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Abstract
Competition is an inevitable factor for any business regardless of size, production and economic potential, the development and diversity of the market in a given space and time specified timing . Even if there is no competition , it does not mean she will not appear at some stage of development of the market rules. But the legal entities in a modern market-oriented society should not be afraid of competition if implemented in a certain strategic and systematic approach in her analysis on one hand and the implementation of the acquired knowledge in the daily operation of the business with a single task - staying true to the goal.

Keywords : competition, market, companies.

INTRODUCTION

Competition is important for any business, regardless of the size, economic and manufacturing potential, the development and the diversity of the market in a given space and a certain time. Even if there is no competition, it does not mean that it will not appear, thereby imposing itself as an actor in conditions of an unequal market dominated by multinationals and monopolies.

Theoretician Mariam Webster defines competition as "the attempt of two or more parties acting independently, to enable business with the third party by offering the most suitable conditions" (Webster M, 2004). Adam Smith described it as a distribution of productive resources to their highest valued uses and encouraging efficiency. This theory, which is between ideal and non-ideal competition, concludes that no system of resource allocation is more effective than ideal competition. Competition, according to the theory, helps companies develop new products, services and technologies that would give consumers a wider choice and better products.(Annual Revied of Antitrust Law developments.2000)

The open market system creates freedom of economic choice, everyone has the right to produce and sell their products. As a result, competition or economic competition appears. In fact, it is a struggle between manufacturers and distributors for leadership, or market dominance.

COMPETITION AND THE MARKET

According to Article 55 of the Constitution of the Republic of North Macedonia: "The Republic guarantees the freedom of the market and entrepreneurship, ie ensures equal legal position of all the entities on the market. In this system everyone has the right to freedom and has the opportunity to realize his abilities and his way of life. Hence, the system of market economy is a framework and basic condition for the development of the human person, ie the realization of human rights. "(Constitution of the Republic of North Macedonia, 1991)

The term "market" is very complex and with multiple meanings: from the geographical space on which the buyer and the seller of the goods and the service meet, to the coverage of all business relationships between buyers and sellers (supply and demand) in relation to certain goods or groups of goods (including services of all kinds) in a given area and within a certain period of time.(Ilic M,2010)

Theorists, although they all have different perceptions, still agree that: Market is the place where the supply and demand are met (goods and services).

Markets vary according to:

-The number of participants (buyers and sellers).

-The power to influence the height of the price of the product.

The main function of the market is reflected in the connection between production and consumption. This basic function of the market can be broken down into four specific market functions:

1) information function and connection function of independent producers of goods;
2) selective function (function of a regulator of economic developments)
3) distribution function - allocation (matching supply and demand)
4) distribution function (allocation function) (Dukoski, 2014)

The Information function and the connection function of independent producers of goods occur when the market receives information about the state of the supply and the demand for a given good or service. That information is called market value. Based on the movement of the market price, business entities can be properly informed about the state of supply and demand, in certain markets, as well as on the basis of that reporting, and estimate their place in relation to the price. Producers are necessarily linked by buying transactions on the market and exchanging their products in order to obtain the necessary inputs in the production process, or to realize their products.

The selective function of the market arises from the selection of business entities through a competitive process. On the market for the same type of products, a uniform price is often set up at which all sellers sell their products. Those who have lower production costs earn higher incomes, while inefficient producers can not reimburse their costs on the basis of market prices because they work with higher costs and losses, so sooner or later they must abandon this activity.

The function of allocation by definition is a condition where the market allows global distribution (allocation) of economic resources for certain economic activities that create the basic products and services. Based on the price movements of products, economic resource holders are withdrawing their assets from activities with poor business perspectives and endeavoring to enter other industries where incomes are greater. Depending on whether the market prices are rising or decreasing, supply and demand changes ahve aspirations to be more or less balanced.

The market achieves the distribution function by determining the price of the factors of production and thus affecting the formation of the

basic distribution of the national income, on the basis of which the owners earn income and participate in the distribution of the newly created value.(Miodrag S.2010)

Numerous market definitions show its basic dimensions. The basic dimensions of the market, which can not be defined, are: person as a subject of a trade transaction, solvency or the ability to pay them, willingness of people as entities to engage in market transactions, time, space.

The basic rules for development, and thus the competitive market economy, is the proper implementation of the legislation in the circumstances of the acute pressure of the Global players on the World Market and the monopoly concerns.

The right to free economic and trade activity derives from the right to free development of a person protected by the Constitution. Ensuring free competition stems from a ban on unfair competition. Competitive fraud can be found as: unfair competition measures against competitors, unacceptable influence on consumers.

In this regard, the protected interests of the community face loyal competition, and this can be violated. The short answer can be: a man should "behave loyally" (Klezinger A.2012)

Market participants, besides competitors and consumers, are all persons who offer or demand goods or services. According to German legal doctrine: Competitor is any entrepreneur who as a bidder or a consumer is in a competitive relationship with another entrepreneur. In this respect, no activity is envisaged in the same branch or at the same economic level. (Klunzinger A.2012)

Unfair competition, which can negatively affect the competition of competitors, consumers or other market participants, is not allowed.

TYPES OF MONOPOLY

As chief antithesis of the free market and fair competition in business policies are the monopolies. According to the theoretical approach under monopoly of the Macedonian legal theory, it is represented: the factual or legal position of the major economic entities, their groups and associations, the state in the system of the market economy, in the area of production and sales (rarely the purchase of) certain products and performance of certain services, which enable the prevention or restriction of free competition.

The main features of this opinion are:

- The monopoly is defined as the position of the major economic entities of their groupings or associations. This determination starts from the economic power of the legal entities, that is, their size, according to which they can realistically take control of the market. This opinion excludes "small" enterprises from the possibility of gaining a monopolistic position;

- Monopoly is a result of the regular business activity of the enterprises on the market (factual monopoly) or as a result of the law (legal monopoly);

- The monopoly exists in the market economy, and it is equal in the area of production and sales of certain products and performing certain services, and rarely in the field of purchase.

The goal of the monopoly is to prevent or limit competition. (Pepeljugoski B.2009)

Joining in production or in economic activities is a tool in the hands of businessmen to realize the ultimate goal - profit. It can be accomplished in two ways. By creating a definite organized contractual relationship between affiliated entities and through a particular type of market placement towards third parties, which is often referred to as restrictive - contractual practice. The contractual relationship between the affiliated entities is accomplished by concluding loose or solid agreements (contracts). (Strezovski S. 1971)

In the legal theory, loose agreements include: ring, gentlemen's agreement and conventions, represent the original forms of monopolistic bargaining. They are not mandatory and of a temporary nature. They most often refer to the supply of goods and terminate by the completion of the agreed operations, or if the market conditions change.

The ring is a monopolistic agreement of speculative character. The same is actually a temporary agreement for the removal of certain products from the market, in order to create an artificial shortage, which in turn will result in a rise in prices. This will give the members of the ring more profit in the later sale of those same products.

Gentlemen's agreements are friendly agreements between owners or company managers. They are based on a given word, in terms of price, business policy, sales or export of goods, regulation of production, and the like. The obligations of participants in such agreements are not firmly fixed, and their independence and free initiative remain large. These contracts are

of a short duration and are not made in writing, in order to facilitate the evasion of the law. Loose treaties include conventions. They are concluded by companies outside the industry (insurance companies, banks). The subject of such agreements is usually the prices and the market.

The solid forms of monopolistic agreements include: the cartel, the union, the trusts, the concern, the consortium, and others (Pepeljugoski V.2009)

The Cartel by legal nature is an agreement between regulated companies: the amount of sale and purchase prices, the market share, the export quotas, the volume of production, the exchange of patents, the conditions of engagement of the labor force, the division of profits, etc. The main motive and purpose of these agreements is the dominance of the market through the impact of the conditions of supply and demand of goods. The fate and duration of cartels depend on the market conditions. There are many types of cartels: export, patent, and some also include a pool that appears in the insurance field.

The Cartel is created by an agreement for the division of the market, limiting and determining the price in the production and circulation. By joining, the company does not lose legal and economic autonomy. The Cartel is a formal (explicit) agreement between enterprises. It is a formal organization of producers who agree to coordinate prices and production.(Sullivan, Arthur; Steven M. Sheffrin 2003).

According to the definition in the Law on Protection of Competition in the Republic of North Macedonia, a cartel implies - "Cartels" are contracts and decisions and/or concerted practices between two or more undertakings aimed at coordinating their behavior as competitors in the market and/or influencing the relevant parameters of the competition, in particular by fixing purchase or selling prices or other trading conditions, limiting the production or establishing sales quotas, dividing markets, bidding when participating in tenders, boundaries import or export and/or anticompetitive behavior directed towards other undertakings -competenced by cartel participants. (Sullivan, Arthur; Steven M. Sheffrin .2003).

The Trust is an association in which companies are under the sole management for monopolistic purposes. Individual companies that enter the trust become a new and singular company and do not have any legal or economic autonomy. Their owners become co-owners, or shareholders in the

new company - a trust. The trust is a higher and firmer form of association in the multinational economy and international trade. The string is a solid form of monopolistic organization of a significantly higher degree of association. The word trust in English means "trust." It is the highest form of monopoly union in which members lose their independence completely. It begins with the unification of several large companies that grow into new multinational companies that operate on the basis of general capitalistic ownership, unified organization and joint management.(Jovasevic V. 1982)

The concern is an association made around a financially powerful entity, which as a parent company dominates and controls the operations. (Bukljas I.1978) The Concern is the highest form of association, whose individual species are very different. Unlike the trusts that are mainly united by companies of the same branch, the companies are united by companies from different branches and economic areas (industry, transport, banks, insurance companies). It is an economic whole that is provided with a single financial control and with centralized relations, that is decentralized administration.

A consortium is a joint effort to work together or meet a common interest. According to the legal nature, it is a contract for a fellowship It is a community of companies that are united around one center of financial power, and are basically divided into a consortium of banks or a consortium of trading companies that have some common purpose. The consortium is a kind of pooling of banking capital in order to carry out certain financial operations. The consortium is usually limited by its subject matter to an operation (money issue, loan bonds). At the head of the consortium is a larger bank, which places joint funds through its organization, legally conducts the operation, while the remaining participants have only financial participation. There is very little know about the nature of the consortium, because the internal relations are kept in the utmost secrecy (Dukoski S.2014)

A Holding company is an association of investors that, by acquiring a larger number of shares of trade companies from a particular business branch, have control over them. The members of the holding retain their economic and legal autonomy. These are special forms of trusts, which are related to the methods of ranking the financial capital. (Dukoski S. 2014).

Holding companies have a controlling stake in several companies, uniting them under their leadership, adding financial operations, and control and direct the business policies of affiliated enterprises. In doing so, some of the companies retain their individuality to a legal entity. A Holding company is a trading company, as a rule a shareholder, which is at the head of a group of companies. The holding is controlled by a group of companies on the basis of the fact that it controls every company within its framework. In Company Law, the holding companies are regulated with provisions that apply to participation in other companies (related companies). In this case, a company is differentiated, which in another company has a share, significant participation, majority participation or majority right in the decision-making, as well as a dependent and governing company.

The Antimonopoly legislation ie competition in the Republic of North Macedonia is regulated by the Law on Protection of Competition (LPC), which has three pillars for protection:

a) general prohibition of horizontal and vertical restrictions on competition through agreements, decisions and concerted practices with the possibility of exemption from the ban;

b) the prohibition of abuse of a dominant position on the relevant market

c) control of the concentrations of undertakings by the competition authority in order to protect the competitive structure of the relevant market (LPC 2010)

The Commission for Protection of Competition is responsible for the enforcement of the Law on Protection of Competition. The Commission is an independent state body with a legal personality, based in Skopje. The principles underlying the work of the Commission are: autonomy and independence of work, decision-making and accountability, and accountability before the legislature. The Commission can conduct: Misdemeanor and Administrative procedure. The Commission ex officio can initiate a misdemeanor procedure against the legal entity, the responsible person in it, as well as against a natural person. Hence, the Commission is a competent misdemeanor body. The decisions of the Commission imposing a misdemeanor sanction in accordance with the articles are final. Against these decisions of the Commission, a lawsuit may be filed for initiating an administrative dispute before a competent court (LPC, 2010)

CONSLUSION

The market system creates freedom of economic choice, everyone has the right to produce and sell their products on the World Market. As a result, competition or economic competition appears. The degree of market freedom depends on the type of competition, only related to the ability of the manufacturer to produce special, different types of competitive products. Often in reality we have the dominance of the monopoly on the market by only one producer. The right to free economic and trade activity derives from the right to free development of a person protected by the Constitution. The market system creates freedom of economic choice, everyone has the right to produce and sell their products.

Association in production, ie in economic activities, is a tool in the hands of businessmen to realize the ultimate goal - greater profit. But not always the freedom of entrepreneurship and competition have true remarks, why multinational companies driven by the desire to dominate the economic, and therefore the political sphere. Attempts to put a legal framework on the actions of the monopolies, and thus to reduce their dominance, is theoretically well placed, but in practice it does not work so well from afar. There is antitrust legislation in the Republic of North Macedonia, and the freedom of the market and entrepreneurship is protected by the Constitution, but the Commission for Protection of Competition has no powers (or simply can not have it) on the monopoly policy of the Large Multinational Companies.

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IS THE PUBLIC IN THE REPUBLIC OF NORTH MACEDONIA SUFFICIENTLY FAMILIAR WITH MEDIATION IN CRIMINAL PROCEDURE, WITH SPECIAL FOCUS ON THE AREA OF THE COURT OF APPEAL-BITOLA

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Abstract
Mediation in criminal procedure is spread worldwide as an alternative way for solving criminal disputes showing great results in many of the developed countries. Following the examples of those countries where mediation has brought very positive results, in the Republic of North Macedonia now Republic of North Macedonia, mediation in criminal procedure was implemented in 2009 with the Changes and Additions to the Mediation Law.
This paper shows data collected from citizens from all 6 municipalities from the area of the Court of Appeal in Bitola about their acquaintance with mediation in criminal procedure as a possibility for criminal dispute resolution instead of going to Court. These results are great indicator of the success in implementation of mediation in criminal procedure in the Republic of North Macedonia now Republic of North Macedonia and may be of a great value for further researches in this field.

Keywords: Mediation in criminal procedure, courts, public, offender, victim.

INTRODUCTION

Criminal legislations throughout the world are in constant search for finding resolutions about bringing the criminal rate down, which will affect

not only the offenders by punishing them for the crime they did, but also to influence everyone not to commit a crime. It is known that crime is reality in every state in the world, in some with higher rates, in some with smaller, but it is a fact that crime exists everywhere from the countries with less strict penal law to the countries with very strict penal law. One of the latest tries in many countries legislation following this direction is mediation. Mediation cases are a private and informal way of settling a dispute without relying on a legal judgment issued by a judge or jury (FindLaw, 2018). In American legislation in 2004, more than two-thirds, or 63 of 94, of the federal district courts offered some form of mediation program (Stipanovich, 2004, 843).

This paper is focused on the implementation of mediation in criminal procedure (MCP) in the Republic of North Macedonia now Republic of North Macedonia (RM-RNM) as a try to bring positive results as it did in many of the developed countries throughout the world. Those positive results should be: lowering the workload of the courts by solving some of the criminal disputes by mediation and not through court procedure, changing the mindset of the offenders about the crime committed, helping the victim better to deal with its victimization, better treatment of the opposite sides-victim and offender, preventing hatred that usually occurs between opposed sides of the dispute by the court decision which is always in favor to one side and against the other side, lowering the expenses, possibility to avoid criminal record for offender and many more.

In the RM-RNM, mediation was implemented by the Mediation Law in 2006, but at that time it was still not meant for criminal matters. Later, with the Changes and Additions to the Mediation Law in 2009, MCP was implemented and later it became a part of the Law for Criminal Procedure and The Children's Justice Law.

But implementation on paper and its realization in practice are two different things. For MCP to function in practice, many factors are relevant: the way that is predicted in the Laws, mediators trainings and capability, the acceptance of the mediation by the judges, public prosecutors, police officials, lawyers and of course the people and so on.

This paper brings important information about the citizen's awareness and knowledge about the possibility of solving the disputes in criminal procedure by mediation. These results are indicators of one of many fields that are crucial for the successful implementation of mediation in

criminal matters in practice and can show where some of the problems lies, so it can be taken in consideration when searching for a solution for resolving the existing problems in implementing MCP in practice.

MEDIATION IN CRIMINAL PROCEDURE IN MACEDONIAN LEGISLATION

Mediation Law was enacted in the RM-RNM in 2006, but MCP was not enacted until 2009 with the Changes and Additions to the Mediation Law. The conditions and procedure of MCP were implemented also in The Law for Criminal Procedure and in The Children's Justice Law. One can resort to mediation in the criminal prosecution phase or during the trial (Mediate, 2018).

