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28 December

Lisbon

Organized by

International Institute for Private- Commercial- and Competition Law (Austria)

in Partnership with

Bielefeld University of Applied Sciences (Germany), Keiser University (USA), Institute of History and Political Science of the University of Białystok (Poland) and School of American Law (Greece)

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Book of proceedings

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Edited by: Dr. Lena Hoffman

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(ICSNS XXV-2022)

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Identification of the reason and the areas most affected by immigration and return migration to Albania

Flavia Kolleshi
Rectorate of Tirana University

Abstract

The phenomenon of Albanian migration, especially some of its main processes: internal migration, international migration and return migration are issues that are present during all the years of transition after the fall of the communist regime in the 1990. International migration is a multi-dimensional phenomenon that has various economic impacts, social and environmental for the countries of destination and origin. Likewise, internal migration affects the structure of population distribution within the country and international migration and internal migration together affect regional growth and sustainable development within a country and in the countries involved in this process. Migration remains a complex phenomenon that has affected Albania for many decades. Many studies have been undertaken to examine the distribution of Albanian international migration after the fall of communism in 1990. According to the first data collected in the first years of migration in Albania, it is noted that with the fall of the regime, there was almost an exodus of the Albanian population mainly towards European countries for various reasons, mainly related to the economic, social and political conditions of Albania at that time. Migration trends over the years must be said to be increasing from time to time and this report tries to give a brief description of the recent dynamics of the Albanian migration phenomenon, focusing mainly on the last two decades. More specifically, this report aims to reveal the characteristics of three forms of Albanian migration: internal, international and return migration. In this paper, will be treated issues related to Albanian migration (internal, international, return), identification of migratory flows, reasons for leaving (driving factors) and to highlight some of the methods used mainly to measure population movements within and between borders.

Keywords: Albanian migration, internal migration, international migration, return migration, population mov reasons.

Introduction

1.1 *Migration: Key Concepts and Definitions. Identification of migrator flows.*

The most important issues that will be examined during this article have to do mainly with immigration in general and with international and national immigration in particular, with the aim of explaining these phenomena, but also analyzing their progress in the country, region and the world, comparing the data and providing drinkable results for the future based on the current data available in the official way. First of all, the term internal migration is used to describe the process of movement of persons that move from one area (a province, district or municipality) to another within the country.[1] Another definition of internal migration is given by the International

[1] International Organization for Migration (2007). Republic of Albania: Migration profile. (The Republic of Albania: Migration Profile). Ministry of the Interior of the Republic of Slovenia: Ljubjana, p.35.

Organization for Migration in the Dictionary of Migration, a publication of key terms and concepts most frequently used in the literature on migration, of 2007.[2] According to this document, internal migration is seen as "the movement of persons from one region to another with the intention of settling in a new location. Migration internal can be temporary or permanent. Internal migrants are mobile within the borders of their country of origin (for example rural-urban migration)".

1.2 *Internal Migration*

Internal migration is conceptualized in accordance with migration organization standards. International migration is a multi-dimensional phenomenon that has various economic impacts, social and environmental for the countries of destination and origin. Likewise, internal migration affects the structure of population distribution within the country and international migration and internal migration together affect regional growth and sustainable development within a country and in the countries involved in this process. Regarding the Albanian case, migration remains a complex phenomenon that spans several decades and for which numerous studies have been conducted to examine the distribution of international migration, especially after the fall of the communist system. It has been estimated [3] that between the years 1989- 1992, 220,000 Albanians citizien left the country and this estimate increased to 300,000 by the end of year 1992. According to INSTAT [4] 700,000 Albanians left the country during the period 1989-2001 and in 2005 the number of immigrants increased to 864,485, which is 27.5% of the population total in the country[5]. According to the population and family census conducted in 2000, 5.7% of the population (182,600) were moved from one region to another in the period 1989 - 2001. The destinations of this migration were central regions like the citeies of Durrësor Tirana ect., and coastal regions like the cities of Vlora, Lezha ect., while the northeastern and southeastern regions were very little affected by the internal movements of the population. For example, in the period 1989-2001 internal migration in Central Albania was 44 times higher than in the northeastern region and 13 times higher than the southeastern regions [6]. Four trends in population movement within regions can be identified:

- persons leaving the northern and northeastern regions and move to the central regions;
- people from different parts of the country move towards the center of the country;
- people from secondary coastal regions (Fier, Vlorë, Lezhë prefectures) move towards central regions;
- people from different central parts of the country migrate to secondary regions coastal.[7]

Part of the phenomenon of internal migration can be related to poverty and lack of opportunities for economic growth in the areas of origin. For example, 40% of families in the city of Kukës receive social support, while the national average of the

[2] Idem.

[3] Journal of King Saud University – Science, "Study of fractional order Van der Pol equation", Volume 28, Issue 1, January 2016, p. 58.

[4] Migration in Albania in 2001. Tirana: Institute of Statistics.

[5] The Knowledge Economy, the Kam Methodology and World Bank. OperationsWorld Bank Institute Working Paper No. 37256, pg.25.

[6] Migration in Albania in 2001. Tirana: Institute of Statistics.

[7] Idem.

standard of living index it was 12% [8]. As far as the host prefectures are concerned, Tirana ranks first, followed by Durrës, Fieri and Vlora. According to the population census conducted in 2001, 72% of people migrated within the country live in Tirana and Durrës[9]. The population in these two prefectures increased by correspondingly 41% and 12%. In addition, in 2001, 30% of the entire population lived in these two areas, compared by 23% in 1989. This complex and often irregular and chaotic internal migration is characterized by levels low level of integration between host and newcomer communities, imbalance in infrastructure (water, electricity, roads) and in the education and health system. In addition, more studies are needed to better understand the impact of internal migration on communities of origin and the impacts of internal migration on the constituent systems of the family, especially on the subsystems marital, parental and fraternal. Albania is increasingly becoming a destination country for a variety of categories of foreigners, including migrants in search of employment, students, asylum seekers and refugees, although the numbers are relatively low. During 2017, the Directorate of General of the National Employment Service has issued a total of 1,705 work permits for foreigners. The largest number of permits of work was issued by the Regional Directorate of Employment in Tirana (651 work permits). Countries of origin top the list with recipients of work permits in 2017 included Turkey (582 or 34% of total work permits issued), followed by China (208 work permits or 12% of the total) and Colombia (85 work permits or 6% of the total). Of the 1,705 work permits that were issued in total for 2017, 245 or 14% of them were awarded to women and 1,142 were first-time applications.[10] If we refer to Albania in recent years, it has been a country from which a large part of the population left through migratory movements**.** But also Albania: as well as other Western Balkan countries has been a transit country for immigrants and refugees and not destination. However, the authorities Albanians have made efforts in response to the flows of such migratory ones to provide all the necessary services and for an efficient response to asylum seekers and for protection of refugees. Due to the increased flow of refugees in recent years, Albania has made efforts to doubling the hosting capacity at the National Center of Reception and for the addition of reception facilities at the border. Law No. 10/2021 for Asylum, [11] in the Republic of Albania describes the procedures for individuals arriving at Albania and seeking asylum. In this regard, the right for asylum according to Article 5 of the law provides institutions

[8] Program For Development of the Kukes Functional Area April 2015, This document is prepared by the Europartners Development Organisation in the framework of the Programme for Decentralisation and Local Government Development, pg. 7.

[9] Migration in Albania in 2001. Tirana: Institute of Statistics.

[10] Cooperation Program for Sustainable Development 2017-2021.

The National Migration Strategy and its Action Plan (2019-2022) focus primarily on regular and irregular migrants, however they also consider, where possible, the position of asylum seekers and refugees. Turkish citizens are mostly employed in the construction, education and health sectors. Chinese nationals are employed in the extractive industry (mining and quarrying),

while Colombian citizens in the construction sector in professions such as welders, mechanics, electricians and drivers of heavy machinery for the construction of the gas pipeline.

[11] Law No. 10/2021 for Asylum, in the Republic of Albania. This law exceeded and replaced the Law on Asylum in the Republic of Albania, No. 121/2014

and the necessary procedures for processing asylum requests[12]. However, despite the efforts made and the support received by the relevant international bodies for it provided an effective response in guaranteeing rights of asylum seekers and refugees for asylum procedures, Albania still faces challenges in implementing the law and relevant regulations on this matter. A challenging situation for the national border authorities it remains "identification and proper registration of unaccompanied minors"[13] in preliminary selection procedures (pre-screening) in the country.[14] In this aspect, even though article 35 of the Law on Asylum provides that an unaccompanied minor asylum seeker to be interrogated in the presence of a psychologist, the employee social or someone who knows the child, this request has come across in the absence of coordination between the relevant institutions".[15] The asylum procedure includes requests registered by the Police of Border and Migration[16] by filling out the forms pre-selection and reporting to the Asylum Directorate and Citizenship to continue with the determination procedures of status. In addition, refugees have the right to be informed and to receive legal assistance and interpreting during registration procedures and application for asylum.[17]

Unlike migrants' international remittances, there is little information on remittances internal money, even when the study focuses on examining this phenomenon; findings have shown

that internal remittances are very small, if not non-existent [18]. A reason that can help in the interpretation of this finding has to do with the standard of living of internal migrants who are usually employed in low paying jobs. Another explanation comes from the fact that internal migration Albanian tends to be more stable and includes the whole family rather than an individual.

