.РМ.18/01.

[309] Дукоски Саша, Меѓународно трговско право , Графомак, Кичево, 2014, стр.92.

[310] Rules established by the International Maritime Board electronic board bill of lading (accepted the XXXIV International Conference of the International Maritime Board CMI Paris 1990).

converted from paper to electronic form nullifying previous security codes (codes and electronic signature).[311]

Although the electronic board bill of lading in no case cannot be treated as securities because their application, availability, reliability of loss or damage, and the possibility of electronic transmission in paper form, it is more and more used in international transport of goods by sea time.

Waybill in Macedonian legal legislation

In the Macedonian legislation, namely the Law on Obligations in Section 2 which speaks of contract of carriage of items as transport documents there mentioned only as Waybill and confirmation of receipt of carriage, while way bills are not mentioned.

It states: "The contractors cannot agree on the shipment delivered to the transport to make waybill. The consignment note shall include: name and address of the sender and the carrier, type, content and quantity of the shipment, and the value of valuables and other precious items, place of determination, the amount of compensation for transportation, or note that compensation is paid advance provision for the amount by which the shipment is loaded, place and day of the publication of the CIM. In the consignment note it can be entered and the other provisions of the contract of carriage. The consignment note must be signed by both the contractor. CIM may contain provision "by order" or read the bearer. "[312]

The same law states that: "The existence and validity of the contract of carriage is independent of the existence of the CIM and its accuracy."[313]

Similarly, when it comes to the Certificate of Compliance for transport stating: "If not issued waybill, the sender may require the carrier to issue a confirmation of receipt of shipment for transport data to include CIM".[314]

CONCLUSION

Transport documents in the international transport of goods have a particularly important role in commercial transactions, in circumstances

[311] Item 7 of the Rules of the International Maritime Committee (CMI) for electronic board bill of lading at the International Conference held in Paris in 1990.

[312] Член 711. Закон за облигационите односи, СЛ.РМ.18/01.

[313] Член 712 Закон за облигационите односи, СЛ.РМ.18/01.

[314] Член 713 Закон за облигационите односи, СЛ.РМ.18/01

where the purchased goods declared to be transported from the site of the seller, to the place of the buyer. In such circumstances the transport documents become evidence, precisely define and enable the rights and obligations of the parties to the contract for international transport.

In maritime tradition, unless the lease agreement of the ship (charter partum), which basically is a document of proof that there is a specific contract for the carriage of goods is critical way bills (Bill of Lading), and also the security.

Besides the traditional (paper) board bill of lading which is security, lately more often used the so-called electronic board bill of lading, but it is important that it is not a security.

Although it is logical to expect way bills to be inserted into the Law of Obligations, however justified or not done it nah, which represents a legal ambiguities and opens need this matter to be regulated by another legal decision.

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THE ROLE OF THE NOTARY SERVICES IN THE EXECUTIVE PROCEDURE IN THE REPUBLIC OF MACEDONIA[315]

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Abstract

The Notary Services is an independent public service whose task is to perform public work at a request of the citizens and the legal persons. It is introduced primarily by the Law on Notary Work in 1996 and the Law on Notary Services in 2007. Under the jurisdiction of the Notary Services, among the other things, the court competences for cases from the executive procedure is passed, in order to unload the judiciary.

In this paper, the positive and negative benefits of introducing the Notary Services as an independent public service and its contribution in terms of execution procedure are investigated and presented.

Keywords: Notary, executive procedure, notary documents, benefits, competences.

ENFORCEMENT PROCEDURE IN FRONT OF A NOTARY PUBLIC

With the amendments to the Law on Execution[316] from 2011 for easing the work of the courts and making it more effective, some undisputed executive cases of the courts are transferred to the authorization of the notaries as trustees of the court. The notaries are authorized as trustees of the courts to decide for the proposals for adopting the decision that allows execution based on authentic documents.