In the Law for Criminal Procedure, MCP is not obligatory, but alternative choice predicted as option for crimes prosecuted with private lawsuit within the jurisdiction of a single Judge. The Court is obligated before opening the main hearing to call for a reconciliation hearing on which the Judge should explain to both parties that they can choose to settle their dispute by mediation instead of through the Court. (Law for Criminal Justice, 2010). Judges should explain to them what the benefits of mediation are and let them know about the possible outcomes.

In the Children's Justice Law, MCP is also not obligatory. In this Law it is predicted that the Public Prosecutor can suggest mediation for criminal acts for which a maximum of 5 years of Prison sentence is stipulated, when offender or victim or both are children. Crimes against sex moral, sex freedom and gender based violence on females are excluded of the possibility of mediation (Children's justice Law, 2013).

So, we can establish that in the RM-RNM, the laws for mediation in criminal matters are already implemented and the procedure is regulated (Jovanovska, 2018, 41).

One of the key-roles for MCP to be accepted by both victim and offender is for them to know what really is mediation and why should they choose it. They must be aware of the benefits it can bring to them individually and to the society. Offenders and victims are citizens who cannot be informed about all this by themselves only, especially because it is a novelty to our legal system. This is why it is of great significance to have a reliable data of people's knowledge about MCP.

METHODS OF THE RESEARCH

The research was conducted on passersby, males and females of ages 20 – 75 by random choice. The respondents were chosen randomly to fill a survey of 10 questions by choosing one of the offered answers that it's closest to their opinion for each question. In this research, results from two questions of the survey will be presented and those are: "Do you know what mediation is?" as first question and "From what source did you found out about mediation?" as second question.

The State Statistical Office of RM-RNM data (Statistical data, 2016) was used in order to get information about the number of population by municipalities. After the representative sample of 1 survey on 2500 citizens was calculated, the necessary number of surveys that needs to be done in each municipality was determined. The statistical data refers to the year of 2016 for all municipalities because that was the newest available data about the number of population at the time.

This research was conducted in all 6 municipalities which are under the jurisdiction of the Court of Appeal Bitola and those are the following: Bitola, Prilep, Krushevo, Resen, Ohrid and Struga.

THE RESEARCH AND RESULTS OF THE RESEARCH FROM MUNICIPALITY OF BITOLA

In the Municipality of Bitola where according to the statistical data lives 92.093 citizens, 37 surveys were conducted.

The results from the first question are presented in Table 4.1 with percentage. The results were the following: 24 of the respondents answered with "Yes", 7 with "I've heard of it, but I am not sure what it is" and 6 with "I don't know".

Table 1 – Survey results on the first question from the Municipality of Bitola (Is the public in the Republic of North Macedonia sufficiently familiar with mediation in criminal matters, with special focus on the area of the Court of Appeal-Bitola: A.Jovanovska, N.Tuntevski, 2018)

Offered Answers	%
Knows what mediation is	64,86
Heard of it but not sure	18,91
Don't know what it is	16,21

The results from the second question are presented in Table 4.2 with percentage. The results were the following: 18 of the respondents answered with “Media (TV, radio, newspapers and so on)”, 5 with “From other people”, 2 with “People involved in mediation”, 2 with “Lawyer, Prosecutor, Judge or other Official”, 2 with “Read in promotional material” and 3 with “Some other way”.

Table 2 – Survey results on the second question from the Municipality of Bitola (Is the public in the Republic of North Macedonia sufficiently familiar with mediation in criminal matters, with special focus on the area of the Court of Appeal-Bitola: A.Jovanovska, N.Tuntevski, 2018)

Offered Answers	%
Media (TV, newspapers…)	48,64
Other people	13,51
People involved in mediation	5,40
Lawyer, Prosecutor, Judge, Official	5,40
In promotional material	5,40
Other way	8,10

THE RESEARCH AND RESULTS OF THE RESEARCH FROM MUNICIPALITY OF PRILEP

In the Municipality of Prilep where according to the statistical data lives 75.252 citizens, 30 surveys were conducted.

The results from the first question are presented in Table 5.1 with percentage. The results were the following: 5 of the respondents answered with “Yes”, 15 with “I’ve heard of it, but I am not sure what it is” and 10 with “I don’t know”.

Table 3 – Survey results on the first question from the Municipality of Prilep (Is the public in the Republic of North Macedonia sufficiently familiar with mediation in criminal matters, with special focus on the area of the Court of Appeal-Bitola: A.Jovanovska, N.Tuntevski, 2018)

Offered Answers	%
Knows what mediation is	16,66
Heard of it but not sure	50
Don’t know what it is	33,33

The results from the second question are presented in Table 5.2 with percentage. The results were the following: 10 of the respondents answered with "Media (TV, radio, newspapers and so on)", 10 with "Lawyer, Prosecutor, Judge or other Official" and the rest 10 did not answer this question because they answered with "I don't know" on the previous one.

Table 4 – Survey results on the second question from the Municipality of Prilep (Is the public in the Republic of North Macedonia sufficiently familiar with mediation in criminal matters, with special focus on the area of the Court of Appeal-Bitola: A.Jovanovska, N.Tuntevski, 2018)

Offered Answers	%
Media (TV, newspapers…)	33,33
Lawyer, Prosecutor, Judge, Official	33,33

THE RESEARCH AND RESULTS OF THE RESEARCH FROM MUNICIPALITY OF KRUSHEVO

In the Municipality of Krushevo where according to the statistical data lives 9.445 citizens, 4 surveys were conducted.

The results from the first question are presented in Table 6.1 with percentage. The results were the following: all 4 of the respondents answered with "Yes".

Table 5 – Survey results on the first question from the Municipality of Krushevo (Is the public in the Republic of North Macedonia sufficiently familiar with mediation in criminal matters, with special focus on the area of the Court of Appeal-Bitola: A.Jovanovska, N.Tuntevski, 2018)

Offered Answers	%
Knows what mediation is	100

The results from the second question are presented in Table 6.2 with percentage. The results were the following: 3 of the respondents answered with "Media (TV, radio, newspapers and so on)" and 1 with "People involved in mediation".

Table 6 – Survey results on the second question from the Municipality of Krushevo (Is the public in the Republic of North Macedonia sufficiently familiar with mediation in criminal matters, with special focus on the area of the Court of Appeal-Bitola: A.Jovanovska, N.Tuntevski, 2018)

Offered Answers	%
Media (TV, newspapers…)	75
People involved in mediation	25

THE RESEARCH AND RESULTS OF THE RESEARCH FROM MUNICIPALITY OF RESEN

In the Municipality of Resen where according to the statistical data lives 16.332 citizens, 7 surveys were conducted.

The results from the first question are presented in Table 7.1 with percentage. The results were the following: 2 of the respondents answered with "Yes", 3 with "I've heard of it, but I am not sure what it is" and 3 with "I don't know".

Table 7 – Survey results on the first question from the Municipality of Resen (Is the public in the Republic of North Macedonia sufficiently familiar with mediation in criminal matters, with special focus on the area of the Court of Appeal-Bitola: A.Jovanovska, N.Tuntevski, 2018)

Offered Answers	%
Knows what mediation is	28,57
Heard of it but not sure	42,85
Don't know what it is	28,57

The results from the second question are presented in Table 7.2 with percentage. The results were the following: 4 of the respondents answered with "Media (TV, radio, newspapers and so on)" and 1 with "Some other way".

Table 8 – Survey results on the second question from the Municipality of Resen (Is the public in the Republic of North Macedonia sufficiently familiar with mediation in criminal matters, with special focus on the area of the Court of Appeal-Bitola: A.Jovanovska, N.Tuntevski, 2018)

Offered Answers	%
Media (TV, newspapers…)	48,64
Other way	8,10

THE RESEARCH AND RESULTS OF THE RESEARCH FROM MUNICIPALITY OF OHRID

In the Municipality of Ohrid where according to the statistical data lives 51.619 citizens, 21 surveys were conducted.

The results from the first question are presented in Table 8.1 with percentage. The results were the following: 4 of the respondents answered with "Yes", 12 with "I've heard of it, but I am not sure what it is" and 5 with "I don't know".

Table 9 – Survey results on the first question from the Municipality of Ohrid (Is the public in the Republic of North Macedonia sufficiently familiar with mediation in criminal matters, with special focus on the area of the Court of Appeal-Bitola: A.Jovanovska, N.Tuntevski, 2018)

Offered Answers	%
Knows what mediation is	19,04
Heard of it but not sure	57,14
Don't know what it is	23,80

The results from the second question are presented in Table 8.2 with percentage. The results were the following: 9 of the respondents answered with "Media (TV, radio, newspapers and so on)", 2 with "From other people", 4 with "Lawyer, Prosecutor, Judge or other Official" and 1 with "Some other way".

Table 10 – Survey results on the second question from the Municipality of Ohrid (Is the public in the Republic of North Macedonia sufficiently familiar with mediation in criminal matters, with special focus on the area of the Court of Appeal-Bitola: A.Jovanovska, N.Tuntevski, 2018)

Offered Answers	%
Media (TV, newspapers…)	42,85
Other people	9,52
Lawyer, Prosecutor, Judge, Official	19,04
Other way	4,76

THE RESEARCH AND RESULTS OF THE RESEARCH FROM MUNICIPALITY OF STRUGA

In the Municipality of Struga where according to the statistical data lives 65.688 citizens, 26 surveys were conducted.

The results from the first question are presented in Table 9.1 with percentage. The results were the following: 11 of the respondents answered with “Yes”, 5 with “I’ve heard of it, but I am not sure what it is” and 10 with “I don’t know”.

Table 11 – Survey results on the first question from the Municipality of Struga (Is the public in the Republic of North Macedonia sufficiently familiar with mediation in criminal matters, with special focus on the area of the Court of Appeal-Bitola: A.Jovanovska, N.Tuntevski, 2018)

Offered Answers	%
Knows what mediation is	42,30
Heard of it but not sure	19,23
Don’t know what it is	38,46

The results from the second question are presented in Table 9.2 with percentage. The results were the following: 6 of the respondents answered with “Media (TV, radio, newspapers and so on)”, 5 with “From other people” and 5 with “Some other way”.

Table 12 – Survey results on the second question from the Municipality of Struga (Is the public in the Republic of North Macedonia sufficiently familiar with mediation in criminal matters, with special focus on the area of the Court of Appeal-Bitola: A.Jovanovska, N.Tuntevski, 2018)

Offered Answers	%
Media (TV, newspapers…)	23,07
Other people	19,23
Other way	19,23

DISCUSSION

It is of great importance for MCP to be practiced in reality besides many other benefits is an opportunity to gain a greater understanding about why the dispute arose (Florida Courts, 2018). Its practice depends of many factors, but since one research can be focused on one only, in this case it is the factor of people’s information of MCP-do people in general know what mediation is really?

When the results from all 6 municipalities are gathered, the outcome is visible. The results of each municipality in one figure are presented in Figure 10.1 in which there is a better view of the total outcome. The numbers on the left show percentage of the respondents’ answers and with blue

colored pyramids are marked answers that showed that respondents know what mediation is, with red colored pyramids-the answers that showed that respondents have heard of mediation but are not sure what that is and with green colored pyramids-the answers that showed that respondents don't know what mediation is.

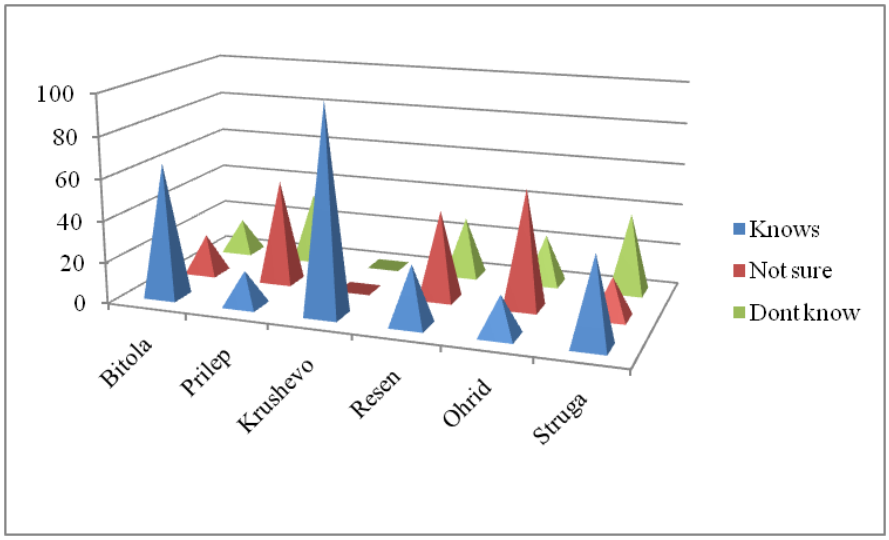

Figure 10.1 – Results from the first question from all 6 municipalities presented in percentage (Is the public in the Republic of North Macedonia sufficiently familiar with mediation in criminal matters, with special focus on the area of the Court of Appeal-Bitola: A.Jovanovska, N.Tuntevski, 2018)

What is obvious here is that only in the municipality of Krushevo with 100% positive answers and municipality of Bitola with 64,86% positive answers, the majority of the respondents knew what mediation is. In all other municipalities the percentage of positive answers is lower than 50%. The red and the green pyramids together are showing that respondents either don't know or are not sure what mediation is. That is the percentage of the respondents that are not informed about the choice of mediation. This here is an indicator that shows that people's knowledge of mediation is at low percentage, below 50%. So, that is the indicator that mediation should be more promoted so the people can know more about it. But in what way should be mediation promoted? By what way would people most effectively receive information about mediation? The answers of these questions may be visible by the results gotten from the second question.

In Figure 10.2 are presented results in percentage, gotten from the second question of the survey in all 6 municipalities. Here are the answers of

the respondents who answered that they know what mediation is or have heard of it but are not sure what it is. The rest of the respondents who answered that they do not know what mediation is could not give an answer to this question.

On the left side are numbers presented as percentage and with the blue colored cylinders are respondents answers which answered that have heard about mediation through the media. By media it is meant all sorts of media: TV, newspapers, internet sources, radio. With red colored cylinder are marked the responses of the respondents who answered that they have heard about mediation via other people, by conversation. With green colored cylinder are marked the responses of the respondents who answered that they have heard about mediation via other people who were either participating or somehow involved in mediation. With violet colored cylinder are marked the responses of the respondents who answered that they have heard about mediation from lawyer, prosecutor, judge or other official. With light blue colored cylinder are marked the responses of the respondents who answered that they have heard about mediation through some kind of promotional material, flyers or so. And with orange colored cylinder are marked the responses of the respondents who answered that they have heard about mediation through some other source which is not mentioned in the survey.

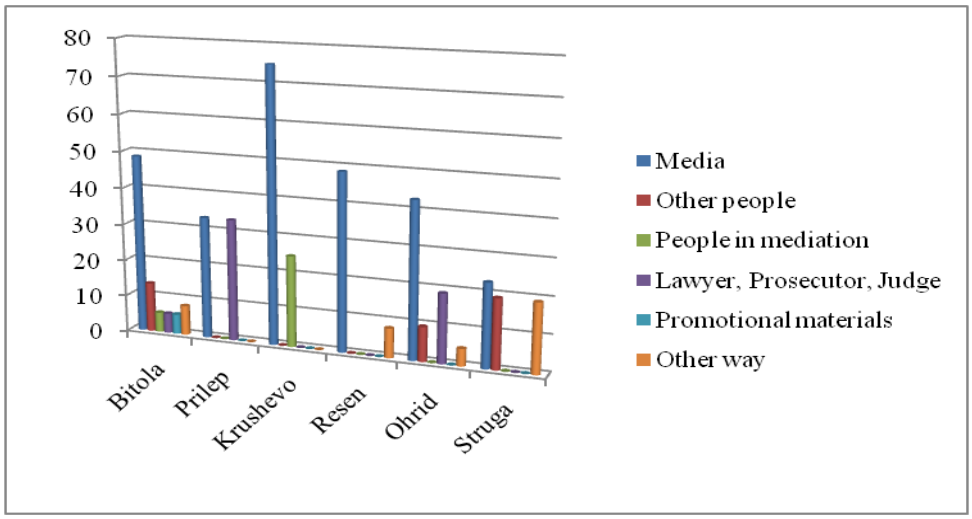

Figure 10.2 - Results from the second question from all 6 municipalities presented in percentage (Is the public in the Republic of North Macedonia sufficiently familiar with mediation in criminal matters, with special focus on the area of the Court of Appeal-Bitola: A.Jovanovska, N.Tuntevski, 2018)

What it's mostly visible here is that the highest percentage in every municipality about the source from which the respondents have heard about mediation is the media. But, what it's also visible is that if we exclude municipality of Krushevo, in all of the other municipalities the percentage of any kind of source is below 50%. Promotional materials have the smallest percentage; "people involved in mediation", "other people" and "another way" have next small percentage and right after the greatest percentage on media comes the percentage of lawyers, public prosecutors, judges or other officials. In the municipality of Struga, Resen and Krushevo there were no answers that lawyers, public prosecutors, judges or other officials have shared information about mediation.