2. ***International migration.***

Albanian migration before 1945 is characterized by flows of population movement within and through borders. For example, Barjaba, presents a comprehensive analysis of migration based on books and descriptions collected from scholarly work in schools as well as from newspapers and opinion pieces personal of travelers who visited the country.[19] Migration before 1945 was characterized by economic factors (eg persons who migrated as seasonal workers, traders, religious missionaries) and political factors (recruited persons and those who joined the armed forces in various wars in the Balkan region). Early mass migration of Albanians mainly in Italy (Sicily and South Italy in 1444-1468) and Greece (the islands Euboea, Hydra and the

[12] Xhaho A., Tandilli A., 2019. Vulnerable asylum seekers and irregular migrants in Albania: Trends, Challenges and Policy Solutions, Institute for Democracy and Mediation, p. 7

[13] Idemm, f. 8.

[14] Instruction 293/2015 "On the procedures for the treatment of foreign citizens with irregular stay in the territory of the Republic of Albania".

[15] Xhaho A., Tandilli A., 2019. Vulnerable asylum seekers and irregular migrants in Albania: Trends, Challenges and Policy Solutions, Institute for Democracy and Mediation, p. 9.

[16] Article 26 of the Law on Asylum in Albania.

[17] Articles 22-23 of the Law on Asylum in Albania.

[18] Volunteer, J. (2007). Albanian Migration and Development: State of the Art Review. IMISCOE document.

[19] Barjaba, K. (2004). Albania: Looking Beyond Borders (Albania: Looking Beyond Borders). Retrieved from Migration Information Resource at: http://www.migrationinformation.org.

territories near them) during the 14th and 15th centuries. Some of the factors that led to mass population movements are related to Ottoman rule and resistance to its occupation. This resistance has led to Albanians leaving their country and settling in the north (Dalmatian coast) and south (Greece).[20] In addition, poverty, low living standards mainly in rural areas, exploitation of farmers, heavy tax system, almost non-existent health and education system, wars and the long Ottoman occupation, all together explain the waves of mass migration during these years.[21] During the years 1468-1506, it is estimated that 200,000 Albanians left the country, which constitutes a quarter of the entire population at that time.[22] Opponents of the Ottoman regime and political activists during the second half of the 19th century and at the beginning of the 20th century, out of fear of persecution and oppression, a significant number did of migrants left the country and sought refuge in neighboring countries as well as in other parts of the country Western Europe, the United States of America, Argentina and Australia. Changing borders as a result of treaties during the Balkan Wars (1912-1913) was a reason another forced migration that affected Albanians, causing internal displacement people from the south to coastal regions (Durham, 2001) and crossing borders and settling in Turkey (the case of Chameria) and North America. Internal movements that occurred within regions and coastal cities attracted people from the surrounding areas. Internal migration was characterized by two dimensions: rural-rural and rural-urban movement.[23] Refering to this sours, the southern and southeastern part of Albania have been most affected by migration, although statistics from the North were rare and difficult to obtain. Estimated that between 1923-1925 over 100,000 Albanians emigrated abroad, which corresponds to 13% of of the total population in 1945. According to INSTAT, 110,000 Albanians left the country during the years 1923-1939 mainly due to economic and political instability. Furthermore, 19,000 Albanians left the country during the period 1940-1945 due to opposite views to the communist party in power at that time.[24] In conclusion, the migration of Albanians before 1945 was complex and influenced by interbreeding of political and economic factors. Massive waves of migration led to a significant decrease in population and created some of the elements that are still found today in the migration situation in Albania, such as different migration routes and internal population movements. Understanding migration early Albanian can help in understanding the origins of recent migration and to explain and predict the current trajectory of Albanian migration today. As we mentioned above, international movement during the era of socialism was prohibited. During the communist regime, the borders with the former Yugoslavia and with Greece were somewhat permeable in the beginning and middle of the 50s and the 60s. Those who managed to cross the borders were temporarily sent to camps refugees in Greece, Italy and Yugoslavia and later moved to their final destinations in Western Europe (such as France, Belgium) and in North America (USA). These sporadic "incidents" became more and more difficult and the Albanian authorities strictly controlled the areas border making crossing the border

[20] Idem.

[21] Volunteer, J. (2007). Albanian Migration and Development: State of the Art Review. IMISCOE document.

[22] Idem.

[23] Tirta, M. (1999). Migrations of Albanians, internal and external (the 1940s - the 40s of the century XX). Albanian Ethnography, 18.

[24] INSTAT (2004a). Migration in Albania in 2001. Tirana: Institute of Statistics

a difficult and dangerous act. Those who were caught were accused of treason against the homeland and were punished in many ways, from the exile of internal up to life imprisonment. Any person who changes his/her place of residence is considered an international migrant.[25] Further, when the duration of migration is considered, two subdivisions of this definition appear. First, "long-term migrant" is considered a person who moves to a country other than that of habitual stay for a period of at least one year (12 months), so the country of destination becomes actually his/her new place of residence. From the point of view of the country of origin the person will be a long-term immigrant while from the point of view of the country of destination the person will be an immigrant long term. On the other hand, a "short-term migrant" is a person ... "who moves to a country for a period of at least 3 (three) months but less than a year (12 months) unless moving towards that the place is for entertainment, vacation, visiting friends and relatives, business, medical treatment or religious pilgrimage".[26] International migration is conceived according to the Migration Dictionary of the International Organization for Migration. According to this document, international migration refers to the movement of persons from the country their place of origin or habitual residence to another destination and this relocation involves crossing international borders. International migration can be temporary or permanent.[27] Albania remains mostly a country of emigration. In 2017, about 1.5 million Albanian citizens were outside the territory of country, or nearly half of the population.[28] A large part of migrant communities are located in neighboring countries, in Italy (448 407) and in Greece (356 848) [29], however with a growing trend in other countries of the European Union, as well as in America of the North and in Canada. Population projections show a long-term trend towards reaching a neutral migration balance. Emigration from Albania is mainly motivated by economic reasons (unemployment and the effort for better living conditions), also why other considerations have come to the fore.[30] Two categories of the population, young people and women, find the situation in the labor market in the country particularly difficult. In 2017, young people aged 15-29, who were not employed and did not attend school, higher education or vocational training, constituted 29.7% of all young people in the country, while only 50.3% of of women were employed, compared to

[25] International Organization for Migration (2006b). Institutionalizing Assistance to Returned Migrants in Albania through Local Employment Offices and Local NGOs. IOM, Tirana: Albania.

[26] Pastore, F. (1998). Conflicts and migration: A case study for Albania (Conflicts and Migration: A Case Study on Albania). Briefing written for the European Commission's Conflict Prevention Network, p.18

[27] International Organization for Migration (2007). Republic of Albania: Migration profile. (The Republic of Albania: Migration Profile). Ministry of the Interior of the Republic of Slovenia: Ljubjana, p. 36.

[28] Sipas INSTAT-it, popullsia mesatare në vitin 2017 ishte 2 873 457 banorë. Ndryshimi ndërmjet të dhënave të regjistruara në Regjistrin Kombëtar të Gjendjes Civile dhe popullsisë mesatare në vitin 2017 mund të vlerësohet indirekt si një tregues i numrit të shtetasve shqiptarë që jetojnë jashtë vendit.

[29] Sipas UNDESA-s, numri i shtetasve shqiptarë në Greqi dhe Itali në vitin 2017 ishte përkatësisht 429 428 dhe 455 468.

[30] Përveç migrantëve për punë, kategoritë kryesore të emigrantëve nga Shqipëria përfshijnë anëtarët e familjes së migrantëve, ose personat që emigrojnë për t'u bashkuar me familjet e tyre jashtë vendit, studentët dhe azilkërkuesit e refugjatët.

64.3% of men.[31] The emigration of Albanian citizens, in particular to the countries of the European Union, continues despite the continuous improvement of the living conditions in the country, the sustainable growth of the Albanian economy and the continuous improvement of public security. According to INSTAT, four are the main factors currently affecting immigration to the EU: opportunity to work abroad (84%), family reunification (4.6%), unemployment (4.2%) and the opportunity to study abroad (3.5%).[32] Other attractive factors are also the better quality of training and opportunities to study abroad. On the other hand, the shortcomings of public services have served as "stimulating factors", negatively affecting the effort and the perspective of migrants to return and settle in Albania. Another category of Albanian citizens abroad are the persons whose request for asylum has been rejected or who have been with irregular stay in EU countries. As a recent trend significant returns of these are observed persons in Albania. It is difficult to register voluntary returns in Albania due to their nature. Statistics in regarding involuntary returns show a decrease in returns from EU countries. Most involuntary returns from countries of the EU and neighboring countries were carried out through repatriation operations (by land and air).[33] For 2017, an increase is observed significant return of unaccompanied minors. 452 minors have been readmitted by border authorities in cooperation with the State Social Service. The impact of the migratory movements of the Albanian population on the socio-economic development of the country has been significant. Money shipments of immigrants, otherwise known as remittances, have helped to overcome the poverty that accompanied it for many years the fall of the communist regime in Albania and continue to make an important contribution to the country's economy. Although Albania continues to be highly dependent on remittances, inflows have gradually declined during the economic crisis in southern Europe from 952 million euros in 2007 to 547 million euros in 2013. Since then, remittance levels have recovered to reach 637 million euros in 2017. It is expected that they will experience further growth with the return of growth economic in host countries, giving migrant families and local economies a tremendous financial resource and irreplaceable.

3. *Return migration.*

Return migration is another important concept that refers to the return of the migrant in the country of origin after staying for at least one year in another country. Return migration urefers to both regular and irregular migrants and includes voluntary return and return forced in the country of origin[34]. A similar definition is found also in

[31] Të dhëna të marra nga Anketa e Forcave të Punës, INSTAT – Tregu i Punës 2017, faqe 2. http://www.instat.gov.al/al/temat/tregu-i-pun%C3%ABs-dhe-arsimi/pun%C3%ABsimi-dhe-papun%C3%ABsia/publikimet/2018/njoftim-p%C3%ABr-media-tregu-i-pun%C3%ABs-2017/

[32] Të dhëna të marra nga Anketa e Fuqisë Punëtore, INSTAT, 2017.