[315] professional paper
[316] Law on Execution, Official Gazette of the Republic of Macedonia 59/11

The Law on Execution[317], besides the other executive documents, as basis for execution takes the executive notary document - decision, which allows execution based on authentic document made by a notary public. In other words, the execution of the notary document can be made only if the notary document has become enforceable under special regulation that governs the execution of the document.

The Law on Execution does not define the term 'notary document', which in some cases may be enforceable. On the other hand, the term 'notary document' is defined by the Law on Notary Services. According to this law, notary documents are documents for legal matters and they are statements that are made by the notary public in form of notary acts, transcripts for legal matters. These documents are made by the notary public or were made in his/her presence. Furthermore, they confirm the facts, which the notary public determined by direct observation or with help of the documents.

The execution based on authentic document existed in the Law on Executive Procedure from 1997[318], where authentic documents are those documents that are not enforceable documents, but they prove the existence of the certain monetary, with high degree of probability.

With the transfer of certain competences to the notary, the special legal procedure governed by the Law on Legal Procedure for issuing a paid warrant is gradually avoided. In this case, the court, on the basis of submitted complaint for received monetary claim which is proven by an authentic document, issues a warrant for the defendant to fulfil the request within the specified period of time.

Authentic documents are: public documents, private documents verified by law, draft and protested cheque and with returned bill, invoices and documents which according to special regulations are same as public documents.

EXECUTION OF THE NOTARY DOCUMENT

For the notary act to be an executive document, the following conditions prescribed by law are necessary to be fulfilled:

-certain determined obligation of price for which the parties can agree

-the notary act to include a statement of the obliger that on the basis of that act, the forced execution may be implemented immediately for realizing the cost after the arrival of the obligation

The private document with the specified content that the notary public confirmed also has a legal influence on the executive document. If the private document does not contain the statement of the debtor - that on the

[317] Official Gazette of the Republic of Macedonia 59/11

[318] Official Gazette of the Republic of Macedonia no.53/97

basis on that document a compulsory execution could be implemented, that statement is recorded by the notary in accordance with the parties and the conditions determined by the Law on Notary Services for confirmation (solemnization) of the private documents.

If the obligation, which is determined by the notary act, depends on a condition or a period which is not determined, that is to say its date is not defined, for the execution of the notary act, then a document which will prove that there is a period i.e. a condition is needed. If that is not possible, then the period or the condition is determined by a verdict in legal procedure.

In the notary documents a partial execution is possible, based on a notary document which became executive only in one part and the execution will be made only in that part.

The procedural actions taken under certain conditions, in certain order and in certain form constitute the content of the execution procedure. Furthermore, when undertaking the procedural actions for the subjects in the procedure, certain mutual relations are established.

1) Procedure for execution in which by taking certain measures of coercion against the debtor, some claim by the trustee which is determined in some cognitive procedure is accomplished, and

2) Procedure for security, which is implemented when the conditions for implementation of the execution procedure are not fullfiled, so that a temporary protection is given by taking certain measures for security until the conditions for implementation of the execution are not fulfilled.

Without getting into the executive procedure and its implementation, the most important thing about this paper are the competences of the notary public in the executive procedure, that is to say, the transfer of some procedural matters of the enforcement procedure under the jurisdiction of the notaries for easing the courts from the cases with indisputable element, and with special emphasis on the execution based on the decision that allows execution on the basis on the authentic document made by a notary public.

I. In accordance with the Law on Contractual Pledge[319], the realization of the pledge (sale of moveable objects, sale of real estates) and the realization of the pledge on the basis on the claims or some other rights (intellectual rights) are transferred under the jurisdiction of the notaries. With the possibility of the realization of the pledge by the notary, there comes the avoidance of the long and expensive court enforcement procedure.

II. In accordance with the Law Amending the Law on Enforcement Procedure, there is a transfer of the following notary competences:

[319] Official Gazette of the Republic of Macedonia no. 5/2003

a) In the part **Procedure for security,** the chapter with the title *Security by transfer of the ownership of objects and transfer of rights*, there is a legal basis for the notaries to perform and realize this type of security;
b) A legal basis is created, but only at a request of an authorized person or authority. When it is provided by law, the notary cannot submit or take other action. The notary public prepares minutes for the undertaken action or for the submission of the written text by mail or directly, and submits a certified copy of the minutes to the court.
c) The competence of the notary public in the procedure of execution based on the notary act with the clause for enforcement and for making a decision to allow the execution based on authentic document by the notary.