CONCLUSION

The most interesting thing of this research is the fact that even if MCP is implemented in the Macedonian legislation from 2009, almost 10 years after (because this research was conducted in 2018) the public is still not well informed about what mediation is and what can we all as society and as individuals benefit from it. This shows that solely by implementing MCP into the legislation cannot be expected to be practiced in reality. It is very important to let the public know more about MCP. One of the crucial factors for successful implementation of MCP in practice is for citizens to know that this option is available and it offers very positive ending of the criminal dispute for the offender, for the victim, for the courts, for the public prosecutors and for the society in general. It can have impact as general and as special prevention. When citizens are informed about the choice of solving their criminal dispute by MCP and they can expect a positive outcome while saving their time and money on the way, they can most certainly at least give it a try. But, as the results showed, citizen's knowledge about mediation is low. It is well known that people tend to choose a path that is familiar to them, not something that they do not know what exactly is. The unknown is always avoided especially when it comes to criminal disputes. It is a fact that most of the people when caught in a situation where they are a part of a criminal dispute, no matter whether as offender or as a victim, or as a person who suffered some kind of damage, they always try to find the best lawyers to defend them so they can win the dispute. People usually have information about who the best lawyers are and try to engage

one for them. This is just an example that shows how much information of the people is important so they can accept something, in this case MCP. Bottom line is that if MCP is known to the public as Court procedures are, parties would try to settle their disputes with mediation and with that the first positive result would occur: most private lawsuits could not even get to the Courts because they could be solved by mediation (Jovanovska, 2018, 127).

Which source would be the best choice to reach the public to inform them about MCP? When taking a close look to the results from the survey, it is noticeable that media was leading source for information about mediation in respondents. But, since most of the people do not know what mediation really is, it can be concluded that even if this source has done so much, it hasn't done enough. MCP should be more elaborated by the media so more people can understand the goal of mediation.

The Courts have some promotional materials about mediation in general, but it is a known fact that promotional materials about MCP are almost non-existing. This is one of the reasons why the results about promotional material as a source are poor. This indicates that something has to be done in this field also.

People who were involved in mediation are very significant source, because they can pass their experience and tell to other people about mediation.

Lawyers, public prosecutors, judges or other officials as source for mediation are maybe most important, because when someone experienced criminal act, the first contact for them would be with one of these officials. If they explain most important goals and expectations of the mediation to the parties, they can convince them to reach for mediation. Unfortunately the results showed that in some municipalities this source was equal to zero.

So, what it can be concluded from all of this is that the public in RM-NRM, or to be more precise in the area of the Court of Appeal in Bitola is not well informed about mediation. Media mostly informed the public, but it should find more ways to do so. It is crucial that lawyers, public prosecutors, judges and officials to talk more to the offenders and victims about MCP and its goal and more promotional materials with MCP should be made available to the public. If MCP starts with practice, people who would be involved in it would also be a source of knowledge about mediation for other people.

Many changes need to be done so MCP can start to function in practice. This paper provided some important results about one of the factors that need to be worked on. Hopefully with some changes in this field MCP can come to live in the RM-RNM too.

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Review Scientific Article
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PUBLIC PROSECUTION VERSUS SPECIAL PUBLIC PROSECUTION

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Abstract

When we talk about effective functioning judicial system, and hence the existence of law relevant monitoring and harmonization of legislation with the highest European standards. The prosecution of perpetrators of crimes is one of the most important parts of an efficient and functional judiciary system. Public Prosecution is an independent public authority on behalf of the society has the function of prosecution. Most relevant assessment of the importance of the role of public prosecution within the judicial system gain as a function of how regulated its position in the system, that is what powers and competences possessed, whether and to what extent exercise these powers in practice, what is his status and relationship with other bodies and institutions in the society, which are his responsibilities and who assesses the legality of his actions.

Key words: Prosecution, investigation, Public Prosecution, Special Public Prosecution, criminal act, criminal procedure.

Introduction

The effective prosecution of perpetrators of criminal acts is one of the conditions for exercising the protective function of the criminal law and in that way the public prosecutor's office gives the most significant contribution to the protection of the individual and the society from acts that endanger many important freedoms and rights, both individually and collectively. The Constitution of the Republic of North Macedonia, following the principles of liberal democracy in its Article 8, ie in the fundamental values, establishes a

system of separation of powers of legislative, executive and judicial as three separate and separate authorities, which have their own competences and responsibilities, but also mutual connected system of relations between different branches of government, according to well-known ***check and balance*** theory - as a system of weighing and counterbalancing. (Constitution of the Republic of North Macedonia, Article 100) This approach seeks to achieve the dispersion of political power and the creation of mutual responsibility between political bodies and authorities, designed to prevent any individual dominance in the system of government. As state administration bodies, the Constitution of RM determines: the Parliament of the Republic of North Macedonia, the Government of the Republic of North Macedonia, the President of the Republic of North Macedonia, the various judicial bodies and the Public Prosecutor's office. Deciding on a criminal charge and preliminary investigation aimed to determine whether the initial suspicion of committing a crime is established. Therefore, public prosecutor and the police gather evidence in an informal manner. The public prosecutor undertakes all actions in the procedure for which he is authorized by law himself or through persons who, pursuant to the law for the public prosecutor's office, are authorized to represent him in the criminal procedure.

- **Historical development of the Public Prosecution**

A feature of the Roman criminal procedural law is that for a long time no state public prosecutor existed until the changes introduced by *Constantine* and we come across an indictment ***ex officio*** by a magistrate or a provincial governor.(Puhan, Polenak Akimovska 2008, 38) For more than 5 centuries, the Romans started the criminal procedure with the initiation of an indictment by an individual, most often the victim, the victim or his close relative because it was considered that personal interest was violated and the initiation of a criminal procedure should depend on the will of the injured party. Personal hostility and the desire for retaliation were considered a sufficient basis for bringing charges, regardless of whether the prosecutor is a victim of the crime or is connected to the victim in some way. This rule existed since ancient Romans believed in the logic of the self, stressed that it is normal and appropriate, although the state may require the case to be introduced state authorities. (Gjurkova 2010, 66) The public prosecutor's office as a separate state body appears for the first time in France after the civil revolution of 1789. In antiquity, the criminal procedure had an

accusatory form, and here the private prosecutor had the function of criminal prosecution, that is, she was in the hands of all citizens. In ancient Greece, the people elected a public prosecutor who supported and charged the crimes against the state. Then this indictment was handed over to the archhoon who carried out preparations and determined the Court's session.

In November 1991, the new Constitution was adopted by which the Republic of North Macedonia was constituted as an independent, sovereign, democratic and civil state whose fundamental values are based on the rule of law and the protection of human freedoms and rights. From that aspect, the Public Prosecutor's Office of the Republic of North Macedonia. as the only and independent state body that prosecutes the perpetrators of criminal acts and other criminal acts established by law, turns into the most important state body in the direction of achieving and protecting the fundamental values of the new constitutional concept. (Veljanovska, 2014, 191)

This need to establish a special state body that will undertake and continue the criminal prosecution resulted from:

- To avoid undue harassment of citizens with criminal prosecution unless there are compelling reasons to have committed criminal act;

- To carry out criminal prosecution and for those behaviors in which the social interest prevails. (Vitlarov 1999, 89)

The historical aspect of the appearance of the Public Prosecution is from the period of feudalism. Institution Procuratores fiscales was created in Spain in 1385, which was the representative of the state treasury. In France, at the time of the ascetic monarchy in the 16th century, an institution similar to the Public Prosecution of Modern Law appeared. The legal representatives took the initiative to criminal prosecute the disputes of the king who had represented him in property disputes, which were expected to benefit the royal treasury from fines and confiscation. This fatigue remains at the same position until the French Revolution.

As for the historical development of the Public Prosecutor's Office in the Republic of North Macedonia, as a state body is closely related to the national liberation struggle of the Macedonian people and the struggle for its own state.

On February 3, 2019, seventy-four years after the adoption of the Decision of the Presidency of AVNOJ, on February 3, 1945, to the then

Democratic Federative Yugoslavia, whose equal member was the Republic of North Macedonia.

With this decision, the Public Prosecutor's Office is constituted as an authority entrusted with double tasks; in the sphere of criminal prosecution and control of the legality of the state administration and the judiciary of the entire state territory. (Hristov 1980, 160)

The Public Prosecutor's Office of the Republic of North Macedonia is a single and independent state body that prosecutes the perpetrators of criminal and other criminal acts determined by law and performs other activities determined by law.

The public prosecutor has several responsibilities:

- to take necessary measures regarding the discovery of the criminal offenses and finding the perpetrators and for directing the pre-trial procedure;
- to request an investigation;
- to raise and represent the indictment, ie the prosecution proposal before the competent court;
- to declare appeals against non-enforceable court decisions and to submit extraordinary preventive remedies against enforceable court decisions; and
- performs other activities determined by law.

The public prosecutor also has competencies within the frames of the other regulated procedures:

- to state its opinion on extraordinary legal remedies - revision of the civil procedure;
- to submit extraordinary legal remedies - requests for protection of legality in litigation, extra-judicial, misdemeanor, administrative, executive procedure and administrative dispute procedures;
- to participate in the above procedures as a party in cases determined by law and
- performs other activities determined by law. (Law on Public Prosecution 2007, article 30)

According to the Law on Public Prosecution Article 17, paragraph 1, the Public Prosecutor of the Republic of North Macedonia is responsible for submitting an initiative for initiating a procedure for assessing the conformity of a law with the Constitution and the conformity of other

regulations with the Constitution and laws, if the question of constitutionality and legality he put himself in the work of the public prosecutor.

- **Special Public Prosecutor's Office**

Formally, the Public Prosecutor's Office was established with the adoption of the Law on Public Prosecutor's Office for prosecution of related crimes and arising from the contents of the illegal interception of communications in the Assembly of the Republic of North Macedonia and the election of Katica Janeva for the Special Public Prosecutor by the Council of Public prosecutors of the Republic of North Macedonia on 15 September 2015.

It is worth mentioning that the Law on the Establishment of the Special Public Prosecutor's Office was passed with the support of 111 MPs from the total of 114 presenters, with no one vote against, and the Prosecutor General Janeva was unanimously elected to this position in the Public Prosecutors Council. In the material and legal sense, the Special Public Prosecutor's Office was completed with the election of 12 prosecutors by the same body on 14 October and 4 November 2015.

Given the scope of work of this public prosecutor's office and the contribution of the investigators and the public prosecutor's office, it was decided that 10 public prosecutors needed to assist the Special Public Prosecutor in her work.

More information on the work of the Special Public Prosecutor's Office, the formation of the team, the course of action, the financial work and the cooperation with other institutions are available in the reports on the work of this prosecutor's office.

The establishment, competencies, function and structure of the Special Public Prosecutor's Office are regulated by the Law on Public Prosecutor's Office for prosecution of related crimes and arising from the content of the illegal interception of communications.

In its actions, this Public Prosecutor's Office is guided by the principle of equality of citizens before the Constitution and laws in the Republic of North Macedonia, striving to increase the trust of the citizens in the judicial system through a transparent and independent procedure, which guarantees the autonomy of this Public Prosecutor's Office.

The main function of this Public Prosecutor's Office within the judicial system of the Republic of North Macedonia is the investigation and prosecution of related crimes and arising from the content of the unlawful interception of communications. Unauthorized interception of communications is defined as unauthorized monitoring of all communications performed between 2008 and 2015, including but not limited to audio recordings and transcripts submitted to the Public Prosecutor's Office of the Republic of North Macedonia before 15 July 2015.

The Special Public Prosecutor's Office initially has a mandate of five years from the moment the Law enters into force. The mandate may be extended once a year by a decision taken by a two-thirds majority of the Members of Parliament.

The public prosecutor who manages the Public Prosecutor's Office is authorized to undertake actions and to represent in cases before the primary, appellate courts and the Supreme Court of the Republic of North Macedonia. The public prosecutor who manages the Public Prosecutor's Office has full competence and authority to independently perform all the investigative and prosecutorial functions of the Public Prosecutor's Office. (Law on Public prosecution for purchasing criminal parties related to and arising from the content of the illegal tracking of communications,2015 Article 5)

All evidence of criminal offenses that are not within the scope of the powers and competencies of the Public Prosecutor for prosecution of related crimes and arising from the content of unauthorized interception of communications or relevant to existing criminal cases shall be handed over to the Public Prosecutor of the Republic of North Macedonia and the prosecutor who leads the case.

The Special Public Prosecutor's Office in the context of the judicial system in the Republic of North Macedonia is organized in accordance with the principle of autonomy, which is explained in more detail in Chapter VI of the Law. Therefore, no public prosecutor in the Public Prosecutor's Office of the Republic of North Macedonia, including the Public Prosecutor of the Republic of North Macedonia, can influence his work, or request reports related to cases from the public prosecutor or public prosecutors within the Public Prosecutor's Office. The Public Prosecutor's Office takes control over the cases that fall within the real competence of the Public Prosecutor's Office at any stage of the procedure, that is, it independently determines its

own competence. The public prosecutor who manages the Special Public Prosecutor's Office is responsible for his work before the Assembly of the Republic of North Macedonia and the Council of Public Prosecutors. The principle of autonomy is also expressed in relation to the manner of financing of the Prosecution, with the Public Prosecutor's Office of the Republic of North Macedonia, the Ministry of Finance and the Assembly of the Republic of North Macedonia unable to change the financial plan prepared by the Special Public Prosecutor's Office and are obliged to incorporate it into Budget of the Public Prosecutor's Office of the Republic of North Macedonia. The Public Prosecutor's Office for prosecuting related crimes and arising from the content of the illegal interception of communications is organized according to the principles of hierarchy and subordination. The public prosecutor's office in this Public Prosecutor's Office is carried out personally by the Public Prosecutor who manages the prosecution and the public prosecutors elected at the Public Prosecutor's Office. The public prosecutors who assist the Special Public Prosecutor are elected by the Council of Public Prosecutors upon proposal of the Special Public Prosecutor. The Special Public Prosecutor appoints two of his deputies who assist him in his managerial function in order to perform timely and quality work.

Public prosecutors who assist the Special Public Prosecutor have no right to make orders and accusations, and have the right to represent the Special Public Prosecutor before the competent court. The public prosecutors appointed by the Public Prosecutor's Office are responsible only to the Special Public Prosecutor, who is in charge of assessing their work. Pursuant to the Law on Public Prosecutor's Office for prosecution of related crimes and arising from the content of the illegal interception of communications, the Public Prosecutor is obliged every six months to report on the activities of this Public Prosecutor's Office, including a description of the progress in any investigation or prosecution undertaken by the Public Prosecutor.

The Supreme Court of the Republic of North Macedonia informed the public that on 30 January 2019, the General Session of the Supreme Court of the Republic of North Macedonia, on the occasion of the initiatives of the lawyers, filed on the basis of Article 6 of the Law on Amending the Law on the courts (Official Gazette of the Republic of North Macedonia No. 83/18) established a basic legal opinion, which reads as follows:

The Public Prosecutor's Office for prosecuting related crimes and arising from the content of the illegal interception of communications may file charges or order an interruption of the investigative procedure for a period not exceeding 18 months from the day of taking over the objects and materials under its jurisdiction as a cumulative condition that can not be exceeded as of the date of receipt of the materials from unauthorized monitoring of communications referred to in Article 2 of the Law on the Public Prosecutor's Office for prosecution of related criminal offenses and which result vaat the content of unlawful interception of communications, and after this period of 18 months, is authorized prosecutor to pursue prosecutorial work on investigative actions provided for in the Criminal Procedure Code.

By this decision, the Supreme Court suspended all actions that the Special Public Prosecutor's Office had raised after the expiry of the 18-month statutory period.

Although the fate of the Special Public Prosecutor's Office is uncertain, the suspects, however, will not be rescued from criminal liability.

The draft strategy for reforming the justice sector is publicly available and open for suggestions. Major changes are foreseen in the Draft Strategy for Reform of the Judiciary Sector for the period 2017-2021 with an Action Plan", presented in Ohrid by the Working Group. It envisages improvement of the working conditions of judges and public prosecutors, distribution of court cases without external influence, election and promotion of judges and public prosecutors according to higher legal criteria and numerous changes in the legislation. Proposal - continuation of the work of the SPP within the Public Prosecutor of the Republic of North Macedonia. (PPRM).