[33] Gjatë 2017, janë kryer 2243 operacione, nëpërmjet të cilave u kthyen 13497 shtetas shqiptarë, ndërsa në vitin 2016 u kryen 2253 operacione dhe u kthyen 16601 shtetas shqiptarë.

[34] International Organization for Migration (2003). Identification of Sustainable Approaches to Voluntary Return and Reintegration of Asylum Seekers and Persons with Temporary Protection Status: Albania, Romania and Russia (Identification of Sustainable Approaches to Voluntary Return and Reintegration of Asylum Seekers and Persons with Temporary Protection Status: Albania, Romania, and Russia). Prepared by Hulst, M., Laczko, F., & Barthel, J. Final project report for the European Commission. Division of Studies and Publications at IOM

the Dictionary of Migration that conceptualizes return migration as the return of a the person in his/her country of origin or usual place of residence, after staying for at least one year in another country. Return migration also includes voluntary return [35]. When we focus on return migration the concept of reintegration becomes very important to understand the manifest and implied realities of this phenomenon. Reintegration is often seen as a complex issues that includes individual, social, economic, cultural and subjective factors. Over the years, return migration has emerged as another phenomenon within Albanian migration. Migration of return can occur from changes in various aspects such as reasons for migration (factors driver), the migrant person himself (eg the person worked and saved while staying abroad and now thinking of starting a business in his country), or the family context (eg family reunification is not possible and the migrant decides to return home). These factors are often considered that affect voluntary return.[36] On the other hand, return experiences can arise from negative migration experience such as failure to obtain regular status in the countries of destination, forced return or deportation becouse of readmission agreements or internships of returning to the country of origin.[37] According to IOM future returnees may decide to move to big cities upon their return rather than returning to the cityof origin. One reason that can explain this preference for large urban places is related to do with the opportunities that exist in larger urban communities compared to smaller rural areas. In addition, a typology of return migrants can be drawn up based on the migrants' experiences during migration abroad. For example, returnees can be classified as potential investors, skilled or unskilled migrants upon return. Also, strategies that facilitate the return experience should be different, depending on the needs of people in each category. Despite the various factors that lead to voluntary or involuntary forms of migration, there broad consensus in the literature regarding the importance of facilitating reintegration. Reintegration experiences include objective and subjective factors. Objective factors include data such as the number of returnees who find a job after returning, returnees who take advantage of opportunities for professional training, those who open their own businesses, etc. On the other hand, subjective factors include returnee's perception, experiences of adaptation in the country of origin and their perspective on temporary or permanent return to Albania.[38] Return migration to Albania has many of the above-mentioned elements. This phenomenon includes voluntary and involuntary dimensions and return experience are considered on a continuum that it goes from positive to negative. With all examples of return migration experiences (volunteer, forced), it is widely accepted

[35] International Organization for Migration (2007). Republic of Albania: Migration profile. (The Republic of Albania: Migration Profile). Ministry of the Interior of the Republic of Slovenia: Ljubjana, p.62.

[36] Danaj, S. (2006). An Analysis of the Activity of Hope for the Future Association for the Period April - June 2006 (An Analysis of the Activity of Hope for the Future Association for the Period April 1999-June 2006). Hope for the Future Association: Tirana, Albania.

[37] International Organization for Migration (2006a). Return and readmission: The case of Albania (Return
and Readmission: The Case of Albania). IOM, Tirana: Albania.

[38] King. R. & Voluntari, J. (2003). Migration and Development in Albania (Migration and Development in Albania. WP C5), Center for Studies on Development and Migration, Globalization and Poverty, University of Sussex, retrieved from: http://www.migrationdrc.org/publications/working_papers/WP-C5.pdf.

that return migration should be a government-facilitated process and various civil society structures. IOM in Albania has played a fundamental role in the relief of the return and reintegration of Albanians in years with various initiatives financed by the Ministry British Home Affairs as well as from the European Commission. Despite all the studies that are being done on this phenomenon, return migration remains a field of unstudied in the literature on Albanian migration. Albanian migrants without documents, especially those living in Italy and Greece have been more exposed to return than migrants with documents. Those who have been forced to return have tried to cross the border several times and often at intervals of short times. In 2004, 30,000 Albanian migrants were estimated to return to their country them as a result of the impossibility to obtain the necessary documentation (legal status) in the countries hosts (IOM 2005).[39] In an effort to profile irregular migrants and potential returnees in Albania and neighboring countries, highlights four driving factors that have led to the migratory experience international:

(1) general insecurity in the country of origin;
(2) economic hardship;
(3) political reasons;
(4) and low living standards in the country of origin.

Out of a sample of 68 Albanian migrants participating in this study, only 21% watched it return as a positive step, while 16 percent appeared indifferent to this possibility. This study underlined three reasons for Albanian migrants to consider the possibility of return:

(1) acceptable living standards;
(2) secure employment;
(3) and acceptable level of security.[40]

Similar studies have shown the presence of the connection between the perception of success and the desire for to return, implying that strong perceptions of success are strongly related to the desire to return. In addition to individual factors, this relationship is also influenced by social factors such as the meanings given to it the phenomenon of return to host and origin societies. When giving back is seen as a personal failure, the immigrant is less inclined to consider return as a possibility. Mass information campaigns and reintegration assistance programs should therefore be given importance that promote positive feelings and expectations in potential returnees and prevent negative effects of stereotypes about return migration. In conclusion, the existing literature on the phenomenon of return migration in Albania shows that return migration can occur from (a) the person's voluntary decision; (b) individual decision if accompanied by an assisted voluntary program; or(c) the individual if forced to return.[41] In addition, decisions to return may arise from

[39] International Organization for Migration (IOM) (2005). Competition for remittances from immigrants (Competing for Remittances). Tirana: IOM Tirana.

[40] International Organization for Migration (IOM) (2005). Competition for remittances from immigrants (Competing for Remittances). Tirana: IOM Tirana.

[41] International Organization for Migration (2003). Identification of Sustainable Approaches to Voluntary Return and Reintegration of Asylum Seekers and Persons with Temporary Protection Status: Albania, Romania and Russia (Identification of Sustainable Approaches to Voluntary Return and Reintegration of Asylum Seekers and Persons with Temporary Protection Status: Albania, Romania, and Russia). Prepared by Hulst, M., Laczko, F., & Barthel, J. Final project report for the European Commission. Division of Studies and Publications at IOM.

various reasons such as failure to obtain regular status in the country of destination, personal and family reasons (e.g. health, longing for the house, etc.). Second, upon return, migrants may encounter obstacles similar to the ones they have experienced before departure abroad, such as unemployment and economic hardship. These factors influence the decisions for temporary or permanent return, making migration e returning a phenomenon with time dimensions. Third, not all returned migrants receive assistance from governmental and non-governmental programs. When assistance is possible, it facilitates reintegration into subjective (e.g. adaptation) and objective level (e.g. participation in a workshop, training opportunities professional, getting a loan to open a business, etc.).

4. ***Recommendations and conclusions for further research and policy making.***

The necessity of cross-sectoral migration strategy. Maximizing the benefits of migration for migrants and societies requires a cross-sectoral approach to governance migration to address challenges related to mixed movements (irregular migration, asylum seekers and refugees, minors unaccompanied, etc.) and to increase as much as possible the impact of migration on the development of the country through investments, human development, innovation, etc. The 2030 Agenda for Sustainable Development has confirmed migration as an important global priority which, if properly governed, can bring positive benefits to migrants and families their own, host and sending societies and countries in general. Furthermore, the formulation of a Global Compact on Migration (GCM) in July 2018 was a clear indication of the comprehensive approach and joint efforts at the global level to better govern migration.[42] What is expected from The GCM is to provide a unifying framework of shared principles, commitments and understandings between Member States on all aspects of international migration, including humanitarian, development and of human rights and also improving international cooperation on migration. Albania is one of a countries that have set the 2030 Agenda as part of their national priorities, as well as welcomed the Agreement Global on Migration and its objectives. The decision of the Albanian Government to renew the cross-sectoral strategy for migration represents an important step in realizing Albania's international commitments in the field of migration. Moreover, the Strategy contributes to the successful realization of nine of the Sustainable Development Goals.[43] The impetus towards the continuous

[42] Albania adopted the Global Agreement on Migration during the Intergovernmental Conference held in Marrakesh, Morocco on December 10 and 11, 2018.