EXECUTION BASED ON NOTARY DOCUMENT

The Law on Execution does not define the term 'notary document' as executive document, but the term itself is regulated by the Law on Notary Services, according to which the notary documents are documents for legal matters and they are statements that the notary public composes in the form of a notary act, minutes for legal matters made by the notary public or in his/her presence, as well as certificates of facts which the notary public established by direct observation or by means of documents. The notary document is an enforceable document in the cases determined by law.
While composing the notary act, the notary public must first examine whether the parties are able and authorized to take the work. Also, the notary public must explain his/her purpose and to make sure whether the parties have real and serious will. On the basis on the statements, the notary public will write the statement and then he/she will read it to the parties and will ask questions to make sure that the content of the notary act corresponds with the will of the parties.
The notary act is an executive document if it determines the obligation for costs for which the parties can agree about, and if it contains a statement of the oblidger that based on that act the compulsory enforcement[320] could be implemented immediately for realization of the cost after the arrival of the obligation.
With the notary act upon which the pledge is written in the public book, the execution of the property could be directly required for paying the secured claim, if the debtor agreed clearly about that.
If the obligation depends on the condition or the period which date is not determined, for the execution of the notary act, a document which proves

[320] Official Gazette of the Republic of Macedonia 55/07

that the condition or the period has ended is necessary. If that is not possible, then it is determined by judgement in legal procedure.
In all previously mentioned cases the notary public will make a certificate for execution of the document, upon a written request of the party to which a certified statement, which proves that the claim or part of the claim has arrived, is attached.
For the notary act to be an executive document, it is necessary to fulfil the following conditions:
1) to determine a certain obligation of cost, for which the parties can agree about
2) to contain a statement of the obliger, that on the basis on that act a compulsory execution could be implemented immediately for realization of the costs after the arrival of the obligation.
In the notary document, a partial execution is possible, on the basis on the notary document which became enforceable in one part, and the execution will be made only in that part.

DECISION FOR EXECUTION

If the proposal is given, if it is well-founded and neat, the notary public will make a decision which allows execution based on authentic documents. The decision, which allows execution, should include everything that one executive document which is eligible for execution contains. The notary public will make the decision with two orders:
1) he/she will charge the debtor to pay the specified amount of monetary claim within the period of 8 days from the day of the reception of the decision.
2) the notary public will allow the execution of the payable monetary claim on the basis on authentic document.
The decision, which allows execution on the basis on authentic document, should contain legal advice that the debtor has the right to file a complaint.
The Law on Execution did not provide reasons for which the debtor could file a complaint and it did not provide whether the reasons should be explained. Although the law did not specify the reasons, they could be different as follows: that the debtor has settled the claim; that the claim is out-of-date; that the debtor does not owe anything to the creditor; that the claim has not arrived; that the claim is legally passed; that the notary is not under the jurisdiction of that; that there is a claim for which a condition exists, and that condition is not fulfilled and so on.

The notary public will submit the decision, which allows execution with confirmation for validity and execution, to the creditor ex officio, without waiting for the creditor to ask for the decision.

The situation with the executive cases by the notaries in the Republic of Macedonia:

Year	Entrusted documents	Effectively resolved cases	Percent
2011	57 705	6605	38,2%
2012	234 254	216 753	89,1%
2013	241 966	204 310	84,4%

In the period between 2011, 2012 and 2013 at the territory of the Republic of Macedonia, 77, 5% of the total number of executive cases are resolved by the notaries.

CONCLUSION

On the basis on the carried out analysis of the statistic data for the number of the execution cases, which are submitted in the period between 2011, 2012 and 2013 and its transferring under the jurisdiction of the notaries as trustees of the court, the hypothesis that every year the number of the notaries' enforcement cases constantly increases, but the work in the courts is reduced, is confirmed. This gives the opportunity for the courts to pay more attention to the cases with contentious element, so that they will resolve them faster and more effectively.