Due to the existing legal decision regarding the mandate of the SPP, and taking into account the number and complexity of the cases under the jurisdiction of this prosecution, it is necessary to create legal preconditions for continuing its work as a separate unit within PPRM. Starting from the existing cadre and technical staff of the SPP, its competence as a separate unit within the PP should be extended by prosecuting high-profile criminal offenses (white color crime). This organizational setup of the PP (supplemented by the special specialized unit) will be followed by an appropriate organization within the judiciary, "said the draft strategy.(Draft

strategy for reform of the judicial sector for the period 2017-2021 with action). The second major novelty concerns the Law on the Establishment of a Restriction Requirement for Public Service, Access to Documents and Publication of Cooperation with State Security Bodies (known as the Law on Lustration), which was abolished in 2015. The working group concluded that the harmful consequences for the persons who were victims of this law remain today. It is proposed that the competence of the SPP as a separate department in the PP be expanded by prosecuting high-profile corruption cases. The greatest weaknesses from a normative and practical point of view are noted in the provisions regarding the election, promotion, evaluation and dismissal of judges and public prosecutors, but also the fact that no liability is foreseen for members of the Judicial Council elected by the judges, that the criteria for the selection of judges are insufficiently objective, the procedure is insufficiently transparent, and the "entrance" in the judicial and prosecutorial profession - strictly bureaucratized and "hermetically" closed with the obligation to complete initial training in kademijata for judges and public prosecutors. Macedonia is the only state in which the Academy has a full monopoly in deciding which future judges and public prosecutors will be", and its role in this direction is more powerful than the role of the Judicial Council and the Council of Public Prosecutors. A series of remarks are addressed to the Judicial Council of the Republic of North Macedonia, a body that should be a protector of the independence and autonomy of the judiciary.

"But this role has not been realized by the Council, nor has it succeeded in imposing the past decade in the society as a guarantor or guardian of the independence of judges who elects, promotes, evaluates and dismisses them. In recent years, progress has not only been absent, but some downturns have been noted, primarily because of the lack of control mechanisms, accountability and accountability of the members of the Judicial Council. In this way, the Judicial Council becomes an instigator of an independent judiciary, subject to external influences and pressures of a different kind, "according to the strategy. (Draft strategy for reform of the judicial sector for the period 2017-2021 with action).

CONCLUSION

In the Republic of North Macedonia, it is insisted to understand that the new system is much more than a simple replacement of a court investigation with a prosecutor's office.

Police and prosecutorial investigations in the new system complement and fuse, and the judicial investigation is practically skipped, and is not replaced by any formal prosecutorial investigation. The investigation procedure in the Republic of North Macedonia with the new criminal procedure law is significantly deformed - the evidence is not carried out but only collected, and for the first time it is performed at the main hearing (as the main trial has now been renamed), except in specific cases when it can be organized a particularly evident hearing (when it is expected that the witness will not be able to participate in the main hearing). By doing so, the previous procedure significantly accelerates, and the importance of the trial (the main hearing) as a central part of the criminal procedure where the evidence is tested in a public and contradictory hearing, which is essential for a fair trial, is also emphasized.

Regarding the work of the Public Prosecutor's Office, the Criminal Procedure Code entrusts the overall pre-investigative and investigative procedure to the public prosecutors, who have the right and duty, to direct the actions of the authorities competent for the detection and reporting of criminal offenses and their perpetrators, to propose, propose and provide evidence, to propose or issue orders for undertaking special investigative measures, to conduct an investigative procedure, as well as temporary measures for the purpose of securing property or objects veins with a criminal offense, decide to postpone the criminal prosecution, propose the issuance of a penal warrant, negotiate with the defendants for recognition of guilt, as novelties.

Regarding the SPP, I would suggest that it be a separate unit within the public prosecutor's office that will deal with the crimes for which it was formed. It is a fact that in the beginning the Law on the formation of the Special Criminal Court was merged with the constitutional provisions, but there was no reaction from the Constitutional Court. The procedures initiated by these prosecutors should also be completed by the defendants if their responsibility is proved to be appropriate for the acts committed.

I believe that the decision to establish a Special Public Prosecutor, as well as the request for the establishment of a Special Criminal Court as separate institutions, before which the special public prosecutors will file their charges, is wrong. A separate unit could be formed within the existing public prosecutor's office that would take these cases. A number of finances were set aside for the work of the SPP. I think that it should continue to exist as a separate unit within the Public Prosecutor's Office. However, attention should be paid to the politicization that is deeply rooted in all pores, both in life and in the work of the judiciary, in order to eradicate it, because only then the principles on which the judicial system will as a whole rely on.

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LEGAL SOLUTIONS FOR THE JUDICIAL POLICE - CONDITIONS IN THE REPUBLIC OF NORTH MACEDONIA VIS A VIS BOSNIA AND HERZEGOVINA

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Abstract

Judicial police play an important role in the smooth operation of courts and prosecutors as part of the judicial system of states. This paper will elaborate on the most important questions about the rights and obligations of the members of the judicial police in the Republic of North Macedonia, as opposed to the situation in Bosnia and Herzegovina.
The purpose of the analysis is these institutions in the two countries of the former Yugoslavia because of the specifics in their functioning and the manner in which their competencies are determined in the Republic of North Macedonia and Bosnia and Herzegovina.
In the conclusion, we will try to offer our opinion on which model is more appropriate for the purpose of the judicial police and whether the Republic of North Macedonia has chosen the most appropriate solution for the position of the judicial police in the judicial system of the country.

Keywords: court system, court police, position, rights, obligations

Introduction

The starting point for analyzing the functioning of the judicial police in the Republic of North Macedonia is the Law on Courts, where in the

section eleven in Articles 110 to 112, the rights and obligations of the judicial police are regulated.

Further, in accordance with Article 112, which states that:

The competencies of the judicial police, the rights and obligations, the employment, the disciplinary responsibility of the members of the judicial police and other issues within the jurisdiction of the judicial police are regulated by law, a Law Judicial Service has been adopted, where in the section ten in the Articles 80 to 86 the rights are elaborated, obligations, employment and disciplinary responsibility of the members of the judicial police of the Republic of North Macedonia.

The situation in this sphere in Bosnia and Herzegovina has been resolved differently. Namely, there are four judicial police in this country: the Judicial Police of Bosnia and Herzegovina, the Judicial Police of the Federation of Bosnia and Herzegovina, the Republika Srpska Judicial Police and the District Court of the Brcko District. They all had legal solutions that regulate the manner of their work within the judiciary.

The judicial police in the Republic of North Macedonia

The judicial police in the Republic of North Macedonia was established by the Law on Courts enacted in 1995. In this Law, in Chapter eight there are several articles that regulate that the provision of facilities, property, persons and maintenance of order in the court is performed by the court police (Article 103 of the Criminal Code of the Republic of North Macedonia, Official Gazette 36/95).

This Law defines in details the conditions for persons who can be part of the judicial police, emphasizing that in addition to the conditions that should be met by anyone who establishes a working relationship according to the positive legislation in the sphere of labor relations in the Republic of North Macedonia, the members of the judicial police must to fulfill additional conditions that are prescribed and controlled by the Ministry of Justice of the Republic of North Macedonia (article 104 of the Law of the Republic of North Macedonia, O. G. 36/95).

The members of the judicial police are under the direct authority of the president of the court, that is, as defined in the Law on the Courts of the Republic of North Macedonia "in the courts with the court police the

president of the court is appointed" (Article103 of the Criminal Code of the Republic of North Macedonia 36/95).

In accordance with the Law on Courts of the Republic of North Macedonia, the Minister of Justice adopts bylaws that regulate in detail the rights, obligations and competencies of the judicial police in the area of: performing their daily tasks; the manner and conditions for the use of coercive measures; the psycho-physical conditions that they need to fulfill to be members of this service and other regulations that regulate relations in the judicial police.

Thirteen years after the commencement of the work of the judicial police in accordance with the Law on Courts, another legal act regulates some of the rights, obligations and responsibilities of this service. It is about the 2008 Law on the Judicial Service. (O.G.98 / 2008)

It stipulates that the Minister of Justice is obliged to adopt a program for training and training of the judicial police (Article 81.st.1) and the Presidents of each of the courts are obliged to realize the envisaged program (Article 81.st.3) .

Unlike the Law on the Courts of the Republic of North Macedonia, where the Presidents of the Courts are in charge of the judicial police in their court, the Law on Judicial Service has given several other possibilities: Apart from the President of the Court, the Ministry of Justice, the commander of the court police in the Supreme Court of the Republic of North Macedonia, as well as the judicial police coordinators in the appellate courts for the basic courts in their area.

If irregularities are found in the work, each of the competent authorities can take measures and activities to overcome them. However, the disciplinary procedure can only be initiated by the president of the court at the request of the oversight body. It is also interesting to have the legal possibility that if irregularities are established by the president of the court, the Judicial Council of the Republic of North Macedonia is informed about this. However, the Law has an inaccuracy from the aspect of what kind of irregularities the persons who supervise can report the President of the Court to the Judicial Council of the Republic of North Macedonia.

Namely, in the Law on the Judicial Council of the Republic of North Macedonia ***"the disciplinary procedure for determining the disciplinary responsibility of a judge is initiated at the request of a member of the***

Council, the president of the court, the president of the higher court or the general session of the Supreme Court of the Republic of North Macedonia". (Article 54 of the CCC). There is nowhere a provision that would give an opportunity to file such a complaint against a court president to bring in persons involved in the supervision of the judicial police.

The same applies to the procedure for determining unprofessional and unethical performance of the judicial office. It is initiated by: ***"request of a member of the Council, the president of the court, the president of the higher court or the general session of the Supreme Court of the Republic of North Macedonia"*** (art. 78, Law on the Judicial Council of the RM). It is obvious that there are inconsistencies in these two legal solutions in the area of possible irregularities by the president of the court regarding the responsibilities of the judicial police.

The Law on Judicial Service regulates the right to strike by the judicial police, and they must not in any way jeopardize the work of other services in the court or impede their normal operation (Articles 85 and 86 of the Law on the Judicial Council of the RM).

In the part of the judicial police, the Law on judicial service does not stipulate by-laws, that is, for everything that is not regulated by this Law, it is directed to seek a solution in the Law on Labor Relations (Article 94 of the Law on the Judicial Council of the RM) system of the state.

Judicial police in Bosnia and Herzegovina

The judicial system in Bosnia and Herzegovina depends to a large extent on the work of the judicial police. We will try to elaborate this in this paper by analyzing the legal and by-law acts that determine the competencies of the judicial police.

As in most other areas and in the judicial police in Bosnia and Herzegovina, there are four judicial police: the Bosnia and Herzegovina Judicial Police, the Federation of Bosnia and Herzegovina's Judicial Police, the Republika Srpska Judicial Police and the Brčko District Police.

The jurisdictions of the judicial police in Bosnia and Herzegovina are with evident discrepancies. The biggest inconsistencies are in the part of acting upon the order of a judge or prosecutor; implementation of security measures; protection of the objects of the court and the prosecution; physical protection of the holders of judicial and prosecutorial functions and other employees in the court and the prosecutor's office, etc.

A.Judicial police of Bosnia and Herzegovina

The judicial police of Bosnia and Herzegovina are competent to act on the orders of the court and the prosecutor's office of Bosnia and Herzegovina and function within the Ministry of Justice of Bosnia and Herzegovina. It is managed by the Minister of Justice and the operational control is in the hands of the commander of the judicial police.

According to the positive legal solutions for the judicial police of Bosnia and Herzegovina, it has no competence to provide judges, prosecutors and other employees of the court and the prosecution outside working hours, that is, outside the premises of the court or prosecution office of Bosnia and Herzegovina.

The Directorate for Coordination of the Police Bodies of Bosnia and Herzegovina (Law on Directorate for Coordination of Police Bodies of BH Sl.VI 36/08) has the competence to protect them outside the courts of the court or the prosecutor's office.

However, it is noted that this legal solution is incomplete because the Directorate provides only physical protection, while the institution in which the person to be protected is working must provide the resources of the type of vehicle and driver which is very difficult to achieve in practice (primarily because lack of personal and material technical resources, as well as displacement of the address of residence of the particular holder of judicial office in relation to the regional offices of the Directorate).

B. Judicial police of the Federation of Bosnia and Herzegovina

The judicial police of the Federation of Bosnia and Herzegovina in turn operate in eleven organizational units deployed in the cantons and at the federal level. The Law gives the jurisdiction to the judicial police to the chief police officer of the judicial police in the Federation of Bosnia and Herzegovina.

It is within its competence to provide judges, prosecutors and other employees in the court and the prosecutor's office during working hours and in necessary cases and outside of working hours. As stated in the Law on Judicial Police: ***"Judicial police assist the Constitutional Court of the Federation of BiH, the Supreme Court of the Federation of Bosnia and Herzegovina and the courts in the cantons for providing information, in the execution of court orders for the forced detention of witnesses,***

execution of orders for bringing accused persons, apprehension of convicted persons in the body for execution of sanctions by order of the court, maintenance of order in the courtroom, security of the judges, and other court employees, security of the court building and execution of other orders by the court "(Article 7 paragraph 1 Official Gazette of the Federation of BiH 19/96) .

They also have these obligations in relation to the prosecution of the Federation of Bosnia and Herzegovina when in accordance with the Law and other regulations they seek assistance from the judicial police in carrying out their work or, when necessary, to ensure order and security in the premises of the prosecution, the prosecutor and other officers of the Prosecutor's Office of the Federation of Bosnia and Herzegovina (Article 2 Paragraph 2, O.G. 37/04)

The judicial police of the Federation of Bosnia and Herzegovina maintain order in the courts of the Supreme Court also in accordance with the rules of this court (art. 9, O.G. 19/96)

C. Judicial Police of Republika Srpska

The Republika Srpska Judicial Police is divided into five organizational units in the area of district courts and their operations are managed by the President of the Supreme Court of Republika Srpska who transfers his authority to the chief commander of the judicial police of Republika Srpska.

It has the competence to provide judges and other workers in a court that is regulated by the following provision to the Law on Judicial Police in the Republika Srpska:

"Judicial police assist the Supreme Court of Republika Srpska, district courts, primary courts and public prosecutor's offices in providing written information, in execution of court orders for forced detention of witnesses, execution of court orders for bringing suspects, defendants and convicts , detention of convicted persons in the body for execution of sanctions by order of the court, maintenance of order in the courtroom, security of judges, court building as well as in execution of other court orders. "(art. 7 st. 1 O.G. 49/02)

"Judicial police take care of the order in the courtroom, it provides judges and the security of the court building according to the rulebook

adopted by the president of the Supreme Court." (Article 9 paragraph 1 of Official Gazette 49/02)

D.Judicial police of the Brcko Distrikt

The District Police of the Brcko District function as an organizational unit under the leadership of the President of the Judicial Commission of the Brcko District, and the operational control is carried out by the responsible commander of the judicial police.

The Brcko District Court Police Department has no jurisdiction to provide judges, prosecutors and other employees of the court and the prosecutor's office except for working hours at the premises of the Court or the District Prosecutor's Office of the Brcko District.

Conclusion and recommendations

We must point out that certain competencies arising from the Laws for judicial police in Bosnia and Herzegovina are inadequately or incompletely regulated by bylaws. Most of these laws were enacted when the Judicial Police did not exist, both in Bosnia and Herzegovina and in the countries of the region, that is, in the Republic of North Macedonia. For these reasons, it must be noted that most of the judicial police laws in these two states are to a minimum extent incomplete and overcome with practice.

When we talk about certain provisions of the Law on the Judicial Police in Bosnia and Herzegovina, they are in conflict with other legal regulations (Law on Criminal Procedure, Law on Enforcement Procedure, etc.). Precisely because of this, the judicial police faces the lack of clear rules for acting, lack of coordination and communication with the persons who issue orders, etc.

Although there are fewer inconsistencies in the Law on Courts of the Republic of North Macedonia, ie in the Law on Judicial Service, which also regulates the work of this service.

Perhaps for the Republic of North Macedonia, the most appropriate solution is to prepare a Law on Judicial Police, which would regulate all issues in this sphere at one place. Of course, the experiences from the neighboring countries, including Bosnia and Herzegovina, would be welcomed, although the position of the courts and prosecution offices in both countries is not on an equal footing. However, in the practice of drafting

Legal Decisions, they are welcome in addition to positive and negative experiences. The first to be used, and the latter do not repeat.

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MONEY LAUNDERING - TERM, PROCESS AND LEGAL REGULATION IN THE MACEDONIAN LEGAL SYSTEM

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Abstract
Money laundering causes serious economic and social consequences that mean: undermining the national security system, destroying the stability of the economic and financial system, reducing the level of the national economy, which at the same time becomes attractive for investments of certain criminal groups, increasing the degree of criminality, etc. Making profit or maximizing it is the goal of criminal groups that deal with this type of crime. The acquisition of profits from illegal and criminal activities connects people, states, banks and other financial institutions, such as: stock exchanges, brokerage houses and investment departments, into a kind of global exchange mechanism and is constantly active, but at the same time an additional problem for capital movements and the rapid growth of the informal economy. In the Republic of North Macedonia, the Financial Intelligence Directorate is a central authority in the system for the prevention of money laundering. It is obliged to collect, process, analyze, store and submit data on money laundering and financing of terrorism received by the entities.