[43] These objectives include: Objective 1 – Against poverty, as a series of measures will contribute to the reduction of poverty in the regions of origin of migrants; Objective 3 – Good Health and Well-being, since the strategy considers the health and well-being of migrants as a prerequisite for social and economic development; Objective 4 – Quality Education, since the strategy encourages the education of migrant children as a measure to promote their socio-economic integration and improve their life chances as adults; Objective 5 – Gender Equality, since the strategy considers migration as a source of empowerment for migrants (including women and girls), also addressing issues of vulnerability due to violence and exploitation;
Objective 8 – Decent Work and Economic Growth, as the strategy promotes decent employment and a safe environment for migrants; Objective 9 - Industry, Innovation and Infrastructure, since the strategy promotes the transfer of knowledge and skills of migrants to support innovation and economic growth of the country; Objective 10 – Reducing inequalities, since the main objective of the strategy is to govern migration to ensure safe and regular migration; Objective 16 - Peace, Justice and Strong Institutions, since the strategy promotes migrants' access to justice and the protection of their rights; Goal 17 – Partnerships for the Goals, as the

improvement of the migration policy framework in the country during the last decade has been given by the EU integration process and the parallel adoption of international norms in this field. Mechanisms of legal approximation and monitoring the implementation of the legislation have been effective, because they have brought higher levels of cohesion in the national legal framework and institutional in the field of migration. The main legislative changes present some of the moments main in this regard, where it is worth mentioning: the adoption of law no. 9668/2006 (amended) on Emigration of Citizens Albanians for Employment Motives, as well as two Orders of the Minister of Labour, Social Welfare and Equal Opportunities, Order no. 1772/2007 on the format, content and procedure of obtaining immigrant status and Order no. 2086/2007 on the format and content of the Immigrant Register and registration procedures; Instruction of the Ministry of Education, Sports and Youth, no. 44, dated 21.08.2013 for determining the criteria and procedures for the equivalence of certificates and diplomas of pre-university education students from abroad, amended by Instruction no. 14, dated 10.05.2017; approval of Law no. 108/2013 for foreigners (amended), Law no. 121/2014 on Asylum in the Republic of Albania; Instruction no. 293/2015 of the Minister of the Intern Work for the procedures of dealing with foreigners with irregular stay in Albania; Order no. 1146/2014 of the Minister of the Interior for some additions and changes in Order no. 851/2009 for the approval of the Standard Procedures of Border and Migration Work; approval of Law no. 18/2017 "On the rights and protection of the child", the field of its implementation which includes children with Albanian citizenship, but also those without citizenship or with foreign citizenship, who are located within the territory of the Republic of Albania; approval of Law no. 14/2016 "For the identification and registration of addresses of Albanian citizens who live outside the territory of the Republic of Albania" and Law no. 16/2018 "For the Diaspora". The aforementioned legislation provides a stable legal framework that ensures not only the protection of Albanian citizens abroad, but also the protection of immigrants in Albania. However, a lesson learned in the improvement process of the legal framework is that the regular review of the impact of the main legal acts on migration governance is very important to identify the need to undertake legal changes that would increase the effectiveness of legal measures. Furthermore, an analysis of interstate agreements should be undertaken to ensure that within these agreements, unaccompanied minors and potential victims of trafficking are not returned to Albania. Alignment of migration legislation with the EU Acquis and international conventions ratified by Albania continues. While Albania has a very high level of ratification of international conventions[44] in the field

strategy pays particular attention to the collection, analysis and sharing of reliable migration data that help policymakers design evidence-based policies and plans that address the migration aspects of the Sustainable Development Goals.

[44] This was one of the findings of the evaluative analysis based on migration governance indicators, which Albania undertook in the spring of 2018. Albania has ratified the following Conventions in the field of migration: International Convention for the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW) - 2007; Convention Relating to the Status of Refugees, 1992; Convention on the Rights of the Child (CRC), 1992; ILO Migration for Employment Convention (Revised), 1949 (No. 97), 2005; ILO Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143), 2006; Convention on Statelessness, 2003; European Convention on the Legal Status of Migrant Workers, 2007; European Convention on the Participation of Foreigners in Public Life at Local Level, 2005

of migration, special attention should be paid to their degree of implementation and the impact they have on migrants' rights. About moreover, in some cases there is a lack of coherence in the terminology of migration both in the Albanian legislation and in policy documents.

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Educational progress in Albania and suitability to the labor market

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Abstract

In this modest work, the authors have tried to present the progress of the Albanian Education System over the years and its connection with the Labor Market in Albania and beyond.
Throughout this paper, the authors have tried, through the secondary statistical data provided by the competent official institutions of our country, such as the Institute of Statistics in Albania, the Ministry of Finance and Economy, the Ministry of Education Sport and Youth, the Ministry of Health and Social Protectionand other subordinate institutions, to present not only the progress and the trends of the Education System but also the connection with the professions most sought after by the Labor Markets in Albania and beyond.
A special part of this paper is dedicated to Employment according to the most sought-after professions in the European Union and the USA based on official data from institutions such as Eurostat, International Labor Organization.
Based on the results achieved after processing the data, the authors give their suggestions regarding the latest trends and trends regarding the professions that are most in demand in our country and beyond.

Keywords: Higher Education, Secondary Education, Primary Education, Employment, employment rate.

Introduction

1. Enrollments in education in total for the period 2014-2022

Based on the data obtained on enrollment in education of Albania in total in the period 2014-2022, it results that:

- in the academic year 2015-2016, compared to the academic year 2014-2015, 43,709 fewer pupils and students were registered;
- in the academic year 2016-2017, compared to the academic year 2015-2016, 26,961 fewer pupils and students were registered;
- in the 2017-2018 academic year, compared to the 2016-2017 academic year, 25,226 fewer pupils and students were registered;
- in the academic year 2018-2019, compared to the academic year 2017-2018, 11,431 fewer pupils and students were registered;
- in the 2019-2020 academic year, compared to the 2018-2019 academic year, 28,627 fewer pupils and students were registered;
- in the academic year 2020-2021 compared to the academic year 2020-2019, 22,930 fewer pupils and students were registered;
- in the academic year 2021-2022 compared to the academic year 2020-2021, 11,735

fewer pupils and students were registered;

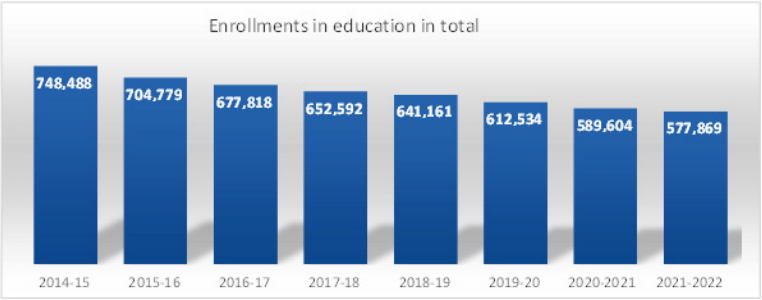


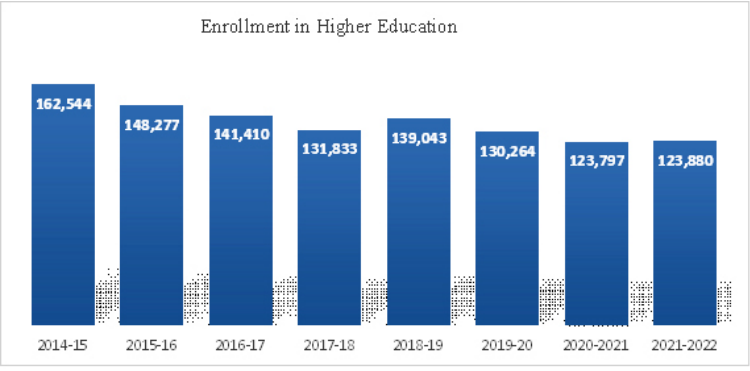
Figure 1. 1 Enrollments in education in total for the period 2014-2022

Source: INSTAT, 2022

Based on the data obtained on enrollment in higher education in the period 2014-2022, it results that:

- in the academic year 2015-2016 compared to the academic year 2014-2015, 14,267 fewer students were registered;
- in the 2016-2017 academic year compared to the 2015-2016 academic year, 6,867 fewer students were registered;

Figure 1. 2: Registrations in Higher Education for the period 2014-2022



Source: INSTAT, 2022

- in the academic year 2017-2018 compared to the academic year 2016-2017, 9,577 fewer students were registered;
- in the academic year 2018-2019 compared to the academic year 2017-2018, 7,210 more students were registered.
- in the academic year 2019-2020 compared to the academic year 2018-2019, 8,779 fewer students were registered.
- in the academic year 2020-2021 compared to the academic year 2019-2020, 6,467 fewer students were registered.

❖ in the academic year 2021-2022 compared to the academic year 2020-2021, 83 more students were registered

Table 1. 1: Registration trend 2014-2022 in %

Nr.	*Category*	*Trend in %*
1	Total	-22.79
2	In Higher Education	-23.78

Source: INSTAT, 2022

Based on the results obtained from the trend of registrations, it follows that:

❖ the downward trend of enrollments in education in total in the period 2014-2022 is presented at the value of 22.79%;

❖ the downward trend of registrations in higher education in the period 2014-2022 is presented in the value of 23.78%

1.1 Trends of registrations in higher education according to fields of study in the period 2014-2022

Table 1.2: The number of students registered by field of study in the period 2014-2022.

Nr.	Academic year	2014-	2015-	2016-	2017-	2018-	2019-	2020-	2021-
		15	**16**	**17**	**18**	**19**	**20**	**21**	**22**
1	Education science	13,654	11,236	11,779	10,689	10,062	9,062	8,367	8,085
2	Arts and Humanities	17,588	17,095	17,278	15,441	14,348	12,537	10,972	9,536
3	Social sciences, journalism and information	10,462	13,073	10,004	12,259	14,086	11,397	10,277	9,204
4	Business, administration and law	42,089	41,523	36,471	30,233	33,447	32,732	31,173	32,227
5	Natural sciences, mathematics and statistics	10,473	6,719	7,816	6,325	7,06	5,962	4,924	4,553
6	Information Technology and communication	9,560	8,260	7,487	8,228	10,016	8,883	8,341	8,458
7	Engineering, manufacturing and construction	18,728	18,005	18,48	18,73	20,019	20,775	20,537	22,555
8	Agriculture, forestry, fisheries and veterinary	10,171	8,383	7,086	4,564	4,999	4,158	3,458	2,770
9	Health and wellness	22,780	21,550	20,900	19,837	20,727	20,199	21,195	22,130

10	Services	5,022	2,433	2,306	3,088	4,279	4,559	4,553	4,362
11	Unknown field	2,017	0	0	0	0	0	0	0
12	Total	**160,527**	**148,277**	**141,41**	**131,833**	**139,043**	**130,263**	**123,797**	**123,88**

Source: INSTAT, 2022

Based on the data obtained on the number of students enrolled in education sciences in the period 2014-2022, it results that:

- in the academic year 2015-2016 compared to the academic year 2014-2015, 2,418 fewer students were registered;
- in the academic year 2016-2017 compared to the academic year 2015-2016, 543 more students were registered;
- in the academic year 2017-2018 compared to the academic year 2016-2017, 1,090 fewer students were registered;
- in the academic year 2018-2019 compared to the academic year 2017-2018, 627 fewer students were registered,
- in the academic year 2019-2020 compared to the academic year 2018-2019, 1,000 fewer students were registered,
- in the academic year 2020-2021 compared to the academic year 2019-2020, 695 fewer students were registered,
- in the academic year 2021-2022 compared to the academic year 2020-2021, 282 fewer students were registered.