1.With the introduction of the Notary Services and the transfer of the competences from the courts to the notaries as court representatives, there is a positive effect in the fast and effective resolving of the cases in the executive procedure with indisputable element by the notaries.

2.On the other hand, the number of the cases with indisputable element of the executive procedure of the courts is reduced. This gives better opportunity for resolving the cases with disputable element, which are under the jurisdiction of the courts, faster and more effectively.

If the competences from the executive procedure are not transferred under the jurisdiction of the notaries, the courts could not deal with the cases by fast and effectively resolving them.

3.The research which was done on a target group[321] showed that the number of contentious cases resolved by the notaries and returned for action in the courts is very small. Also, all people who were interviewed consider that the notaries are well qualified and trained for fast, effective and efficient resolving of the cases transferred under their jurisdiction. 4.Almost all respondents, except the notaries, consider that the established awards for work of the notaries positively affect the efficiency of their work.

Beside the positive side of the introduction of the Notary Services (fast and efficient resolving of the cases and making the work of the courts easier), there are some negative sides of its introduction too.

1. There is a privileged right to a number of notaries to earn high income by performing the public service, and because of that the budget income is reduced. Despite the expansion of the competences in the Notary Service, the number of the notaries and employees of the notaries remains the same.

2.The introduction of the Notary Services negatively reflected the competences of the lawyers. A large number of things, which were under the jurisdiction of the lawyers, are performed. That is done contrary to the legislation, that is to say, the notaries perform tasks for which they do not have competences with impunity.

In conclusion, it could be emphasized that it is necessary to take certain actions in the Notary Services, so that it will enable to increase the number of the notary offices or to enable every person, who does not fulfil the conditions required by the Law on Notary Services, to freely open a notary office and to perform a notary service. On the one hand, it will lead to employment of a large number of people. But on the other hand, it will bring greater rivalry in the work of the notaries, and that will lead to the reduction of the prices – the prize for the notary work.

However, there are some recommendations for the competent institutions in the Republic of Macedonia to continue to engage in activities with which the Notary Services will be further improved, as part of the legal system, and that will enable fast and efficient resolution of the issues that are very important for the protection of the rights and interests of the citizens.

[321] It is a research done by the author in territory on the Republic of Macedonia during the 2014 and the data are still processing and have not been published yet. Only parts of them are used for the needs of this paper.

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MEANING OF THE TERM THE BEST INTEREST OF THE CHILDREN IN THE CONVENTION OF CHILDREN RIGHTS[322]

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ABSTRACT

The basis of the Convention is the fundamental principle- the best interest. The idea when and how the principle - best interest press in an leading link that is overall international protect on the children rights is based on, what exactly the term best interest means, which are the element that determine it and the ways in which this postulate is embodies in the reality are the basic on which is based this thesis. The interpretation of the true meaning of this principle is importance for adequate application of the principle of the each individual case, especially it comes to protecting children's rights in societies with different levels of social and economic development . The main purpose of this thesis is to explain the essential meaning of this principle to allow equality in its application.

Key words: protect, interest, children, Convention, meaning

INTRODUCTION

The ideal of the society is related to creating and raising strong generation and individuals by providing the children a quality growth and development.

[322] review scientific paper

The Convention on the rights of children, brought by UN in 1989, represents an instrument in which a whole system of rights referring to defending the child's special needs is incorporated.

The Convention and its established framework, directs the countries which have signed and ratified this Convention to act in providing the best interest for the child.

What does "the best interest" mean and by which key elements is it determined?

The complicity of this fundamental principle upon which all other rights of the Convention are based, makes its realization difficult, considering the fact that each case has its own best interest.

The fact that there is neither a comprehensive definition in the Convention itself, nor in another international or national agreement or act brought based on the Convention on the rights of children provokes motivation for further research in this field.