Keywords: crime, organized crime, money laundering, finance, financial intelligence.

INTRODUCTION

We live in conditions of globalization and openness of national economic systems, so the process of monitoring money laundering and financial crime is becoming increasingly complex and difficult to detect.

The more developed the process of money laundering, economic crime and corruption, the slower the development of democracy and market economy.

The money laundering process is always in a negative correlation with economic growth, whereas such a process creates economic foundations that have a negative impact on the process of functioning of the so-called mechanism "Invisible hand" in the market and loyal competition. (Tonevski 2016, 6).

This can be easily concluded, if the economic trends, market development and entrepreneurship are carefully analyzed, in correlation with the issues of organized crime and money laundering, as one of its segments.

In today's living conditions, money laundering is an integral part of any serious criminal activity. All this speaks enough about the seriousness of this type of crime.

THE TERM MONEY LAUNDERING

Money laundering is a multi-stage process of converting income from illegal activities into funds that originate from seemingly legal sources, without revealing their true source, nature or property. (National Strategy for Combating Money Laundering and Terrorism Financing 2017, 3).

The term *money laundering* is a process through which the so-called "unclean" money or other property acquired by criminal or illegal activity is converted into "clean" money or property. This "clean" money can then be used as a legal income in banking, trading, sales, investment and entrepreneurial activities.

Officially, in the literature, this term first appeared in the 30s of the last century after mafia-owned laundry chains and was, however, derived from the English word "*money laundering*", meaning the legalization of capital acquired in a criminal way, i.e. financial transactions that conceal the true origin of money and other forms of capital on the market. (Lekovska 2014, 4-5).

Since then, the term has become widely accepted in national and international contexts, and has been used extensively in international documents. (Taseva 2013, 30).

In the past, the term "money laundering" only referred to financial transactions that were linked to organized crime. Today, this definition is

extended to include those financial transactions that generate certain profits as a result of certain illegal activity (tax evasion, double running of accounting records, etc.). Money laundering can be done by individuals, smaller or larger companies, corrupt civil servants, and even by whole countries through the offshore banking system. International organizations have determined precisely which countries represent the so-called "tax havens", and as such are attracted to money laundering entities. (Trajkovski 2011, 2).

Money laundering in practice means using of financial transactions to hide the identity, source and/or destination of money. Money laundering is one of the main activities that are characteristic of the "grey" economy. (Trajkovski 2011, 2).

The main goal of criminal groups dealing with money laundering is to maximize the profits.

The phenomenon of money laundering is most often described as a covert and lucrative criminal activity, and the perpetrators are often individuals who are always one step ahead of the operatives of state authorities and institutions that are responsible for investigating economic and financial crime.

This phenomenon is most prevalent in the field of economics, finance and high technology, which conducts money transactions through financial institutions.

Money laundering and other proceeds of crime means: "actions undertaken by natural or legal persons in banking, financial or other business consisting of circulating, receiving, taking over, replacing or dissolving money obtained by crime act (trafficking in narcotic drugs, arms trafficking, etc.) or by converting, altering, transmitting or otherwise concealing that originates from such a source or concealing its location, movement or ownership." (Guidelines on Preventing Money Laundering and Financing Terrorism for Casinos 2014, 3).

THE MONEY LAUNDERING PROCESS: THEORETICAL ASPECTS

Money laundering is: "A process by which profits that are believed to be derived from a criminal activity are believed to be transported, converted or incorporated into legal financial flows in order to conceal their origin, source, movement or ownership, to enable these funds to emerge as legal and

for those involved in criminal activity to avoid the legal consequences of such action." (Taseva 2013, 31).

The complex process of "money" can usually be divided into three phases: the first phase is the placement of money; the second stage covers the process of disconnecting the relationship between the source and the funds and the third stage represents the integration by which the perpetrator of the crime takes the laundered money. (Money Laundering Prevention Strategy 2005, 19).

The money laundering procedure usually takes place in three phases:

- *Placement phase* - in which money from criminal activity is placed, that is, invested in a bank or other financial institution, or buys real estate with the same money;
- *Concealment phase* - in which attempts are made to conceal or change the true origin or ownership of assets;
- *Integration phase* - in which money is incorporated into legal economic flows and into the financial system and are incorporated into other values in the system.

Consequently, "successful opposition to organized economic and financial crime in the context of the socio-economic and political system in our country should take place in three phases:

The first phase, which has a preventive character and in which the state participates with all the competent state bodies and institutions and entities in order to eliminate the conditions that affect the occurrence and development of crime through its numerous emergent shapes and forms". (Trpeska 2018, 28).

The second phase consists of the operational activities of the police and other competent authorities and institutions for the identification of persistent forms and the taking of criminal acts through criminalistics ways, methods and means of detecting, clarifying and documenting specific crimes in each individual criminal case, and also to detect the perpetrators of all individual criminal acts and of course, to provide the objects and traces of the criminal event as evidence for further criminal proceedings. (Trpeska 2018, 29).

The third phase involves the prosecution of the perpetrators and their conviction, which falls under the jurisdiction of the public prosecutor and the court. (Nikoloska 2013, 111).

COMPETENT AUTHORITIES FOR TAKING MEASURES AND ACTIVITIES TO PREVENT MONEY LAUNDERING

The term entities responsible for taking measures and actions to prevent money laundering shall mean all natural and legal persons who under the Law on Prevention of Money Laundering and Financing of Terrorism have an obligation to take measures and actions to prevent and detect money laundering and financing of terrorism.

According to the legal definition, the group of entities that are obliged to undertake the measures and actions for detection and prevention of money laundering and financing of terrorism provided by the Law on Prevention of Money Laundering and Financing of Terrorism, are included:

1. Financial institutions and subsidiaries, branches and business units of foreign financial institutions which in accordance with the law operate in the Republic of North Macedonia;
2. Legal and natural persons who perform the following services:
   a) Brokering real estate;
   b) Audit and accounting services;
   c) Providing tax advice;
   d) Providing services as an investment adviser; and
   e) Providing services for organizing and conducting auctions;
3. Notaries, lawyers and law firms performing public authorization in accordance with the law;
4. Gaming organizers:
   a) Lottery games of chance;
   b) Games of chance in Casino;
   c) Games of chance in betting;
   d) Games of chance in slot machine club;
   e) Electronic games of chance;
   f) Closed-type raffle and
   g) Internet games of chance.
5. Providers of services of trusts or legal entities;
6. Central Securities Depository and
7. Legal entities performing the activity of receiving a pledge of movable property and real estate (pledges).

Financial Intelligence Office

The Office is a Financial Intelligence Unit of the Republic of North Macedonia, established for the purpose of collecting and analysing suspicious transaction reports and other information relevant to preventing and detecting money laundering and financing terrorism and submitting the results of the analysis and other relevant information to the relevant authorities when there are grounds for suspicion of money laundering and financing terrorism. (Article 64 paragraph 1 of the Law on Prevention of Money Laundering and Financing of Terrorism, "Official Gazette of the Republic of North Macedonia" No.120/18).

The Financial Intelligence Office is a state administrative body as a part of the Ministry of Finance which has the status of a legal entity.

The Financial Intelligence Office has responsibilities to:

- collects, processes, analyses, stores and submits data obtained on the basis of the Law on Prevention of Money Laundering and Financing of Terrorism,
- obtain the data, information and documents necessary for the performance of its responsibilities,
- prepares and submits reports to the competent state authorities whenever there are grounds for suspicion of committing a crime of money laundering or financing of terrorism,
- prepares and submits a report to the competent state authorities on the existence of grounds for suspicion of committed another crime,
- issues a written order to the entity temporarily suspending the transaction,
- submits a request for a proposal for provisional measures to the competent public prosecutor,
- submits an order for monitoring the business relationship to the entity,
- issue misdemeanour payment order,
- submit a request for initiation of a misdemeanour procedure to the competent court,
- prepares strategic analysis for identifying trends and typologies of money laundering and financing terrorism,
- cooperates with the entities referred to in Article 5 of the Law on Prevention of Money Laundering and Financing of Terrorism, with

the Ministry of Interior, Ministry of Defence, Ministry of Justice, Ministry of Foreign Affairs, Public Prosecutor's Office of the Republic of North Macedonia, Intelligence Agency, Financial Police Office, Customs Administration, Public Revenue Office, State Foreign Exchange Inspectorate, Securities and Exchange Commission value of the Republic of North Macedonia, National Bank of the Republic of North Macedonia, Fully Funded Pension Insurance Supervision Agency, Insurance Supervision Agency, State Government Mission Prevention of Corruption, the State Audit Office, the Central Registry of the Republic of North Macedonia and other state bodies and institutions, as well as with other organizations, institutions and international bodies to combat money laundering and the financing of terrorism,

- concludes cooperation agreements and exchanges data and information with financial intelligence units of other states and international organizations involved in combating money laundering and financing of terrorism,
- independently or in cooperation with the supervisory authorities of this law, supervises the entities for the application of the measures and actions determined by this law,
- participates in the implementation of a national risk assessment of money laundering and financing of terrorism and implements risk assessment on certain categories of entities,
- initiates or gives opinions on laws and by-laws concerning the prevention of money laundering and financing of terrorism,
- can assist in the professional development of the authorized persons and the employees in the department for prevention of money laundering and financing of terrorism in the entities referred to in Article 5 of this Law,
- establish lists of indicators to identify suspicious transactions in co-operation with entities and bodies who supervise on their work and updates them regularly,
- plans and implements trainings for improvement and readjust of the employees in the Office,

- implements activities aimed at raising the awareness of the NGO sector about the risks of their possible misuse for the purpose of financing terrorism,
- provides clarification in the application of regulations for the prevention of money laundering and financing of terrorism,
- keep records as well as comprehensive statistics for the purpose of performance evaluation of the anti-money laundering and financing of terrorism system,
- act accordingly with the provisions of the Law on Restrictive Measures and the by-laws adopted on its basis;
- performs other activities determined by law. (Article 64 paragraphs 3 of the Law on Prevention of Money Laundering and Financing of Terrorism, "Official Gazette of the Republic of North Macedonia" No. 120/18).

In order to carry out its responsibilities, the Financial Intelligence Office is provided with timely direct or indirect electronic access to data, information and documentation available to entities, public authorities and institutions and other legal or natural persons.

Fulfilling its responsibilities, the Office functions as an intermediary between the entities that take measures and actions, the oversight bodies and the institutions responsible for prosecuting the perpetrators of crimes.

The Financial Intelligence Office performs its duties in accordance with the positive legal regulations in the Macedonian legislation, as well as with the ratified international agreements that regulate the prevention of money laundering and financing of terrorism.

NORMATIVE-LEGAL REGULATION OF MONEY LAUNDERING IN MACEDONIAN LEGISLATION

The issue of money laundering prevention in the Republic of North Macedonia was first legally regulated by the adoption of *the Law on Prevention of Money Laundering*, which was adopted in August 2001 and entered into force on September 13, 2001. Based on Article 5 of that Law, in the middle of September 2001 a *Directorate for Prevention of Money Laundering* was established as a part of the Ministry of Finance, which had the task to collect, process, analyze and store data obtained from entities that are obliged to take measures and actions for detecting and preventing money

laundering as well as other actions for which it is authorized under the provisions of law. The Law on Prevention of Money Laundering started to apply from 1 March 2002, when the Directorate for Prevention of Money Laundering started to operate and take activities in several fields.

The new *Law on Prevention of Money Laundering and Other Proceeds of Criminal Offense* was adopted by the Parliament of the Republic of North Macedonia on 12 July 2004. This law is in line with the regulations contained in relevant international documents, such as: the 2000 UN Convention against Transnational Organized Crime (the Palermo Convention), the EU Council Directive 91/308/EEC of 10 June 1991 on prevention of the use of the financial system for the purpose of money laundering from 1991 and Directive 2001/97/EC of the European Parliament and of the Council of 4 December 2001 amending Council Directive 91/308/EEC on prevention of the use of the financial system for the purpose of money laundering, as well as the recommendations of the FATF.

The Government of the Republic of North Macedonia in June 2005 adopted a *National Strategy for Combating Money Laundering and Financing of Terrorism* as a framework of the strategic goals that need to be achieved through the foreseen activities aimed at strengthening the fight against these crimes and raising the level of cooperation and coordination between the involved institutions.

In 2008, a new *Law on Prevention of Money Laundering and Other Proceeds of the Punishment and Financing of Terrorism* entered into force in the Macedonian legislation. For alignment with the provisions of that law, The Directorate for Prevention of Money Laundering, as a body in part of the Ministry of Finance, was renamed into *Administration for Prevention of Money Laundering and Financing of Terrorism*. At the same time, part of the competences in relation to the previous legal provisions are set at a higher level, and the measures and actions for detecting and preventing money laundering and financing of terrorism are fully regulated as in previous legal texts.

With the amendments of this Law of 30 March 2012, the Administration for Prevention of Money Laundering and Financing of Terrorism was renamed into *the Administration for Financial Intelligence*.

In 2014 a *new Law on Prevention of Money laundering and Financing of Terrorism* was adopted. In terms of measures and actions, this

law provides the same protection measures as the previous laws. This law delineates what is meant by the term transactions, and what are the responsibilities and other actions and activities undertaken by all involved institutions, organs, bodies, entities - natural and legal persons involved and struggling with this global social problem.

The Assembly of the Republic of North Macedonia adopted a *new Law on Prevention of Money laundering and Financing of Terrorism* on June 26, 2018. This law is the latest legal solution in the Macedonian legal system that regulates this area. It is a modern solution, in line with international regulations.

This law is in line with the EU Directive 2015/849 of the European Parliament and of the Council on the prevention of the use of the financial system for the purposes of money laundering and financing of terrorism from 2015, amending and supplementing Regulation (EU) 648/2012 of the European Parliament and of the Council and repealing Directive 2005/60 / EC of the European Parliament and of the Council and Commission Directive 2006/70 / EC with a CELEX number 32015L0849.

This law regulates the measures, actions and procedures undertaken by entities and authorities to detect and prevent money laundering, related crimes and financing of terrorism, as well as the operations and responsibilities of the *Administration for Financial Intelligence*.

This Law establishes a *Council for Fight against Money Laundering and Financing of Terrorism*, which is responsible for coordinating the activities for conducting national risk assessment in the Republic of North Macedonia and preparing a report on national risk assessment for money laundering and financing of terrorism.

CONCLUSION

Money laundering is a type of crime that, in today's modern way of life, poses a major threat to the economic, financial, legal and social system of any state.

When it comes to the Republic of North Macedonia, we found that the anti-money laundering system is defined by the prescribed legislation and the established framework in Macedonian legislation.

From the analysis of the legal framework that regulates this issue, we have found that in the Republic of North Macedonia, in the period of less

than two decades, several laws for prevention of money laundering and financing of terrorism have been adopted, as well as appropriate amendments arising from the problems and omissions that occur in practice. This for the reason that it is almost impossible to envision all emergent forms of money laundering as one of the more serious types of organized crime.

The Republic of North Macedonia has set up and build it money laundering prevention system in line with international standards and international best practices. Building a system to prevent money laundering adequate to the estimated risk is conditioned by a previously conducted quality assessment of the risk of money laundering itself.

Cooperation between the competent authorities in the countries themselves, as well as international cooperation with the relevant foreign partner institutions, must be at a high level because this type of financial crime has a transnational character.

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LEGAL - FINANCIAL ASPECTS OF THE CONTROL OF THE BUDGET USERS IN THE REPUBLIC OF NORTH MACEDONIA

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ABSTRACT

Through the contents of the work, in the concise and concurrent way, the legal and financial aspects of the control of the budget users in the Republic of North Macedonia will be presented. Namely, in the part of the legal aspects, the legality that regulates the financial area in the part of performing the audit[1] will be presented on the use of budget[2] funds by users as well as the proper keeping of the required records. In the section on financial[3] aspects will cover the part of legal spending, cost-effectiveness, rationality and justification of budgetary funds by budget users. Certainly the control that is carried out on the budget users has its own course, planning, implementation, submission of preliminary report remarks, if any, and finally , preparation and submission of a final report on the performed control. As a

[1]**Compliance / regularity audit** is a procedure for determining and assessing the compliance of the operations of entities with laws, by-laws and internal acts;
A performance audit is an assessment of the economy, efficiency and effectiveness of operations and the use of assets in a defined area of activities or programs;
Financial audit is a check of the accuracy and completeness of the accounting records and financial statements, Provision in the Law on State Audit, Consolidated text (unofficial version) Official Gazette of the Republic of North Macedonia no. 66/10, 145/10, 12/14 and 43/14, Art. 2

[2] **The budget** is an institutionalized financing instrument in the state, through which public expenditures are carried out in all modern financial systems. The financing of public expenditures with the budget is called the budgetary way of financing, Aleksandra Maksimovska Veljanovski, Vesna Pendovska, Budget Law, Faculty of Law "Iustinianus Primus" - Skopje, 2013, p. 20

[3] **Finance** is a socio-economic category that encompasses a set of activities of individuals and legal entities related to money management (creation, storage, distribution, exchange and use of money), Vesna Pendovska, Aleksandra Maksimovska Veljanovska, Kiki Mangova-Penjakovik, Financial Law, Faculty of Law "Iustinianus Primus" - Skopje, 2010, p. 21

confirmation of such procedures are the presented references, in which the area of our interest has been elaborated in details.