Based on the data obtained on the number of students enrolled in social sciences in the period 2014-2022, it results that:

- in the academic year 2015-2016 compared to the academic year 2014-2015, 2,611 more students were registered;
- in the academic year 2016-2017 compared to the academic year 2015-2016, 3,069 fewer students were registered;
- in the academic year 2017-2018 compared to the academic year 2016-2017, 2,255 more students were registered;
- in the academic year 2018-2019 compared to the academic year 2017-2018, 1,827 more students were registered,
- in the academic year 2019-2020 compared to the academic year 2018-2019, 2,689 fewer students were registered,
- in the academic year 2020-2021 compared to the academic year 2019-2020, 1,120 fewer students were registered,
- in the academic year 2021-2022 compared to the academic year 2020-2021, 1,073 fewer students were registered.

Based on the data obtained on the number of students enrolled in administration, business and law in the period 2014-2022, it results that:

- in the academic year 2015-2016 compared to the academic year 2014-2015, 566 fewer students were registered;
- in the academic year 2016-2017 compared to the academic year 2015-2016, 5,052

fewer students were registered;
- ❖ in the academic year 2017-2018 compared to the academic year 2016-2017, 6,238 fewer students were registered;
- ❖ in the academic year 2018-2019 compared to the academic year 2017-2018, 3,214 more students were registered.
- ❖ in the academic year 2019-2020 compared to the academic year 2018-2019, 715 fewer students were registered,
- ❖ in the academic year 2020-2021 compared to the academic year 2019-2020, 1,559 fewer students were registered,
- ❖ in the academic year 2021-2022 compared to the academic year 2020-2021, 1,054 more students were registered.

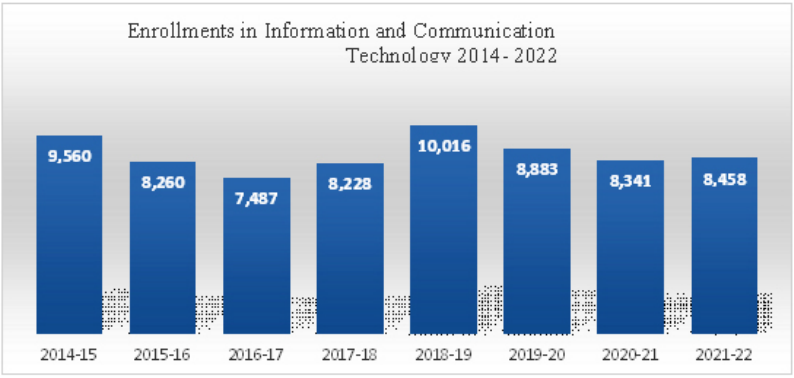
Based on the data obtained on the number of students enrolled in natural sciences, mathematics and statistics in the period 2014-2022, it results that:

- ❖ in the academic year 2015-2016 compared to the academic year 2014-2015, 3,754 fewer students were registered;
- ❖ in the academic year 2016-2017 compared to the academic year 2015-2016, 1,097 more students were registered;
- ❖ in the academic year 2017-2018 compared to the academic year 2016-2017, 1,491 fewer students were registered;
- ❖ in the academic year 2018-2019 compared to the academic year 2017-2018, 735 more students were registered,
- ❖ in the academic year 2019-2020 compared to the academic year 2018-2019, 1,098 fewer students were registered,
- ❖ in the academic year 2020-2021 compared to the academic year 2019-2020, 1,038 fewer students were registered,
- ❖ in the academic year 2021-2022 compared to the academic year 2020-2021, 371 fewer students were registered.

Based on the data obtained on the number of students enrolled in information and communication technology in the period 2014-2022, it results that:

- ❖ in the academic year 2015-2016 compared to the academic year 2014-2015, 1,300 fewer students were registered;
- ❖ in the 2016-2017 academic year compared to the 2015-2016 academic year, 773 fewer students were registered;
- ❖ in the academic year 2017-2018 compared to the academic year 2016-2017, 741 more students were registered;
- ❖ in the academic year 2018-2019 compared to the academic year 2017-2018, 1,788 more students were registered.
- ❖ in the academic year 2019-2020 compared to the academic year 2018-2019, 1,133 fewer students were registered,
- ❖ in the academic year 2020-2021 compared to the academic year 2019-2020, 542 fewer students were registered,
- ❖ in the academic year 2021-2022 compared to the academic year 2020-2021, 117 more students were registered.

Figure 1.3: The number of students enrolled in Information and Communication technology in the period 2014-2022

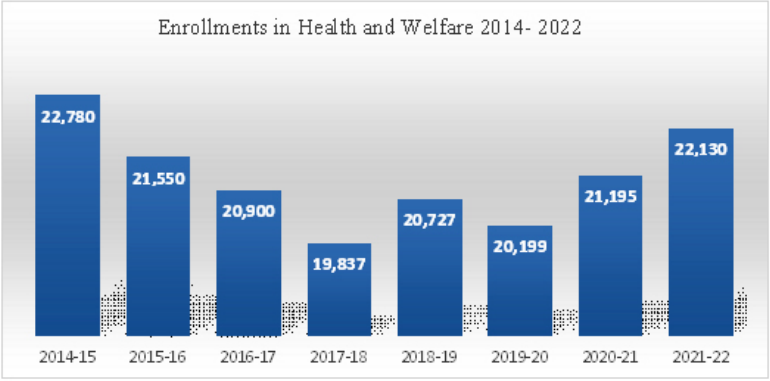


Source: INSTAT, 2022

Based on the data obtained on the number of students enrolled in health and well-being in the period 2014-2022, it results that:

- ❖ in the academic year 2015-2016 compared to the academic year 2014-2015, 1,230 fewer students were registered;
- ❖ in the 2016-2017 academic year compared to the 2015-2016 academic year, 650 fewer students were registered;
- ❖ in the academic year 2017-2018 compared to the academic year 2016-2017, 1,063 fewer students were registered;

Figure 1.4: The number of students enrolled in Health and Wellness in the period 2014-2022.



Source: INSTAT, 2022

- ❖ in the academic year 2018-2019 compared to the academic year 2017-2018, 890 more students were registered.
- ❖ in the academic year 2019-2020 compared to the academic year 2018-2019, 528

fewer students were registered,

- in the academic year 2020-2021 compared to the academic year 2019-2020, 996 more students were registered,
- in the academic year 2021-2022 compared to the academic year 2020-2021, 935 more students were registered

Table 1. 3: Trend of registrations according to the fields of study in the period 2014-2022

Nr.	NAME	%
1	Education science	-40.78
2	Social science	-12.02
3	Natural sciences, mathematics and statistics	-56.52
4	Business, administration and law	-23.43
5	Information and communication technology	-11.52
6	Health and wellness	-2.85

Source: INSTAT, 2022

Based on the results obtained from the trend of registrations, it follows that:

- the downward trend of registrations in educational sciences in the period 2014-2022 is presented at the value of 40.78%;
- the downward trend of registrations in social sciences in the period 2014-2022 is presented in the value of 12.02%;
- the downward trend of registrations in natural sciences, mathematics and statistics in the period 2014-2022 is presented in the value of 55.52%;
- the downward trend of registrations in business, administration and law in the period 2014-2022 is presented in the value of 23.43%;
- the downward trend of registrations in information and communication technology in the period 2014-2022 is presented in the value c11.52%;
- the downward trend of registrations in health and well-being in the period 2014-2022 is presented in the value of 2.85%.

In conclusion, in the fields of study: (1) educational sciences, (2) natural sciences, mathematics and statistics, (3) business, administration and law, (4) health and welfare, (5) social sciences and (6) technology of information and communication, a downward trend in registrations is evident in the period 2014-2022;

2. General description of the Labor Market

2.1 The US job market

The following salaries and rankings are by US market as data is obtained from the Bureau of Labor Statistics (U.S. Bureau of Labor Statistics, 2022) – an independent statistical agency that tracks unemployment and other essential data for the US labor market.

Table 2. 1: The highest paying professions, how much they pay in the USA.

Nr	OCCUPATION	Annual salary in USD ($)
1	Doctors and surgeons.	(Annual salary: $208,000.3 +)
2	Dentists.	(Annual salary: $159,200+)
3	Chief Executive Officers (CEOs).	(Annual salary $104,690 to $184,460)
4	The nurses.	(Annual salary: $115,800 to $174,790.2)
5	The pilots.	Pilots.(Salary: $121,430.8+)
6	Computer and information systems managers.	(Annual salary: $146,360.9+)
7	Architecture and Engineering Managers.	(Salary: $144,830.10 +)
8	Petroleum Engineers.	(Annual salary: $137,720+)
9	Judge	(Salary: $136,910.2+)
10	Marketing Managers.	(Salary: $135,900.13+)
11	Financial managers.	(Annual salary: $129,890.14 +)
12	Head of Natural Sciences.	(Salary: $129,100.15+)
13	Pharmacists.	(Annual salary: $128,090.16+)
14	The lawyers.	(Salary: $122,960.18+)
15	Political science experts.	(Salary: $122,220.20+)
16	Human Resources Managers, Human Resources.	(Annual salary: $116,720.21+)
17	Computer Network Architects & Web Developer	(Annual salary: $112,690.23+)

SOURCE: Bureau of Labor Statistics (BLS) 2022

Based on the published results of this study in August 2022 by the Bureau of Labor Statistics in the USA, it can be seen that the study programs offered by Higher Education Institutions in Albania are in line with the highest paid professions in the States of United States of America.