ORIGINS OF THE PRINCIPLE „THE BEST INTEREST"

The concept of the child's best interest has a quite long history in the International law. Its firsts can be found in the Declaration of the rights of the children from 1924.

The Declaration of the rights of the children from 1924 contains a range of children's rights proposed by the founder of "The Save the Children Fund", Eglantyne Jebb in 1923.[323]

Her thought that children's rights should be protected was reflected in the decisions of the Declaration.

[323] "Save the Children" is an international non-governmental organization which promotes children's rights, provides help and support to children in developing countries. It is established in the UK, 1919, as "The Save the Children Fund" by Eglantyne Jebb and her sister Dorthy Buxton, who after the World War I realised the need of children's care and protection. In 1920, supported by the International committee of the red cross, "The Save the Children Fund" restructured in The International Save the Children Union. There are 30 national branches of the Save the Children organization as a network of non-profitable organizations having the support from over 120 countries around the world. Jebby's life and the foundation of the organization are found in the biography "the woman who saved the children" published from One World, in 2009
Save The Children, http://en.wikipedia.org/wiki/Save_the_Children_Fund [Accessed 24 January 2014]

The best interest principle is not founded in the Declaration but it is taken into consideration that "men and women from all nations, known as humanity, are obliged to give the best to their children..." [324]

That is the first legal acknowledgment that adults have the responsibility to do the best for the children.

This Declaration is known as The Geneva Declaration of the rights of the child as it was adopted February, 23 in Geneva, by The International Save the Children Union. On February 28, 1924, the bill of the Declaration was ratified on the fifth congress of the General Assembly of The League of Nations. [325]

The best interest principle is first mentioned in the Declaration of the rights of children in 1959 stating that children need a special legal protection, convenience and opportunities by law and other means which provide physical, mental, spiritual and social development in a normal and healthy way, in conditions with freedom and dignity. The child's best interest should be a leading principle when establishing law and other acts referring to children, as well as a basic one for all those responsible for making decisions for the children. [326]

In 1978, in the early bill of the UN Convention on the rights of the children inspired by Polish representatives, the best interest principle was considered to be included and clearly marked in the Convention.

Apart from the other principles, this proposal was accepted in the Convention on the rights of the children in 1989, so that the best interest principle was raised to the highest level as a leading principle.

CONVENTION ON THE RIGHTS OF THE CHILDREN FROM 1989 AND THE PRINCIPLE „THE BEST INTEREST"

[324] Declaration of the Rights of the child 1959, http://www.humanium.org/en/childrens-rights-history/references-on-child-rights/declaration-rights-child/ [Accessed, 25 January 2014] .

[325] Geneva Declaration of the Rights of the Child, http://www.un-documents.net/gdrc1924.htm [Accessed, 23 January 2014]

[326] Declaration of the rights of children from 1959 is adopted by the General Assembly of the UN, in 1959, November, 20 by all member states of UN in resolution 1386. It marks the first international protection on the fundamental principles of children's rights. (http://www.humanium.org/en/childrens-rights-history/references-on-child-rights/declaration-rights-child/, [Accessed, 23 January 2014]

The United Nations Convention on the rights of children from 1989 is an international agreement containing civil, political, economical, social, health and cultural rights of the children.

The idea for adoption of the Convention was brought by Poland February 7, 1978. It represented the idea of making a binding agreement for all nations which after ten years of the Declaration of the right of children was considered as an opportunity for adopting a new act in addition to the previous one.

The bill consisted of nineteen articles of which ten were legislative and nine procedural. In contrast to the previous Declaration, this Convention was supposed to be binding for all. [327]

The first bill of the Convention was presented in the Commission of human rights where a working group was created, charged for writing the bill of the Convention. [328]

Ten years later, on November 20, 1989, the United Nations General Assembly, with resolution 44/55, adopted the Convention on the right of the children (it contains 54 articles). [329]

The year 1989 represents a special symbol, ten years since the International year of the children and thirty years since the adoption of the Declaration of the rights of the children in 1959.

The text of the Convention is in addition of the Declaration in 1959 when for the first time introduced the child as an individual with own rights.