Key words: control, audit, law, finance, report

INTRODUCTION

The Republic of North Macedonia, which strives to become a member of the European Union (EU), has for a long period been taking over and implementing the rules and procedures applied in most of the EU countries. The implementation of the regulations and protocols that represent an international standard are for the most part already implemented in the domestic legislation and they are in the everyday application. It is precisely because of this approach of the Republic of North Macedonia to the state budget and its rational, intended, legal and proper use in order to achieve these tasks by the state, it establishes certain legal and legal mechanisms, through which it would protect its own interests. An institution that is eligible for auditing over public budget users in the Republic of North Macedonia is the State Audit Office (http://dzr.mk/). For the implementation of the regulations in the budget users, an internal audit system has been established which is prescribed in the Law on Internal Audit in the Public Sector (Law on Internal Audit in the Public Sector (Consolidated Text), Official Gazette of the Republic of North Macedonia No. 69/04 of 07.12.2004 and No. 22/07 of 23.02.2007). For the performed audits, the internal auditor prepares the Audit report and the Annual Audit Reports. As the established system, at least for now, achieves the expectations and upgrades the existing system, it is expected in the future to provide even better effects. Because of the past work and the established system, we will explain it through our set goals in the area of legal and financial aspects.

THE LEGAL ASPECTS OF THE CONTROL OF THE BUDGET USERS IN THE REPUBLIC OF NORTH MACEDONIA

Whether they like it or not, it is necessary to present a small retrospective about the beginnings of this state tool in the protection of the budget, that is, its rational, intended, lawful, effective and efficient use. In order to explain the legal aspect, we recall the undertaken obligations from the signing of the Stabilization and Association Agreement and the desire of the Republic of North Macedonia to become a member state of the European Union, and thus to assume the Union's right and its common benefits (acquis communautaire), which is a condition for joining the candidates from Middle and Eastern Europe. For the period after the independence of the Republic of North Macedonia in the period from 1991 until 1998, the competencies for carrying out the state audit belonged to the **Social Accounting Service (SAS),** which was later transformed into the **Institute for Payment Operations (IPO).** The role of this institution was much wider, and it, had competencies in the part of the assessment of enterprises with social capital for the purposes and within the privatization of social capital. During 1999, the employees of the Directorate for Economic and Financial Audit from the Institute for Payment Operations (IPO), transferred to the newly established **State Audit Office**. The legal aspect of the control of the budget users in the Republic of North Macedonia would not be complete if the chronology of the adoption of the legislation that provides this is not presented.

Table no. 1 Review of the adoption of the legal regulations for the functioning of the state audit

No.	**Name of the regulation**	**Published in the Official Gazette of the Republic of North Macedonia no.**
1	**Law on State Audit**	**65/1997**
2	**Law on Amendments to the Law on State Audit**	**70/2001**
3	**Law on Amendments to the Law on State Audit**	**31/2003**
4	**Law on Amendments to the Law on State Audit**	**19/2004**
5	**Law on State Audit (Consolidated Text)**	**73/2004**
6	**Law on Amendments to the Law on State Audit**	**70/2006**
6	**Law on Amendments to the Law on State Audit**	**133/2007**
8	**Law on State Audit**	**66/2010**
9	**Law on Amendments to the Law on State Audit**	**12/2014**
10	**Law on Amendments to the Law on State Audit**	**43/2014**

Following the tables presented adopting the Law on State Audit and amendments thereto, we can conclude that this regulation has a dynamic development that is conditioned on the acceptance of directives and recommendations that have international significance or represent certain obligations to standardize regulations and the procedures of this specific area of financial performance.

The dynamics of the amendments and supplements to the regulations, that is, the laws and bylaws, usually cause the need for training of the personnel who apply the regulations for their effective and efficient implementation and application, as well as the appropriate behavior of the employees. Speaking of this section and referring to persons who apply and enforce regulations that use legal powers received from these regulations, the institution **State Audit Office** has adopted the following bylaws:

- Rulebook on the manner of performing state audit (Official Gazette of the Republic of North Macedonia No. 158 dated 15.11.2011;
- Rulebook on the manner of performing the internal audit and the manner of reporting on the audit (136/2010);
- Rulebook on the code of ethics of internal auditors (136/2010);
- Code of Business Ethics and Behavior, December 2006;
- Standards for Internal Control in the Public Sector (147/2010)
- International Standards for the Professional Practice of Internal Auditing (113/2014)
- Rulebook on the Internal Audit Charter (136/2010);
- Internal Audit Charter
- Internal Audit Manual - Guidelines for Internal Auditing Methods and Techniques
- Assessment of risks in audit planning (https://finance.gov.mk/mk/node/679).

The above-mentioned by-laws provide much easier and legal performance of the audit, and for the success, competence and training of the employees - the auditors are concerned by the **Central Harmonization Unit of the Public Internal Financial Control System (PIFC).** Certainly, the training and competence are especially important because of the scope of *duties that belong to the performance of the state audit*, which are:

1) examination of documents, personal documents and reports, accounting and financial procedures, electronic data and information systems and other records in terms of whether the financial statements truthfully and objectively express the financial position and result of the financial activities in accordance with accepted accounting principles and accounting standards;

2) examination and evaluation of the reports of the performed internal control and public internal financial control, examination and evaluation of the financial management and control system;
3) examination of financial transactions that are public revenue and public expenditure in terms of legal and proper use of funds;
4) giving an assessment of the use of funds in terms of the achieved economy, efficiency and effectiveness, and
5) assessment of the measures undertaken by the audited entities in relation to the established conditions and the given recommendations contained in the final audit report (Law on State Audit, Consolidated text (unofficial version) Official Gazette of the Republic of North Macedonia No. 66/10, 145/10, 12/14 and 43/14, Art.19) .

The legal aspects fully apply to the rights and obligations for legal entities and for the responsible persons in the legal entities in the budget enterprises and institutions, and at the same time for the institutions that are competent to perform control and supervision over the use of budget funds and their responsibility for legal, rational, targeted and, of course, successful effective and efficient use of state budget funds.

FINANCIAL ASPECTS OF THE CONTROL OF THE BUDGET USERS IN THE REPUBLIC OF NORTH MACEDONIA

Financial aspects in the area of financial audit are defined as checking the accuracy and completeness of the accounting records and financial statements. The interest in the financial control of budget users is of paramount importance, primarily due to the planned and legal use of the budget funds from the budget users. According to the Law on Public Internal Financial Control, public sector entities are the beneficiaries of the funds from the Budget of the Republic of North Macedonia (Maksimovska Veljanovski,/ Pendovska, 2013, 20), ***funds, municipalities and the City of Skopje, agencies and other institutions established by law, public***

enterprises, public institutions and other legal entities that are state-owned or in which the state is a shareholder. In terms of control, two types of control are provided:

1. Ex-ante financial control is a procedure that ensures that the financial obligation does not take place and the expense is not paid without prior approval by an official person hierarchically regardless of the person authorized to undertake the financial obligations and the person authorized to pay;
2. Ex-post financial control is a procedure that is carried out in the entity that provides financial transactions in the form of commitments, expenditures or revenues, to be checked after the transaction is fully completed.

Since we often use the term control (Micunovic, 1990, 311), to explain it, these are all actions undertaken in order to avoid or reduce the risks. Namely, the purpose of financial management and control is to improve financial management in order to achieve the following general goals:

- Doing things in a proper, ethical, economical, effective and efficient way;
- Harmonization of operations with laws, other regulations, established policy, plans and procedures;
- Protecting property and other resources from losses caused by poor management, unjustified spending and use, as well as irregularities and abuses;
- Strengthening the responsibility for the successful accomplishment of tasks;
- Proper recording of financial transactions and
- Timely financial reporting and monitoring of performance results.

In terms of performance and the significance of internal control, the Committee of Sponsoring Organizations of the Treadway Commission (COSO) also speaks , according to which: *internal control is a process carried out by the board of directors, management or other personnel designed to provide a realistic basis for achieving the objectives in the domain of the following categories:*

1. ***operational control*** - in relation to the efficient and effective use of the resources of the business entity:
2. ***control of financial reporting*** - in terms of preparing reliable, published financial reports and

3. ***compliance control*** - regarding the compliance of an entity's operations with applicable law (Bozhinovska Lazarevska 2011, 441).

In terms of control, control activities include: policy and procedures introduced by management as an extra in terms of the control environment and accounting system by mean of which can realistically be expected achievement of defined objectives of the business entities. The control activities that may be considered relevant for an audit, basically speaking, can be classified as policies and procedures that relate to the following:

- Checking the results;
- Information processing;
- Physical control and
- Division of responsibilities (Bozhinovska Lazarevska 2011, 441).

The key to control is the position of auditor about it, whether a control activity is relevant to the audit and it depends on the risk of material misstatement that the auditor has identified as possible as well as the likelihood appropriate to test the operating effectiveness of controls in deciding to provide essential testing.

REPORTS FOR EXECUTED CONTROLS

The obligation of the competent institutions that perform the control over the budget users, after completing it, is to prepare and submit an appropriate written report on the performed control. On the other hand, ***the state audit covers:***

- Examination of documents, documents and reports, accounting and financial procedures, electronic data and information systems and other records in terms of whether the financial statements truthfully and objectively express the financial position and the outcome of the financial activities in accordance with the accepted accounting principles and accounting standards;
- Examination and evaluation of the reports of the performed internal control and public internal financial control, examination and evaluation of the financial management and control system;
- Examination of financial transactions that represent public revenues and public expenditures in terms of legal and earmarked use of funds;

- Giving an assessment of the use of funds from the aspect of the achieved economy, efficiency and effectiveness, and
- Evaluation of the measures undertaken by the audited entities in relation to the established conditions and given recommendations contained in the final audit report (Law on State Audit, Consolidated text (unofficial version Article 19).

As for the report, it is necessary to prepare a **draft audit report**, which the auditor is obliged to submit to the legal representative of the audited entity in order for them to submit within the legal period of 30 days their own remarks on the report to the State Audit Office, if any, before the **final audit report** is adopted. By the legal representative of the audited entity, it is necessary to undertake appropriate measures and activities related to the findings and recommendations from the audit report, and the deadline in which it is necessary for them to be taken is 90 days. There are often examples of given remarks on the preliminary reports and we would only present a few without penetrating the contents of the same:
Ministry of Justice
(http://dzr.mk/Uploads/1_5_FR_Ministerstvo_za_pravda_Smetka_na_osnoven_budzet_637_ZABELESKI_SUBJEKT_ODGOVOR_DZR.pdf).
Ministry of culture
(http://dzr.mk/Uploads/2000_FR_Ministerstvo_kultura_ZABELESKI_SUBJEKT_ODGOVOR_DZR_2017_REDUCE_finale.pdf

NOTES FOR THE PRELIMINARY REPORTS FROM THE EXECUTED AUDITS

Typically, the reports begin with the regulation of certain processes and the conduct of certain procedures, most often in the domain of public procurement and their legal execution or circumvention of the regulations. Regarding the regulations there is a good part of the remarks in which there is a lack of certain procedures or for the application of the same, a methodology prescribed for other procedures on other grounds has been used. At the same time , for clearly defined and regulated procedures there is also their non-application, mostly in the part of the regulation / recording of working hours (not all are recorded) and the part for payment of salaries

because there is no basis because there is no evidence for coming and leaving the work. Another element is the use of funds for representations used and for the payment of certain financial transactions outside the state by raising advances and for persons who cannot use these funds. Particularly interesting are the public procurements and their abuse (untimely initiation and completion of a new public procurement although the deadline for elaboration of the old contract is known) in order to enable the conclusion of a contract without a public procurement which in principle causes initiating corruptive relations and suspicion of abuse and committing a crime or work for the financial police and the public prosecutor's office. On the other hand , there are also substantiated objections given by the legal entities in the part of the established situations, primarily because of the too low interval for performing the audit, cases that are in procedure or not completed, the existence of documentation that is not taken into account , decisions by which certain funds are written off, the lack of bookkeeping financial records for the value of certain objects and procedures, and more. These are remarks for which a good part is justified because according to the laws of archival work, certain mechanisms and procedures have been established in which it is prescribed for certain specific documentation what is the time frame in which the particular institution is obliged to keep and lead. On the other hand, certain remarks that are given to the established conditions in the preliminary reports cannot be absolutely acceptable because there are no legal grounds for their justification, but with the most interesting one, especially in the Ministry of Culture, which in the past years had the largest budget, especially in the implementation of the project "Skopje 2014", the biggest problem is the assessment of the artistic value of a certain artistic object or work, and there are certain indications that in this part there is a possibility of the largest abuses that, in addition to the audit, it is especially important to include the Ministry of Finance, the Financial Police, the Criminal Police with the Department of Economic Crimes and most of the INTERPOL (International Criminal Police Organization) as an international organization for cooperation between member states and which helps to combat international organized crime.

CONCLUSION CONSIDERATIONS

Concluding observations would be in the area of modernization of the audit process and control of financial operations, especially in the budget coatings through the Ministry of Finance and the use of new technologies but, of course, through man as a factor that could at any time exercise physical control over the documentation and the evidence of the financial and material operations and the orderliness of maintaining the accounting records. This means required mandatory training of existing and adoption of new staff SAO with the possibility of using new technologies via portable devices and readers records from the server (database) and spot verification of the budget user. On the other hand, it is imperative that many more frequent controls are carried out among budget users, especially on the compliance of the regulations and procedures and their application, and in the domain of finances, absolutely without exception, at least twice a year performing independent auditors' control, and the reports to be submitted to the SAO of verification and approval.

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Advice on advancement and development of audit – regulations, http://sunr.mk/index.php/mk/

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THE EUROPEAN UNION IN INTERNATIONAL RELATIONS

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Abstract
The lessons learned about the European Union (EU) say it is not a hard power alliance. This fact does not diminish any value or significance of its existence. Moreover, the majority of twenty-eight Member States see the EU as the best format to work together in large number of areas, more effective than the individual efforts of the Member States. These reasons motivate the EU to define common foreign policy and security priorities and one of the reasons is *multilateralism in action*. This is one of the ways which makes EU influential in international relations and the achievement of its objectives in international action listed in Article 2 of the Lisbon Treaty. The deficiency of European common foreign policy and the role of NATO in European security are seen as main obstacles to the emergence of EU as a global power in world politics.

Key words: European Union, International relations, United Nations, Multilateralism, L'Europe de la défense, raison de valeur, Lisbon Treaty.

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INTRODUCTION

> (…) If it wants to be influential it is necessary for the European Union a world managed by a comprehensive, effective multilateral system. This means that the EU wants to see strong international organisations those who are entrusted with peace and security management and organisations that act in a binding multidimensional arrangement that would be effective in combating global challenges (…)

These words of the former director of the EU Institute for security studies are current today and *multilateralism* is one of the basic principles of the EU's international action. Rule-based multilateralism and international system underlying the fondation of a strong international institutions are in the greatest interest of the EU.

> (…) The EU will strive for a strong United Nations as a pillar of a multulateral rules-based order, and develop globally coordinated responses in cooperation with international and regional organisations, states and non-state actors (…) (Global Strategy for the European Union's Foreign and Security Policy 2016, 39)

Regarding the issues of preserving international peace and security, the United Nations are at the center of such system. What this means specifically for the European Union can be established on the basis of the practice of cooperation so far and based on the interpretation of the UN Charter.

Based on the practice and interpretation of the role that international organisations can have in matters of international peace and security, according to the UN Charter, it is possible to say that the relationship between EU and the UN is developing into three basic legal and political levels:

1. Based on the Chapter VIII of the UN Charter that defines the relationship with regional agreements and arrangements (Article 52 and 53);

2. Cooperation between the EU and the UN with participation in peacekeeping missions and operations and;

3. In the framework of a peaceful settlement of disputes under Chapter VI (Article 33), which is especially significant for the EU as a regional alliance *sui generis*. (Ateljevic 2018, 292)[5]

[5] Vladimir Ateljevic, Ph.D, is a member of the Negotiating Team for negotiating the accession of the Republic of Serbia to the European Union.