2.2 The European Union employment market.

Based on the Report published by the Institute of Statistics of the European Union (EUROSTAT,2022), regarding the labor market, the situation is presented as follows.

During the period from the first quarter of 2021 to the first quarter of 2022, the Sector (according to ISCO) which had the largest percentage of increase in the number of employees in the European Union was from the Food Preparation Assistants sector. This sector has had a growth of 25.1%, increasing by almost 1.1 million employed to almost 1.4 million employed for this one-year period.

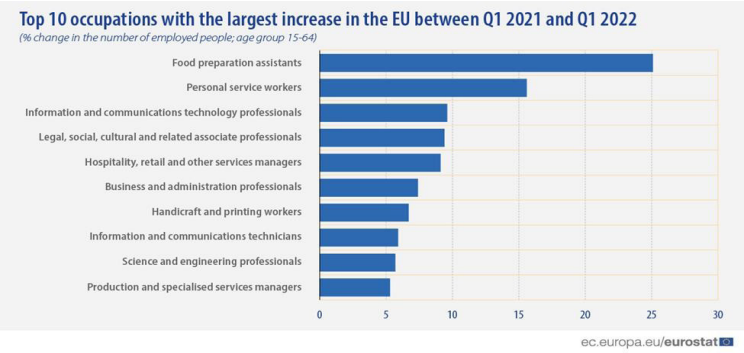


Figure 2.1 occupations with the fastest growth in the European Union for the year 2021-2022

SOURCE: EUROSTAT 2022

The second largest increase, 15.6%, was in the personal service workers sector, which is related to travel attendants, drivers, guides, cooks, waiters and bartenders, hair-dressers, beauticians and building and maintenance supervisors. home. In the first quarter, this occupational group had 7.6 million workers.

The sector in which they are included; Information and Communication Technology Professionals is in third place, with an increase of 9.6% from the first quarter of 2021 to the first quarter of 2022. Between these two quarters, this sector related to software developers and analysts and applications and database and networking professionals increased from 4.1 million employees to 4.5 million.

Sector in which they are included; legal, social, cultural professionals, has increased by +9.4%, and managers of hospitality, retail and other services has increased by +9.1%. In the first quarter of 2022, these groups numbered 3.5 million and 2.4 million employed persons, respectively. Next in the list of the main professions with the largest percentage increase in the number of employees were the professionals working in the Business and Administration sector with an increase of +7.4%.

The sector to which they belong, Handicraft and Printing Workers, had an increase of +6.7%. The sector to which they belong, Information and Communication Technicians, had an increase of +5.9%. The sector in which they are included; The Sciences and Engineering Professionals grew by +5.7%, while the Manufacturing Managers and Specialized Services sector grew by +5.3%.

2.3 Employment market Albania

The programs offered by Higher Education Institutions in Albania are in coherence with the National Education Strategy for the period 2021-2026. Based on the Report

published on the Labor Force Survey by the Institute of Statistics in our country (Institute of Statistic, 2022) for the period 2020-2021, it was found that: The sector they belong to; Managers, professionals and technicians covered 18.4% of the total employees of our country for 2019, while in 2020 this indicator was at the value of 19.1%. In this sector, the number of employees during 2021 decreased by 0.2% compared to the previous year.

Table 2. 2:Employment structured by gender and profession

Group Professions	2019	2020	2021
Total	1.265.583	1.243.343	1.248.749
Managers, professionals and technicians.	18,4	19,1	18,9
Clerks, Sales and Service Employees.	19,1	19,1	18,7
Skilled agricultural and trade related workers.	47,3	46,6	46,9
Equipment and machinery assembly workers.	9,3	9,0	8,3
Elementary professions.	5,4	5,7	6,6
Armed forces.	0,6	0,4	0,7

SOURCE: Labor Force Survey, 2020-2022

The sector they belong to; Clerks, sales and service employees for 2019 covered 19.1% of the total employees of our country, while in 2020 this indicator was at the same value of 19.1%. In this sector, the number of employees during 2021 decreased by 0.4% compared to the previous year.

The sector they belong to; Qualified agricultural and trade-related employees covered 47.3% of the total employees of our country for 2019. This is the sector with the highest number of employees in Albania. This indicator during 2020 was at the value of 46.6%. In this sector, the number of employees in 2021 increased by 0.3% compared to the previous year.

The sector they belong to; Equipment and machinery assembly workers covered 9.3% of the total employees of our country for 2019, while in 2020 this indicator was at the value of 9%. In this sector, the number of employees during 2021 decreased by 0.7% compared to the previous year.
The sector they belong to; Elementary professions covered 5.4% of the total employees of our country for 2019, while in 2020 this indicator was at the value of 5.7%. In this sector, the number of employees in 2021 increased by 0.9% compared to the previous year. The Armed Forces sector covered 0.6% of the total employees of our country for 2019, while in 2020 this indicator was at the value of 0.4%.

3. Conclusions and recommendations

Based on the results obtained on enrollments at different levels of education in the period 2014-2022, on the trend of the Labor Market in the USA 2022, on the trend of the Labor Market in the European Union 2022, on the trend of the Labor Market in Albania 2021, the following conclusions have been drawn up.

1. The downward trend of registrations in higher education in the period 2014-2022 is presented in the value of 23.78%.
2. The downward trend of enrollments in education in total in the period 2014-2022, which includes a period of more than 5 years, is 22.79%.
3. Based on the results obtained from the trend of registrations, it results that: the downward trend of registrations in education sciences in the period 2014-2022 is presented in the value of 40.78%.
4. The downward trend of registrations in social sciences in the period 2014-2022 is presented in the value of 12.02%.
5. The downward trend of registrations in natural sciences, mathematics and statistics in the period 2014-2022 is presented in the value of 55.52%.
6. The downward trend of registrations in business, administration and law in the period 2014-2022 is presented in the value of 23.43%.
7. The downward trend of registrations in information and communication technology in the period 2014-2022 is presented in the value of 11.52%.
8. The downward trend of registrations in health and welfare in the period 2014-2022 is presented in the value of 2.85%.
9. Trends, in the fields of studies: (1) educational sciences, (2) natural sciences, mathematics and statistics, (3) business, administration and law, (4) health and welfare, (5) social sciences and (6) information and communication technology, a downward trend in registrations is evident in the period 2014-2022.

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Implementation of the European Union directive in the Albanian public procurement law - Problems encountered in practical implementation

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Abstract

A comprehensive process of many sectors accompanied the process for membership in the European Union, of the Republic of Albania. In this context, this includes the adjustment (alignment) of the legislation with that of "Acquis Communitaire", which came as a process after the signing of the SAA (Stabilization and Association Agreement), which includes administrative contracts too. This legislative adaptation process includes the public procurement field. Specifically, the adaptation with the Directive 2014/24/EU of the European Parliament and of the Council, dated February 26, 2014 "On public procurement and repealing directive 2014/18/EC", amended by Directive 2014/25/EU of the European Parliament and of the Council, dated February 26, 2014 "On procurement by entities operating in the sectors of water, energy, transport and postal services and repealing directive 2004/17/EC", amended. Within the framework of the above-mentioned directives, Law no.162/2020 "On Public Procurement" in Albania also brought necessary references for adaptation and creation of new links that were not foreseen in the previous legislation. One of the innovations was the change of the public procurement complaints institute. The latter, has caused a lot of confusion among economic operators who do not have the appropriate legal information to have a proper handling of complaints. Often these appeals in the courts are not accepted due to non-compliance with the details that the law has determined. In this respect, we are of the opinion that some of the forecasts are restrictive in the market that economic operators operate. In the light of the directive 2014/18/EC, the adequacy in the domestic law by adopting a comprehensive law on public procurement similar to the above-mentioned directive. In addition, the institute of the life cycle, unforeseen in the previous law and other institutes that changed the origin in practice, brought problems in implementation. Within the framework of the legal changes, the Public Procurement Agency creates special structures for the monitoring of contracts through which it increases the effectiveness and management of public funds. The economic operators in the market too, find it difficult to adapt to the changes in the law and the confusions that these legislative changes brought. It is worth noting that the use of labels during procurement procedures is almost small, and this affects the market of fulfilling the manufacturer's standard. Green procurement not affected by the law on public procurement, an effort between the World Bank and PPA is enabling the use of green procurement procedures to be foreseen.

Keywords: Public Procurement, Green Procurement, Directive, Public Procurement Agency (PPA), Stabilization and Association Agreement (SAA).