The Convention came into force on September 2, 1990 after it was ratified by twenty member states of the United Nations.

It is very important that the Convention presents children as subjects of internationally-legal protection, as individuals who have the right on the human rights.

This concept for the rights of the children is understood and accepted with difficulty, considering the fact that the children are individuals

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[327] *The Convention on the Rights of the Child, The Beginnings of the Convention* http://www.humanium.org, [Accessed, 26 January 2014]

[328] The group included representatives from different non-governmental organizations, The United Nations Children's fund, as well as representatives from forty-eight countries, members of the Commission of the human rights. The group met once a year in Switzerland where the proposed details for reaching consensus were denied.

[329] Convention on the Rights of the Child, 20 November 1989, http://www.icrc.org, [Accessed, 26 January 2014]

who need the protection and therefore they are not obliged to be included in the act of bringing decisions referring to themselves. [330]

The best interest principle considered in the Convention covers a wide range of activities and decisions which affect children, including not only the activities by the authority such as legislative, executive, juridical and administrative authorities, but all activities by all relevant private institutions.

The founders of the Convention not only spread the range of the best interest principle, but they established it as being one of the basic and leading principles of the whole Convention.

The United Nations Committee on the rights of the children in defining and explaining the principle considers the best interest as a general principle- leader of the whole explanation of the Convention. [331]

The key definition for the best interest principle is stated in the first paragraph, article 3 in the Convention: "All activities referring to children, the children's interests are the ones of primary importance with no importance if they are conducted by the public or private institutions for social protection, administrative or legislative authorities". [332]

The best interest principle as stated in article 3 in the Convention does not provide general explanation of the best interest and its reference, so that the interpretation of the article has aroused debates.

The best interest as a term and principle differs from one place to another, from one situation to another, and depends on the resources, the level of development and the culture around which the children live. [333]

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[330] Nada Grahovac , *Annual report of the work of the Ombudsman in the Republic of Serbia*, Banja Luka 2009, pp.12-16.
http://www.djeca.rs.ba/uploaded/izvjestaj%20g%20lat.pdf , [Access, June 2014]

[331] Thomas Hammarberg, 2008, Commissioner for Human Rights Council of Europe, *THE PRINCIPLE OF THE BEST INTERESTS OF THE CHILD – WHAT IT MEANS AND WHAT IT DEMANDS FROM ADULTS*, (Warsaw, 30 May 2008)
https://wcd.coe.int/ViewDoc.jsp?id=1303979&Site=CommDH&BackColorInternet=FEC65B&BackColorIntranet=FEC65B&BackColorLogged=FFC679 [Accessed, 28 January 2014].

[332] Convention on the Rights of the Child, the United Nations Resolution 44/25 20.11.1989 articl 3.
http://www.childrensembassy.org.mk/WBStorage/Files/konvencija%20celosna.pdf [Accessed, 30 January 2014]

[333] Thomas Hammarberg, 2008, Commissioner for Human Rights Council of Europe, *THE PRINCIPLE OF THE BEST INTERESTS OF THE CHILD – WHAT IT MEANS AND WHAT IT DEMANDS FROM ADULTS*, (Warsaw, 30 May 2008)

Based on the above-mentioned, there is an example of abusing child's labour; many families in developing countries exist by abusing all the productive members' labour, no matter their age, or the societies where girls who are traditionally educated, are deprived from the right to education as it is more important to control the household than to acquire academic education.

Many children from aborigine families were violently taken in the name of the best interest and sent to boarding schools where they were civilized. There were societies where corporal punishment was excused by the argument saying the children can differ between good and bad things.

The Convention on the rights of the children does not provide general definition of the child's best interest in a given situation but its idea is to provide a general framework with clear directions and limits for children's treatment.

FUNCTIONS AND CHARACTERISTICS THE BEST INTEREST PRINCIPLE

The best interest principle has two "traditional" functions, function of control and function of seeking solution.

The function of control is used to determine if the best interest principle of the child is used in realization of the children's rights and obligation.

This function is notable in the Family law in realization of children's care and protection by competent institutions in situations of alternative care and migrations.