> (…) Believing in the UN means investing in it, notably in its peacekeeping, mediation, peacebuilding, and humanitarian functions. The EU and its Member States, as already the first contributor to UN humanitarian agencies, will invest even further in their work. Common Security and Defence Policy (henceforth referred to as: CSDP) could assist further and complement UN peacekeeping through bridging, stabilisation, or other operations. The EU will also enhance synergy with UN peacebuilding efforts, through greater coordination in the planning, evolution, and withdrawal of CSDP capacity-building missions in fragile settings (…) (Global Strategy for the European Union's Foreign and Security Policy 2016, 40)

"Countries in Europe are too small to guarantee and secure the necessary prosperity and social development of their citizens. European countries must represent a federation."

Jean Monnet (1888-1979)

EU MULTILATERAL AGENDA

Professor Ilik[6] considers that, *multilateralism*, in accordance with the Human Security Doctrine, includes in itself three basic aspects. First of all, it *involves commitment to work with international organisations, through the procedures of international institutions*. On the one hand, it means working within the UN and on the other hand, working with or within other international and regional organisations such as the OSCE (Organisation for Security and Co-operation in Europe) or NATO (The North Atlantic Treaty Organisation), The African Union, The South African Developing States (SADC), and the Economic community of West African States (ECOWAS) in Africa, or the Organisation of American States (OAS) in the Western hemisphere (Ilik 2012, 206). In the context of such primary definition of multilateralism, the doctrine also emphasizes the Union's intense commitment to change the existing international system, with the intention of improving it, sophistication and effective multilateralization.

From another aspect, multilateralism implies commitment to common goals for working, including accepted norms and rules, in the function of

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creating common rules and norms, solving problems through the application of rules and effective cooperation and of course implementing them. Through this commitment, the Union seeks to profil itself not as a super power in the world, but as a super-promoter of norms which are desirable, necessary and applicable to the existing world order.

The third aspect of this doctrine, defines multilateralism as coordination rather than duplication. This is due to the U.S. "warnings" adressed to the EU during the drafting of the European Constituion in the part of constituting the European Security and Defence Policy. Such a "warning" was confirmed by a resolution of the U.S. Congress, highlighting the following:

> (…) Preserving the solidarity and effectiveness of the Alliance achieved over the past fifty years, and all further security arrangements that the Union plans to make within the framework of the Common Security and Defence Policy, including the development of its defense forces, *must bring them into line with NATO structures* (…)

It is clear that the content of this resolution highlights the growing need for continuous compatibility between U.S and European (military) forces, as well as preventing possible non-compliance within NATO (Ilik 2012, 207). The effective security approach requires coordination between intelligence services, foreign policy, trade policy, development and security policy of Member States, the European Commision, the European Council, and of course coordination with other multilateral entities – the United Nations, World Bank, International Monetary Fund, and regional institutions.

Such determination to implement effective multilateralism, within the framework of an established world order, has been stipulated in the EU's Global Strategy on Foreign and Security Policy since 2016. Without global norms and the means to enforce them, peace and security, prosperity and democracy – the vital EU's interests – are at risk.

> (…) The EU is committed to a global order based on international law, including the principles of the UN Charter, which ensure peace, human rights, sustainable development and lasting access to the global commons. This commitment translates into an aspiration to transform rather than simply preserve the existing system (…) (Global Strategy for the European Union's Foreign and Security Policy 2016, 39)

This once again confirms the intention of the Union to standardize the world order, emphasizing its vision for strengthening international law within the UN Charter, as well as the determination to strengthen the competencies of the UN Security Council, especially in the area of its primary competence – *the maintenance of international peace and security*. We must not forget the fact that two of five permanent Member States of the UN Security Council are Member States of the EU – the United Kingdom and France. Such a multilateralist determination of the Union *a fortiori* is confirmed by its founding treaties, such as the Lisbon Treaty. This treaty once again confirms the Union's commitment to:

> (…) Safeguard its own *values*, fundamental interests, security, independence and integrity, consolidate and support democracy, *the rule of law*, human rights and the principles of *international law*, preserve peace, prevent conflicts and strengthen international security, in accordance with the UN Charter and other international documents (…) [(The Treaty of Lisbon, Chapter 1, Article 10 A, para. 2 (a, b, c)]

In this context, the Union is determined to "*promote an international system based on stronger multilateral cooperation and good global governance*".

THE EUROPEAN UNION AND CHAPTER VIII OF THE UN CHARTER

Dr. Vladimir Ateljevic adresses two questions related to the foreign policy relations between the European Union (*foedus pacificum*) and the United Nations. The first and foremost question that arises is *whether the EU can be considered as a regional organisation in terms of Art. 52 and 53 of Chapter VIII of the UN Charter?*[7]. More precisely, can the EU be viewed as a regional security and political organisation that deals with issues of preserving international peace and security? The second question is *whether the UN Security Council can use the EU as a regional organisation for some of the coercive actions?*

[7] The European Union isn't regional / international organisation. It is used this term in the sense of Chapter VIII of the UN Charter. The European Union is defined as a *sui generis* alliance of sovereign and independent states.

International and regional organisations existed in the 19th and 20th century and appropriate examples are the Holy Alliance and the International Union of American Republics. The emergence of the League of Nations as a universal and global organisation, has not put into question the existence of such regional arrangements and (or) organisations but has already raised the question of coexistence of universal and regional organisations. Hence, in Art. 21 of the Covenant of the League of Nations there was a provision that referred to the coexistence of all regional arrangements, principles, doctrines and organisations:

> (…) Nothing in this Covenant shall be deemed to affect the validity of international engagements, such as treaties of arbitration or regional understandings like the Monroe doctrine, for securing the maintenance of peace (…)

The League of Nations recognized initiatives and alliances such as the Balkan Antanta, Locarno Agreement, and even more important for the European integration process the Briand's proposal for the formation of the EU (Briand-Kellogg Pact). The new development that brought the UN Charter was Chapter VIII and clear division of work and responsibilities between the SC and regional / international organisations, so that the UN's primary mission in safeguarding international peace and security is not jeopardized, and the functioning of established regional organisations can not be endangered:

> (…) Nothing in the present Charter precludes the existence of regional arrangements or agencies for dealing with such matters relating to the maintenance of international peace and security as are appropriate for regional action provided that such arrangements or agencies and their activities are consistent with the Purposes and Principles of the United Nations (…) [(UN Charter, Chapter VIII: Regional Arrangements, Art. 52 (1)]

In this sense, the Charter leaves the possibility of establishment and acting of regional organisations in three ways:

1. As security organisations of collective / mutual defense in accordance with the right of self-defense (Article 51 of the UN Charter);

2. As an organisation that the SC can authorize to make concrete coercive action in order to apply decision (SC Resolution) made in the context of Chapter VII of the UN Charter and

3. As an organisation that can act in purpose of peaceful settlement of disputes, in particular in local disputes or *with the mandate of the UN Security Council*.

When it comes to the first and second form of international action, an example of NATO and EU is illustrative as two European security organisations. In the Founding Act, NATO does not refer to Chapter VIII, only refers to the General Purposes and Principles of the UN Charter. It is established as a collective defense organisation guaranteed by Article 51. The logic of the founders of NATO was to confront the Eastern Bloc if an armed attack occur from the East during the Cold War. By SC Resolution 787 (1992), para. 12, NATO was brought into the position of a regional organisation. More precisely, there are four operations on the territory of the former Yugoslavia in which NATO participated applying the decisions of the Security Council in accordance with Article 53. Those are the following operations: *Operation Maritime Monitor*, *Operation Sharp Guard*, *Deny Flight* and *Close Air Support* (Ateljevic 2018, 294).

It is interesting that by the entry into force of the Lisbon Treaty, the EU has become *sui generis* alliance of collective defense, but not formal and legally explicit regional organisation in the sense of Chapter VIII:

> (…) If a Member State is a victim of an armed agression in its territory, other Member States are obliged to provide assistance and support to all available funds in accordance with Art. 51 of the UN Charter (…) This does not, in any way call into question the specific nature of the security and defense policies of certain Member States (…) [(The Treaty of Lisbon, Article 42, para. 7 (*mutual assistance clause*)]

The EU *de facto* acts as an organisation of a regional character within the meaning of Chapter VIII. Already in the Lisbon Treaty, the principle of multilateralism is alive. Article 21 gives direction:

> (…) The Union will strive to develop relations and build partnerships with third countries and international, regional or global organisations with which it shares the principles outlined in the first paragraph. It will promote multilateral solutions to common problems, especially within the United Nations (…)

Although the Lisbon Treaty does not explicitly define EU as a regional arrangement or agency in the sense of Chapter VIII, the EU and the UN approach with each other very pragmatically, in practice. One of the examples of the EU-UN multilateral pragmatism is the successful transfer of

powers between the EUFOR mission in Chad and in the Central African Republic and the UN mission (MINURCAT) in the states mention above, in March 2009. The UN Security Council praised the EU for the successful engagement of EUFOR and supporting UN activities in these two countries, in particular its contribution in delivering humanitarian aid and preserving security in the regions of its area of responsibility (Ateljevic 2018, 301).

The EU and the UN have also acted pragmatically in resolving the longstanding dispute between the Republic of North Macedonia and The Hellenic Republic (Ελληνικη Δημοκρατια, Greece), in 2018, bearing in mind that Greece is one of the oldest EU Member States and one of the founding states of the United Nations.

"Si on veut faire une Europe politique, elle n'est rien si elle n'est pas indépendante. Or, le critérium de l'indépendance, c'est la défense."

Charles de Gaulle, 1962[8]

THE EUROPEAN COMMON SECURITY AND DEFENSE POLICY

Professor Jovanovic[9] considers that two problems make it impossible for the EU to reach „adult age" in the international arena. The first concerns the inexistence of a common foreign policy of the EU. Without it, it can not be defined and applied security and defense policy. In other words, if a military intervention is to be carried out somewhere, it is necessary a prior agreement on whether there should be any intervention at all. When it comes to the EU such consent is more often an exception than a rule. The other issue in some way concerns the EU defense independence. Namely, until the troubled relations of European states with NATO, i.e. with the U.S. it's hard to get any kind of qualitative changes in terms of building "*Europe of Defense*" or said in French "*L'Europe de la défense*". These syntagm marks the European integration in the domain of defense.

An example of Europe's largest civilian mission – EULEX – perhaps testifies the best about the EU's position in the world security architecture, or the hierarchy that exist between the USA and the EU in this area. Namely, it is evident that the U.S played key role in "resolving" the Kosovo crisis.

[8] „*If we want to make a political Europe, it is nothing if it is not independent. Now, the criterion of independence is defense*" – Charles de Gaulle.

[9] Dr. Milosh Jovanovic is Assistant professor at the Department of International law and International relations at the Law Faculty, University of Belgrade, Republic of Serbia.

From the organisation of the "negotiations" in Rambouillet (France) in February 1999 through an agression against the Federal Republic of Yugoslavia, until the entry of NATO troops into the southern Serbian province, the United States inviolably conducted the entire operation. In autumn 2008, after the reconfiguration of UNMIK (United Nations Mission in Kosovo), the EU was given a certain role in the final phase of the creation of an "independent Kosovo". In other words, in 1999, NATO "started" the work and finished its hardest part and then, in a way as a master apprentice, left EULEX to stabilise and pacify the area, still under NATO control, and bring to end the building of a "new state". That is simply a kind of divison of labor between the USA and Europe, the type of division in which one knows who is leading the main word. Robert Kagan recalled this division of labor with the following words: "*As some Europeans explained, the real division of labor consisted in the fact that the United States* "*cooked lunch*" *and Europeans* "*washed the dishes*" (Jovanovic 2012, 321).

Maxime Lefebvre rightly observes that although the Common Security and Defense Policy after Saint-Malo (France) was initiated in a military perspective, today the most part of CSDP consists of civilian missions. And indeed, the EU is currently (as of October 2012) carrying out 14 missions, 11 of them are civilian, while there are only 3 military missions. It is about EUFOR-ALTEA mission in Bosnia and Herzegovina, EUNAVFOR-ATALANTA in the horn of Africa and the EUTM mission in Somalia. When it comes to the fight against piracy in the Horn of Africa it is certainly not insignificant, but it takes more the form of international police mission at sea rather than demanding military operation. Even if there is a will of the EU to take greater part in maintaining international peace and security, the unresolved problem of insufficient military capacities would remain.

The construction of "*L'Europe de la défense*" has a truly substantial character. First, in essence, the issue of "*L'Europe de la défense*" is actually a question of whether Europe will become an important political actor in the international arena or will only remain an integrative process that exclusively has one objectif - the economic prosperity of its Member States. Secondly, this issue has a contextual importance as it is the domain that most directly affects the sovereignty of states (Jovanovic 2012, 315).

However, the concept of "*L'Europe de la défense*" is alive and confirmed by the EU's 2016 Global Strategy for Foreign and Security Policy:

> (…) In this fragile world, soft power is not enough. The Union must enhance its credibilty in security and defense. Member States must channel a sufficient level of expenditure to defense and meet the collective commitment of 20% of defense budget spending. Capabilities must be developed with maximum interoperability and commonality, and be made available where possible in support of EU, NATO, UN and other multinational efforts. Defense cooperation between Member States will be systematically encouraged because nationally-oriented defense programmes are insufficient to adress capability shortfalls. Still, Member States remain sovereign in their defense decisions (…)

THE EUROPEAN UNION IN THE WORLD – A COMMUNITY OF VALUES

The former EU Ambassador in the United Nations, John Richardson, considers that the same set of political concepts can serve as a guide to the future internal development of the EU and as the basis of such a long-term foreign policy. *A fortiori* it suggests that neither should be seen in terms of the balancing of interests but rather, as the expression of a small list of fundamental values. The list is as follows:

1. *The rule of law* as the basis for relations between members of society;
2. The interaction between the democratic process and entrenched *human rights* in political decision-making;
3. The operation of competition within a *market economy* as the source of increasing prosperity;
4. The anchoring of the principle of *solidarity* among all members of society alongside that of *the liberty of the individual*;
5. The adoption of the principle of *sustainability of all economic development* and;
6. The preservation of *separate identities* and the maintenance of *cultural diversity* within society (Richardson 2002, 14).

These values can be seen as the answer to the question posed both, by citizens of the Union and by our fellow citizens of the world: "What does the

EU stand for?". In exploring these values it should be remembered that in the real world there are occasions on which *Realpolitik* intrudes and the interest-based paradigm prevails.

Dr. Vladimir Ateljevic considers that one of the EU's self-determination is that this community is based on values (Ateljevic 2018, 302). Dr. Goran Ilik finds that the EU's fundamental values encompass a broad legal and political spectrum of universal values set out in its constitutive treaties (Ilik 2016, 73). Those values, acting in a synergy, categorise the EU as an original community of values with its own value interest (*raison de valeur*). It aims to "promote peace, fundamental values, and the well-being of the people" (The Treaty of Lisbon, Art. 3, para. 1). The Union *per se* is based on the values of respect for *human dignity, freedom, democracy, equality, the rule of law,* and respect for *human rights,* including the rights of persons belonging to minorities. These values are common for Member States in a society where pluralism, non-discrimination, tolerance, justice, solidarity and equality between men and women prevail (The Lisbon Treaty, Art. 2).

Taking into account the rule of law, one of the great success stories of European integration is the ordering of society through the application of a framework of laws and regulations based on the will of the people, as expressed through the democratic process and implemented by an independent judiciary (Richardson 2002, 18). What has been surprising, however, is that the enforcement of EU law, which overrides national law in areas of EU legal competence, has been successfully entrusted to national courts, under the overall umbrella of the European Court of Justice.

It should be noted that if enlargement negotiations are to be regarded as part of external relations, the EU is indeed engaged in exporting its codex of law (the *acquis communautaire*) to all those who are candidates to join it, including the Republic of North Macedonia. This is the logical extension of the Copenhagen criteria, which define the conditions for a candidate country to be accepted as a legitimate aspirant for membership of the Union.

Lastly, it is worth emphasizing that many would argue that EU support of the *multilateral system* can be seen as adopting the sharing of sovereignty as a basic principle of governance in an increasingly interdependent world, and for the same basic reasons as it has chosen to develop methods for sovereignty sharing in its own integration (Richardson 2002, 27).

CONCLUSION

The paper gave answers to three questions: Whether the EU can be considered as a regional organisation in terms of Art. 52 and 53 of Chapter VIII of the UN Charter?, whether the UN Security Council can use the EU as a regional organisation for some of the coercive actions? and what does the EU stand for?. Depending on the connotation, pro-European or anti-European, several directions of the EU's development are possible: Loose type of Union unlike the existing one – this would mean, for example, leaving the euro and focusing only on the single market. Avant-garde Europe – this model implies that the new EU should be based on core and orbit. The core should create federation and the orbit association. The avant-garde, or the core of the Member States, is meant to be "the decisive factor in advancing the european integration process, which should ultimately culminate in a *European federation* (Ilik 2016, 82).

Cooperation of the EU with the UN in peaceful settlement of disputes can be one of the most suitable and non-controversial dispute settlement instrument. The most common disputes that take place are those ones in its immediate neighbourhood and even among EU Member States (Ateljevic 2018, 312).