1. Introduction

1.1 About public procurement

Public procurement came as a need and a way of the state to invest in various fields of social activity as a demand for the development of society, but not only. Such an

approach, of how the state keeps its structure operative, came in expansion as one of the important instruments with which social policies, national and international issues are carried out. Such approach has encountered oppositions because it was considered an instrument that can disrupt the balances of the private market, affecting quite a bit negatively a market that should be competitive. This is due to the very fact that public procurement procedure is seen as a state instrument with a great impact on the economic life of the country and beyond. That is related to the good functioning or good governance and at the same time the realization of government policies but always mainly addressing the private market or private operators (private contractors) for work, goods or services. The total volume of public procurement in the economy of a country has been expanding, making a transition of the realization of state policies from its structures to private structures *(entities)*. This is clearly in the way most countries operate, where in many cases meeting the needs for work, goods or services in different sectors is being *"passed"* to private operators, especially with a significant expansion of the specific weight after the 90s. This not without purpose, as private operators are considered more flexible in market and are an important promoter in the developments of various sectors of technology and innovation *(the economy in general)*. In this dynamic environment, the application of procurement procedures which are in expansion, in itself, have required continuous improvement in order to find those mechanisms in avoiding the impact on the disruption of balances in the private sector between operators in these sectors. It is an input of the fact that in many cases public contracts (awarded based on the public procurement procedure) have been and even now are *"enviable"* as it is considered a guaranteed *"market"* or *"profit"* to those operators, securing in some cases superiority over other operators operating in the same market sectors. Therefore, public procurement procedures, in many cases, have been the subject of studies and treatments by state structures or the judiciary, followed by a continuous process of improving legal mechanisms, taking in consideration precisely these weak points, with the aim of minimizing or building those mechanisms that guarantee or ensure objective and equal treatment between operators, transparency in order to avoid the phenomenon of preference of public procuring entities in relation to certain private economic operators. This simultaneously requires the provision of clear instruments to maintain the level of transparency and objectivity, but at the same time those instruments that are related to other monitoring bodies of these procedures, aimed at *"intervention"* in case of breach or violation of legal procedures. The goal is to provide work, goods or services at favorable prices, taking advantage of the maximum quality of the procurement object and at the same time taking into consideration the respect for the environment or the cost of the life cycle, as it is being treated seriously in the last decades.

Precisely, when it comes to the issue of quality, it must be understood that the public sector faces a much more dynamic development in the private sector. For this reason, even the demands for work, goods or services, being continuously increasing, require that their impact be as little as possible on the eco-system and the importance of the treatment of the cost of living. Precisely the procurement procedures are already directed towards works, goods or services that apply eco-friendly technology and are taking into consideration their life cost. At this stage of economic development, the goal in itself is already green public procurement or procurement that protects and preserves the environment, save energy, or use of renewable energy technology. It is

precisely in this direction that the EU has been moving towards, for more than two decades and is considering very strict criteria in the procurement documentation or the way a procedure can be considered green public procurement, as a purpose of the procurement itself. This movement is not easy to implement, especially in countries that are in the process of membership, like the case of Albania, which is making important legislative efforts in this direction. But this also requires an awareness process of all procurement structures and at the same time of economic operators, regarding the realization of the procurement of works, goods or services in respect of the environment and the consideration of the life costs, a very important element for the evidence of what represents their entire real costs.

1.2 On public procurement in Albania after the 90s

After the 90s, the state structure and organization in Albania underwent important changes, which were related to a completely new concept for the exercise of power functions by central or local government bodies or the state power as a whole structure. Precisely, the exercise of this power according to sectors or levels within these functions, was accompanied by the demand for investments, goods or services. The fulfillment of these requirements was channeled in a special process of securing them, in the public procurement process, where central or local institutions realized their needs for investments, goods, services, etc., funds which come from the state budget on the basis of forecasts needs, which were mainly provided by private entities. The framework for this process was approved in 1995 with Law no.7971 dated 26.07.1995 "On Public Procurement" including the by-laws. This law, for the time, brought innovations and ways of acting which were accompanied by a process that in focus aimed not only at the realization of procurements but also the quality of offers, transparency in procurements, good administration of public funds as an end in itself. Being a new experience and an unexplored field both in terms of the experience of contracting authorities and private economic operators, a number of problems were identified in terms of quality, transparency and equality. This brought to the need for more legal provisions of the law system in Albania, including Penal Code which had preceded the situation, by providing penalties against entities that violate equality in bids.[1]

The Stabilization Association Agreement [2](SAA) signed in July 2006 between Albania and the European Community (today the European Union-EU) had a major impact on the legislative framework in the Republic of Albania *(including the public procurement legislation)* and their member countries. This is due to the fact that, part of this process is the alignment of Albanian legislation with the European Union. In this context, a few months after the approval of the SAA, law no.9643 dated 20.11.2006 "On public procurement" implemented the provisions of European directives 2004/18/EC and 2004/17/EC. In the framework of such a process of implementation, law no.9643 dated 20.11.2006 "On public procurement" was abolished in order to implement the new EU directives approved in 2014. Specifically, this came with the law no.162/2020

[1] Law no.7895, dated 27.1.1995 "Penal Code of the Republic of Albania", in its article 258 provides a punishment with fine or imprisonment up to three years. Law no. 23/2012, dated 1.3.2012, made changes in the punishment measure, removing the punishment with fine and providing only prison sentence up to three years.

[2] Law no. 9590, dated 27.07.2006.

"On Public Procurement", which achieved alignment and implementation at a satisfactory level. Such changes are understandable, since the EU legislation itself (directives) undergoes changes to be as coherent as possible with the development of the societies of the EU member countries and beyond. Specifically, in the current public procurement law,[3] in contrast to the laws that were in force before, it makes determinations and emphasizes existing concepts such as *public interest* or introduces new concepts where we can mention *green public procurement*, *cost of living*, *appeal procedures* etc. Aiming at comprehensive definitions level, as a manifestation of the actions of the contracting authorities/entities involved in the public procurement procedures, the purpose of the provisions not only put on evidences the fact that the service, work, supply have a public character, but in any case there must also be a public interest. This means the overlap of the interest of the majority or certain groups against personal interest. Such approach is evident in court practice, where the Albanian Supreme Court gave the opinion on the meaning of *"public interest"* as follows [...] *Public interest should be understood as a relationship between individual and community well-being.* [...] [4]; or [...] *"Public interest" is wider social interest for the good and general progress of citizens under equal conditions in material and non-material terms that can be endangered by causing material and non-material damage in case of the conflict of private and public interest.[...].*[5] The interpretation of public interest is in relation with the principles as transparency, proportionality, etc.

Referring to process of the public procurement, we can distinguish ***three phases***. *First phase* includes the determination of needs (so what items or services will be provided); *second* the stage of the development of the procurement procedure until the conclusion of the contract (the economic operator with whom the contract will be concluded); *the third*, the contract implementation phase (the impact of the concrete implementation of the contract).[6] Regarding these stages, for the first stage European law does not express *"interest"* as it is up to the member states, but for the second and third stages, it expresses interest.[7] The current internal Albanian law on public procurement has necessarily expressed an interest in regulating aspects of the first phase, that of the need to anticipate work, goods or services. Specifically, the law on public procurement gives general definitions without making a precise detail or a description of how these public needs will be foreseen.[8] Referring to the meaning of what is represented by the Contracting Authority (CA), which means *the state*, the practice of the Court of Justice of the European Union (CJEU) comes to our aid for "state" definition term,[9] which according to the CJEU [...] *"the term"*

[3] Law no.162/2020 "On Public Procurement" accessed at www.app.gov.al on 05.12.2022.

[4] Decision no. 273/10 dated 02.02.2021 of the Administrative College of the Supreme Court.

[5] Decision no.00 – 2021 – 1177 date 21.07.2021 of the Administrative College of the Supreme Court. parag.14.

[6] Dobjani, E. (2017)."Theoretical and practical treatise of administrative contracts in Albanian law ", First Edition, Emal Publishing House, Tirana, ISBN 978-9928-04-383-2, pg. 586-587.

[7] Llorens, F. (1981)."Contrat d'entreprise et marche de travaux public", Librairie General de Droit et de Jurispriudence, Paris.

[8] The legislator in article 21 point 2 of the law no.162/2020 determines that [...] In the sense of this point, the contracting authority or entity has the obligation to plan well in quality and time the public funds and its needs and procure and implement the contract in accordance with the legislation in force.

[9] Bovis, C. (2005). "The Law of EU Public Procurement", Second Edition, Oxford University

state' must be interpreted in a functional sense. The purpose of the directive, which is to ensure the effective achievement of freedom of establishment and freedom to provide services in relation to public works contracts, would be jeopardized if the provisions of the directive were upheld inapplicable only because the public works contract is awarded by a body which, although established to carry out the duties defined by law, is not formally part of the state administration. Consequently, a body such as the one in question here, whose composition and functions are determined by law and which depends on the authorities for the appointment of its members, which has the duty to respect the obligations arising from the measures taken from his and the financing and awarding of public works contracts, should be considered to be included in the notion of the state for the purpose of the above provision, even though it is not of the state administration in the formal sense. [...]"[10]

2. Judicial practice and public procurement - Influence on the legislative process

Judicial practices has often been a promoter in the process of filling the gaps that can be evident in the EU legislation. Such a process, despite skepticism, is a very healthy process in itself that highlights legislative gaps when it comes to the practical application of law. Here we can mention the practice of the Court of Justice of the European Union (CJEU), which has had a significant impact on the filling of legislative gaps. As an example, we can refer to the *in-house contracts* issue.[11] Such a practice has been included and became part of the directive 2014/24 dated 26.02.2014 "On the connection of Public Procurements" in its article 12 named *"Public contracts between entities within the public sector*". Such provision is also part of the Albanian's legislation *(specifically the law no.162/2020 "On Public Procurement" foreseen it in Article 11*[12]*)*, this in compliance to the directive of the European Union (referred to judicial practice).

Some contracting authorities, in their organization, internally separate some of their administrative functions, creating so other legal entity, subjects of public law or private law with *separate legal personality*.[13] In this perspective, a contract can be concluded within those public bodies, with different legal personality, to be fulfilled for supply of goods, work, services, etc., with the object of rights and obligations between the parties, as well including the obligation of payment for those legal entities.[14] In its practice, the CJEU has *"created"* an exception in the application of European directives on public procurement, on contract as an internal agreement between structures, with different and separate legal personality, but in fact substantially they are the

Press, pg. 312-315.