The main purpose of the function is to determine if it is of primary importance in taking action or making decisions referring to children.

The function of solution refers to the concept that those making the decisions for the children have to take the postulate best interest into consideration along with the positive and negative effects.

Different situations mean different decisions or solutions as there is a special interest for each individual case.

This function is essential for those making the decisions, because it represents a bridge which connects the written text and the real situation.

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https://wcd.coe.int/ViewDoc.jsp?id=1303979&Site=CommDH&BackColorInternet=FEC65B&BackColorIntranet=FEC65B&BackColorLogged=FFC679 [Accessed, 30 January 2014]

The best interest principle has several characteristics:

1. Contrary to the many articles in the Convention, in article 3 paragraph 1 the subjective law strict sensu is not established but the principle that has to be established in all activities and interventions referring to children, with the purpose of providing a guarantee that life decisions will be made on the basis of interpretation of the best interest principle.

2. The article says that countries have to take into consideration the best interest principle in making decisions which affect children.

3. Article 3 establishes a new status for the child as an individual and subject with own rights and duties, also seen in articles 2,6 and 12 where there is a prohibition for children's discrimination, the right to life, the right to harmonic development and the right to be heard.

4. The best interest concept is indefinite and has to be renamed and internationally accepted. The recent practice along with case studies enabled development for certain solutions referring to individual situations or groups of children. This principle needs to be reliable, accepted and applicable by those making the decisions. [334]

5. The best interest principle is relative in time and space. It is determined by the importance given to the children on the certain territory and time period, depending on the different standards that developed the societies, but it does not mean that the best interest principle can be affected by the cultural relativism which accepts making decisions that affect children and the tangible assets in a negative way. [335]

6. In making decisions referring to children, there are several things which need to be taken into consideration, such as the personal characteristics of the child, the surroundings and the long-term consequences as a result of the decision. On the other hand, the carrier of the decision based on the definition for the child as a human being in development, has to take into consideration the future interest of the child as a result of the period of development.

7. The best interest principle, based on the twenty-six years since the adoption of Convention, is evolutionary and in development in accordance to the social changes. These changes are related to marriage, the big number of divorces, custody, redefining of parents' role and responsibility. All these

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[334] Fatma Hassan Beshir, 2011-2012, *Public Policies and Child Rights Diploma, Article 3 of the Convention on the Rights of the Child, the Best Interest of the Child*, http://www.enmcr.net/site/assets/files/1382/the_best_interest_of_the_child.pdf

[Accessed , 27 January 2014]

[335] Idem

changes and new ways of thinking affect the determination of the meaning of the term best interest.

8. The best interest principle is doubly subjective as it is considered in article 3 from the Convention.

There is a collective subjectivity. What does that mean? The collective subjectivity can be seen through generalization of the term child, in fact the Convention is applicable for all children regardless the sex, religion or race. The term child means forming a subject different from the others-the adults.

The second subjectivity is called personal subjectivity.

According to Van Bueren PhD, the lack of insecurity and indetermination are typical for the best interest principle.

CONCLUSION

The Convention on the rights of the children represents an integral part of the more complex system for protection of human rights and embraces all aspects of child's life.

The best interest principle of the child is one of the basis upon which all rights are established.

The meaning of the term is precisely defined neither in the Convention, nor in another act based on the Convention.

The idea of the best interest principle is older than the Convention itself, but there is no exact definition in all other acts which determines the meaning of the term.

The complexity and flexibility of its meaning comes from the many elements which determine it, as well as the life conditions in a society.

The meaning of the term best interest can be explained depending on the economical and social occasions, resources and the level of development and culture in the society, in fact its meaning is different for each individual case.

The principle is a practical tool which enables the connection between the theory and practice.

Generally speaking, the best interest of the child refers to taking a range of measures in the process of making decisions for the child with the purpose of reaching a high level of welfare determined by the different circumstances for each case.

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5. Save The Children [online] http://en.wikipedia.org/wiki/Save_the_Children_Fund [Accessed 2014]
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