Waiting for the date for start of the accession negotiations with the Union, the Republic of North Macedonia must work on harmonizing the Macedonian diplomacy with the European diplomacy, in particular must work on harmonizing its foreign affairs with the EU's Global Strategy for Foreign and Security Policy.

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THE CHALLENGES OF THE ECHR: A COMPARISON OF THE REGIONAL HUMAN RIGHTS SYSTEMS

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Abstract

This paper will examine whether the European Convention on Human Rights (ECHR) is the most efficient regional human rights instrument. The particularities of each regional system will first be looked at to establish that while their objectives are very similar, their approach is vastly different and based on cultural differences and societal structures. The very purpose of the regional mechanisms is to ensure that certain regional characteristics are considered in order to better protect human rights within a specific context, as each region has different rules about morality, and moral claims can only be derived from and understood within their cultural context.[1]

Nevertheless, it will be shown that The Inter-American and African systems are challenged by low funding and a lack of resources which limit their efficiency. Despite criticism, the ECHR's enforcement mechanism, its interpretation techniques as well as its influence on IACtHR judgements make it the most advanced when compared to the African and the American regional systems.

The Inter-American Regional Documents

Despite most human rights being protected at state level, a lack of political will could lead to improper enforcement. Consequently, it is crucially important that regional systems, such as the Inter-American human rights system, provide extra protection to victims of human rights abuses when domestic systems fail. [2]

[1] RJ Vincent, *Human Rights in International Relations* (Cambridge University Press 1986) 37
[2] Daniel Moeckli and others, *International Human Rights Law* (2nd edn, Oxford University Press 2014) 398-401

The ACHR protects civil and political rights and freedoms. It protects twice as many rights as the European central instrument, and introduces the concept of human rights as being inherent to the person, both first generation (civil and political) and second generation rights (economic, social and cultural)[3] as well as duties underpinning these rights.[4] Several factors might have contributed to the larger number of rights, the most important of which being the regional circumstances at the time of formation: some of the states had weaker and more corrupt domestic courts as well as larger domestic violations which Europe had overcome. The presence of indigenous people, who require more protection in the eyes of the court, is also not a factor in the European context. The Inter-American document did not only become binding twenty years after the ECHR, and consequently had more time for issues to be discussed and addressed, but it needed to address more issues in the first place.

Along with its larger number of enforceable rights, this system set standards in many areas. The freedom of expression rulings in *The Last Temptation of Christ*[5] and *The Kimel*[6] cases have become universally recognised principles. The *Awas Tigny*[7] case considers the rights of indigenous people. Cases such as *Marzioni*[8] have allowed for efficient communication with domestic legal systems. [9] However, one of the biggest challenges of this system is its lack of universality. While 25 out of 35 OAS members have ratified the ACHR, only 22 states have accepted the Court's jurisdiction: the U.S. and Canada, as well as several Caribbean countries and Cuba, have not.[10] The system is more Latin American than Inter-American,

[3] B Weston, 'Human Rights' [1984] 6(3) Human Rights Quarterly 264

[4] Antonio Augusto Cancado Trindade, The Inter-American Human Rights System at the Dawn of the New Century: Recommendations for Improvement of Its Mechanism of Protection. in D.J. Harris and S. Livingstone (eds), *The Inter-American System of Human Rights* (Oxford University Press 1998) 395-420

[5] Olmedo Bustos et al. v. Chile, Merits, Reparations and Costs, Judgement, Inter-Am. Ct. H.R. (ser. C) No. 73 (Feb. 5, 2001)

[6] Kimel v Argentina, Merits, Reparations and Costs, Judgement, Inter-Am. Ct. H.R. (ser.C) No. 177 (May 2, 2008)

[7] Awas Tigni Community v Nicaragua, Merits, Reparations and Costs, Judgement, Inter-Am. Ct. H.R. (ser. C) No. 79 (Aug, 31, 2001)

[8] Santiago Marzioni v. Argentina, Case 11.673, Report No. 39/96, Inter-Am.C.H.R., OEA/Ser.L/V/II.95 Doc. 7 rev. at 76 (1997)

[9] Monica Pinto, The Role of the Inter-American Commission and Court of Human Rights in the Protection of Human Rights: Achievements and Contemporary Challenges. in Christina M. Cerna (ed), *Regional Human Rights Systems* (Ashgate 2014) 221-225

[10] OAS, 'American Convention on Human Rights' <http://www.oas.org/en/iachr/mandate/basics/conventionrat.asp> accessed 3 November 2017

as different criteria must be applied to different states that violate human rights. If jurisdiction is not accepted, the outcome of a case can only be a non-binding recommendation. Furthermore, states should not only ratify the Convention, but also incorporate these rights into their own legal systems and ensure that they are protected.

Moreover, chronic under-funding and limited resources are great challenges given the increase in cases and interim measures requests.[11] The integrity of the institutions could be compromised by their reliance on donations from OAS member states and, more importantly, if these donations are withdrawn, the organs might no longer have the resources to continue necessary work.[12] This frail foundation of the enforcement mechanism points toward a great structural deficiency in the system. Despite having reached landmark decisions and even influenced the global understanding of human rights, the Inter-American system is improperly enforced.

The African Regional Documents

Africa's approach to human rights protection is very different from that of the two other systems, and, therefore, despite academics like Vincent arguing that this system is behind the others in terms of human rights institutions, its perspective must be considered within a very specific context. The very title of the central document, the "African Charter of Human and Peoples Rights", implies the great importance of not only rights of individuals, but also of peoples.[13]

The Banjul Charter dedicates a chapter to duties as well as rights: the emphasis on duties is a reflection of personhood in Africa, where identity can only be defined in relation to a group. Rights are, therefore, less natural than duties in this context. Beyond the recognition of the rights of others, and, unlike the other two systems, goals such as the harmonious development of the family are promoted in Article 29(1), along with rights of women, children and the infirm. Moreover, the Charter also embraces two third generation rights as "belonging to all people: the right to economic,

[11] Jo M Pasqualucci, The Inter-American Regional Human Rights System. in Mashood Baderin and Manisuli Ssenyonjo (eds), *International Human Rights Law: Six Decades after the UDHR and Beyond* (Ashgate 2010) 268-269

[12] Moeckli and others (n1)

[13] Declan O'Sullivan, 'The history of human rights across the regions: Universalism vs cultural relativism' [1998] 2(3) The International Journal of Human Rights 38

social and cultural development and the right to national and international peace and security".[14] This system enforces the widest range of rights in all three generations, perhaps because of a need to introduce the "western" human rights ideology into the structural foundation of the African society.

In terms of enforcement, however, Africa must be the most difficult region in which to impose human rights compliance. The continent is facing many challenges on the way to achieving proper implementation of its human rights, despite commitments in the form of rights, the establishment of further institutions, declarations and the regional human rights system itself. The coexistence of traditional and modern societies and perspectives in Africa provides an unstable foundation for human rights to be built on. Poverty is one of the main challenges, and it goes hand in hand with human rights violations.[15] The African system has often been criticized, given the poor track record of its institutions: only 41 cases have been finalised in the 30 years since the creation of the African Commission. The Commission suffers from poor management and a severe lack of resources, as well as a perceived lack of impartiality, yet the African system has the highest range of outcomes and a multi-layered enforcement mechanism.[16]

Consequently, while rights protected by the African central text seem to properly address issues brought about by the cultural and societal stratification on the continent, the application of these rights is subject to criticism. While the adoption of the regional system is a step in the right direction, other more immediate root causes of human rights violations such as poverty and corruption should be tackled before risking a proliferation of mechanisms. One or two truly efficient mechanisms would prove much more efficient.

The European Regional Documents

Following the adoption of the "grandfather" of all human rights instruments, the Universal Declaration of Human Rights, the American Declaration of the Rights and Duties of Man was approved. This instrument, however, was initially only a non-binding declaration. The Council of Europe was the first regional body to create a legally binding human rights

[14] Ibid 39
[15] Moeckli and others (n1)
[16] Christof Heyns and Magnus Killander, The African Regional Human Rights System. in Christina M. Cerna (ed), *Regional Human Rights Systems* (Ashgate 2014) 461-495

document, which was used as a model for the ACHR.[17] It can, therefore, be affirmed that the European regional human rights system is the first of its kind and it provided the first model of regional human rights system, different versions of which were then adopted in the Americas and in Africa.

Together with its conventions, this document is widely perceived to be the most advanced and efficient form of human rights protection in existence, having generated the most sophisticated jurisprudence in international human rights law and established the most efficient enforcement mechanism. It contributed largely to areas of international law such as state immunity and the functioning of international courts.[18] Its provisions are elaborated through a complex system of bureaucracy, which allows for individuals to raise complaints even against their own states.[19] Founded on the western ideal of individual liberty and meant to directly respond to the Second World War atrocities, stop democracies from relapsing into dictatorships and prevent further war, its drafters could hardly have predicted its modern impact:

> *"The European Court of Human Rights is surely one of the busiest and most exemplary of international judicial bodies. It exerts a profound influence on the laws and social realities of its Member States and has become the paradigm for other regional human rights courts, not to mention other international judicial bodies in general."*[20]

Nevertheless, cases such as *Hirst*[21] in regards to prisoners' votes and *Vinter*[22] which considered possible liberation despite whole life sentences have led to great criticism, particularly from the UK Government. The Court's legitimacy as an institution has been challenged.[23] Given the purpose of the ECHR, it has been argued that the document goes beyond its original political purpose when enforcing human rights through expansive

[17] Christina M Cerna, 'The Inter-American System for the Protection of Human Rights' [2004] 16 Florida Journal of International Law 195-212
[18] David Harris and others, *Harris, O'Boyle & Warbrick: Law of the European Convention on Human Rights* (3rd edn, Oxford University Press 2014) 34
[19] O'Sullivan (n13) 35-36
[20] Christiane Bourloyannis-Vrailas, The European Court of Human Rights. in Christina M Cerna (ed), *Regional Human Rights Systems* (Ashgate 2014) 229
[21] Hirst v United Kingdom (no2) [2005] All ER (D) 59 (Oct)
[22] Vinter and others v United Kingdom [2013] All ER (D) 158 (Jul)
[23] Harris and others, (n18) vii

interpretation, thereby robbing states of a decision not to undertake certain human rights obligations.

However, because of the special nature of the law-making treaty, it is more than just a contract between two states. The ECtHR explicitly decided that it should be interpreted in a way that prioritizes the objective, not in a way that could restrict obligations put on states. It has even shifted from being able to issue only declaratory judgements to requiring specific actions from states. While it clearly favours expansive interpretation, it also imposes limits: it can only interpret the text, and not revise or bend it. [24] This approach allows for more effective protection for the individual when going against a state to protect his rights.

Moreover, the ECtHR also considers the interests of states through the margin of appreciation, a doctrine developed to allow national bodies to make decisions justified by the country's own history and circumstances. While it is prepared to accept that outcomes might be influenced by national issues, the Court must retain the power to rule against decisions made by national bodies, as this is a vital part of its role as a tribunal applying supranational laws.[25] Consequently, it can be affirmed that the Court operates in an efficient manner despite criticism. Given the difficulty of achieving balance between not limiting state power and enforcing human rights, the ECtHR has successfully used expansive interpretation to protect individuals, even while being the most restricted in terms of the number of enforceable rights.

Another point of criticism of the ECHR is the low number of rights which, given the date of the document's enactment, does not address contemporary issues in society. While the African system, for instance, protects all three generations of rights and creates specific rights for women and children, the twelve rights protected by the European document are all first generation, civil and political, and meant to prevent war and protect democracy.[26] Nevertheless, the landmark solution of evolutionary interpretation allows for the ECHR to be seen as a "living instrument" so as

[24] Shai Dothan, 'In Defence of Expansive Interpretation in the European Court of Human Rights' [2014] 3(2) Cambridge Journal of International and Comparative Law 508-531

[25] Anthony Bradley, The need for both international and national protection of human rights - the European challenge. in Flogaitis and others (eds), *The European Court of Human Rights and its Discontents: Turning Criticism into Strength* (Edward Elgar Publishing 2013) 6

[26] Steven Greer, 'What's Wrong with the European Convention on Human Rights?' [2008] 30(3) Human Rights Quarterly 681

to keep up with "present-day conditions" and will be interpreted "in the light of the progress of events and changes in habits of life".[27] Domestic courts apply similar techniques, such as the always speaking statute interpretation, the living tree interpretation and the Verfassungswandel doctrine.[28] Consequently, it is neither unexpected nor an abuse of power that the document will be interpreted in a way that will answer contemporary society's needs and demands in terms of human rights protection. The apparent low number of rights does not affect the instrument's performance when applied by the ECtHR.

However, probably the biggest crisis the ECHR is faced with today is the number of applications submitted and the resulting caseload. While in the 1960s, two or three cases were proclaimed per year, by 2008 that figure had reached 500,000.[29] The reason for this may be that the Convention has been adopted by practically all the countries of Central, Eastern and Western Europe, making it the only regional human rights system that practically binds a whole continent.[30] The Court has, in response, simplified, modernized and accelerated its procedures. Protocol 14 has led to a decrease in the number of cases before the Court and Protocol 15 has introduced a significant disadvantage criterion. While these mechanisms are meant to secure the long-term effectiveness of the ECHR, they might also undermine the principle of individual access to international justice. [31]

However, while the number of applications has increased significantly, so has the number of judgements delivered by the Court. The low number of rulings is caused by the high number of joint cases decided,which means the court, in 2013, judged 3,661 applications.[32] By

[27] Eirik Bjorge, *Domestic Application of the ECHR: Courts as Faithful Trustees* (Oxford University Press 2015) 131
[28] Ibid 153-154
[29] Luzius Wildhaber, Rethinking the European Court of Human Rights. in Jonas Christoffersen and Mikael Rask Madsen (eds), *The European Court of Human Rights between Law and Politics* (Oxford University Press 2011) 223
[30] Ibid 206
[31] Nikos Vogiatzis, 'The admissibility criterion under article 35(3)(b) ECHR: a "significant disadvantage" to human rights protection?' [2016] 65(1) International & Comparative Law Quarterly 185-211
[32] Mikael Rask Madsen, 'The Challenging Authority of the European Court of Human Rights: From Cold War Legal Diplomacy to the Brighton Declaration and Backlash'[2016] 79(1) Law and Contemporary Problems 159-160

2019 this number dropped significantly, with only 2,187 judgements delivered.[33]

Nevertheless, the ECHR is binding on 47 member states, while the ACHR only has 24 parties. It has been widely accepted, fact which directly resulted in an increase in applications. It has 47 active judges and can decide 47 cases at once, while the ACHR and the African system, with 7 and 11 respectively, can only decide one case at a time. The number of cases decided on a yearly basis is also highest for the ECtHR. Consequently, despite the significant delay in some of the cases because of the high number of applications, the European system is highly efficient when compared to the two other regional systems.

The successful approach of the ECHR is also reflected in how widely its jurisprudence has been adopted elsewhere. While similar approaches and interpretation lead to a reciprocal interest on the part of the European and American systems in each other's, this interest is much stronger on the side of the IACtHR. In 10,000 cases, the ECtHR has cited judgements of the IACtHR in 25 judgements. The IACtHR, on the other hand, has cited 123 ECtHR judgements, which amount to 45% of the 276 handed down in total. While this could be caused by the fact that the IACtHR is a much younger institution and the ECHR had already decided many of the issues it is faced with[34], the staggering percentage shows that the ECHR is a highly influential system and has been received more than favourably on an international level.

Conclusion

This paper has shown that the regional systems have become interdependent: their mutual influence leads to a progressive approach toward institutional and normative developments.[35] The three regional human rights systems are a direct reflection of the differences in culture, economy, religion and history of the people they protect. Yet, factors such as funding, enforcement mechanisms and interpretation of the central text

[33] European Court of Human Rights, 'Analysis of statistics 2019' (ECHR, January 2019) <https://www.echr.coe.int/Documents/Stats_analysis_2019_ENG.pdf> accessed 27 February 2020

[34] O'Boyle Michael, A European Respect for the Opinions of Mankind?! in Buckley and others (eds), *Towards Convergence in International Human Rights Law: Approaches of Regional and International Systems* (Brill | Nijhoff 2016) 583-585

[35] Dinah Shelton, 'The Promise of Regional Human Rights Systems' in B. Weston & S. Marks (eds.), The future of International Human Rights (1999), 351, at 356

evidence that the American system is underfunded and not uniformly adopted, while the African system is too complex, making it unable to address human rights breaches efficiently.

In order to evaluate the efficiency of regional human rights systems, only the aspects of the law considered to be most important have been looked at. There are principles of human rights law which this paper has not had scope to consider, given the vast complexity of the issues involved. Nevertheless, these key aspects provide a clear insight into the functioning of these systems, and the findings show that the ECHR is, in fact, the most efficient regional human rights system, despite a high number of pending applications and further criticism.

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