[10] See, ECtHR, case C-31/87, Date 20.09.1988, Gebroeders Beentjes BV v. Netherlands State, pg. 11, 12.

[11] Terneyer, P. (2002). " Vade-mecum sur les marches publics in hous " Dalloz, Chroniques pg.669; Arnould, J. (2000). "Les contrats de concession, de privatization et de servise in housau regard des regles communautaire", RFDA, pg.2; see also Dobjani, E. (2017). "Theoretical and practical treatise of administrative contracts in Albanian law " EMAL Edition, Tirana, pg. 598.

[12] This article determines that: [...] Contracts between entities within the public sector 1. The contracting authority or entity may award a public contract to a legal entity governed by private or public law, not applying the provisions of this law, when all the following conditions are met: [...]

[13] Dobjani, E. (2017). "Theoretical and practical treatise of administrative contracts in Albanian law ", Emal Edition, Tirana, pg. 598.

[14] Lemiere, A. (2001). " Les contrats de prestations integrees " ACCP, pg. 27.

same.[15, 16]

In this context, the new law on public procurement in Albania, in the process of implementing EU directives, has dealt with contracts between entities within the public sector. According to the actual legislation, the subjects participating in the public procurement procedures, that are otherwise named as Economic Operators (EO), are subjects registered in the Albanian territory and that are organized in one of the forms foreseen in *the law no. 9001 dated 14.4.2008 "For traders and commercial companies".* As well as foreign economic operators (not registered in the Albanian registers) can participate in the case of international public procurement procedures. EOs when participating in public procurement competitions can do so alone *(competing with their individual offer against others)* or can participate together with other operators in a consortium of operators *(with a single offer of common manner and form provided by law on public procurement for work, goods or services)*.[17] Referring to the progress, the process of legislative implementation of Albania to that of the EU, as we mentioned above, recognizes as a turning point the signing of the Stabilization and Association Agreement, [18]including the administrative contracts.[19]

[15] Ruiz-Jarabo Colomer, D. (2008). " L'engament contractual dans la jurispurdence de la Cour de Justice des Communautes Europeennes " published in Conseil d'Etat, Rapport Public, " Le contrat, made d'action publique de normes " La documentation francaise, Paris, pg. 369.

[16] The court acknowledged this exception with the decision in the case no. C-107/98 , dated 18.11.1999 Teckal v. Commune de Viano et Azienda Gas- Acqua Consorzialda (AGAC) DI Reggio Emilia, where it was stated that the directive of the European Union for public procurement does not apply,[...] Hypothetically when, firstly, the public person exercises over the person in question a control analogous to the control he exercises over his structure and secondly, when this EO person carries out the essence of his activity with the person or persons public that they control.[...]

Referring to the market where EOs operate, a concern element is the issue on monopolies/ oligopolies situation in the private market, related to contracts in the public sector. Referring to their main activity, some EOs have managed to create monopolies/oligopolies, due to the lack of other operators or the removal of the latter from the market. In Albania, a monopolistic or bipolar phenomenon we can find it in the field of medical services. In this vital sector, there are EOs that have a monopoly position, on the provision of certain specific products, which has led to the limitation of competition. Specifically in Albania we can mention the supply of medical gases such as liquid oxygen or nitrous oxide (medical gases), where only two economic operators operate in the market. In the procurement procedures, they enter mainly as a union of operators. This has led to a division of the market (oligopoly-dipole), resulting in deficiencies in the provision of the service because this product is necessary or necessary. In the field of nitrous oxide, a single operator operates, bringing the monopoly designation in the market for this product. In these two very simple examples, it is found that the economic operators have a market where they manage to impose themselves on the procurement price, almost making a direct determination of this price to the contracting authorities. Such a situation brings problems as it leaves room for abuses of public funds, as the contracting authorities are clear that these goods will be procured only from an economic operator that to some extent is also the "determiner" of the procurement funds, referred to "market price" offered by this operator.

[18] Law no.9590, dated 27.7.2006 "On the Ratification of the "Stabilization-Association Agreement between the Republic of Albania and the European Communities and Their Member States".

[19] It is worth mentioning an important impact of the practice of the Administrative College of the Albanian Supreme Court, which define important positions for the public procurement sector. In decisions, no.577, dated 14.01.2014, as well the decision no.1895, dated 06.05.2014,

3. Legislative implementation of EU directives in Albania - Novelty and issues

The judicial practice influence[20] on the legislative approach, as mentioned above, brought to changes to EU directives for *"in-house contracts"* no. 2014/24/BE dated 26.02.2014 "On the connection of Public Procurements", article 12 -" *Public contracts between entities within the public sector* ". The implementation process, an important process within the provisions of SAA *(articles 70 and 74)*, had an important impact in terms of Albanian law approaching to the public contracts.[21] In this process, as a first moment we would like to put in evidence the issue of *"time implementation"*. The new EU directive 2014/24/EU in Albania took almost 7(seven) years of implementation (the end of 2020). Such e long period on the implementation of the directive in internal legislation, is considered too long since the nature of the field of public procurement is dynamic. Therefore, it is imperative that the harmonization or implementation process must take place in the shortest possible time, in coherence and with the dynamic nature of the public procurement field. Another moment that needs to be addressed, within the framework of Law no.162/2020 "On Public Procurement" as well as bylaw no.285 of 2021 "On the Approval of Public Procurement Rules", is the implementation of the basic principles, where we can quote the *transparency, non-discrimination, equal treatment, increasing public trust* etc. Administrative[22] contracts that

evidences the fact that: [...] One of the goals of the public procurement legislation is the fair, transparent and effective use of public funds. Precisely for this reason, the special legislation regarding public procurement has provided for a specific procedure that must be followed starting from the moment of choosing the party with which the state body will enter into a contractual relationship using public funds, the conclusion of the contract, contractual conditions, its execution and until the termination of the contract.[...]

[20] This influence is present even after the adoption of directive 2014/24/EU, where we can refer to a decision of the ECtHR where the question was raised: [...]Is Directive 2014/24/EU of the European Parliament and of the Council applicable of 26 February 2014 on public procurement for procurement procedures undertaken by a foreign mission of an EFTA State in a third country (outside the EEA)? A foreign mission of an EFTA State is a body exercising executive powers and must therefore be considered to fall within the definition of a State (compare the decision in Commission v. Belgium, C-323/96, cited above, paragraphs 27 to 29). In addition, a foreign mission, such as the Norwegian Embassy in Luanda, must be considered an agency or institution under the Norwegian Ministry of Foreign Affairs, which is listed in Appendix 1 of Annex XVI of the EEA Agreement. In this context, this court has interpreted the implementation of the directive to third countries, with the only condition that this has a close connection between public procurement. Such an interpretation was adapted to the implementation of the SAA within the framework of domestic law, directly interpreting the international norm when the national one has deficiencies or ambiguities.

Tanushi, M. (2020). "Concessionary Contract in the Republic of Albania Effects and Problems ", diploma topic in "Public Scientific Master", University of Tirana, pg. 29.

[22] Law no.162/2020 "On Public Procurement" Article 2-Purpose [...] The purpose of this law is: a) to increase efficiency and effectiveness in public procurement procedures; b) ensure good use of public funds and reduce procedural costs; c) promote the participation of economic operators in public procurement procedures; ç) promote competition between economic operators; d) ensure an equal and non-discriminatory treatment for all economic operators participating in public procurement procedures; dh) ensure integrity, public trust and transparency in public procurement procedures.[...] Article 3-General principles [...]1. Authorities and contracting entities guarantee equal and non-discriminatory treatment for economic operators, as well as

are classified as public procurement, have public interest and impact, therefore it is important that they must be done according to...*detailed procedural rules, transparency, equal treatment, non-discrimination, and competition.*[23] The goal, in compliance with clear principles and rules, is the fair and transparent, effective use of public funds as a public interest, as well as not undermining free, fair and effective competition in the market.[24] The equal treatment foreseen in EU directives, originates from Article 18 of the Treaty on the Functioning of the European Union which provides that: [...] *In the field of application of the treaties, and without prejudice to the special provisions they provide, all discrimination due to nationality.* [...] Referring to judicial practice, the ECJ in the case of *Hauptollmat Hamburg-St. Annen* has defined as a fundamental principle of European law the general principle of equality or equal treatment.[25] Equal treatment is manifested by the conditions and criteria produced by the contracting authority, to enable a comprehensive procedure to have clear, non-discriminatory and transparent criteria and in accordance with the legislation in force. Focusing on the transparency, it should be noted that: *1)first* , this principle represents a principle that goes along with the activity of the public body in the exercise of this activity; *2) secondly,* as a main tool for achieving the standard of equal and non-discriminatory treatment, as well as *free and fair competition* of economic operators in selection procedures. The essential elements of a procurement procedure, such as bid documents, requests for participation, confirmation of conflict of interest, must always made in writing, while oral communication with economic operators must continue to be possible, if its content is documented to a sufficient extent. This is necessary to ensure a sufficient level of transparency that allows verifying whether the principle of equal treatment has been respected. In particular, it is essential that oral communications with the participants, which may affect the content and evaluation of bids, must be documented to a sufficient extent and by appropriate means such as written or audio records, or summaries of elements, main communication.[26] The principles of the

act transparently and proportionally. [...]

[23] Dobjani, E. (2017). "Theoretical and practical treatise of administrative contracts in Albanian law ", Emal Edition, Tirana, pg 640.

[24] Ibid.

[25] According to the CJEU [...] While the provision without any doubt prohibits any discrimination between producers of the same product, it does not define in such clear terms the prohibition of discrimination as regards the relationship between different industrial or commercial sectors in the field of agricultural production of processed. This does not change the fact that the prohibition of discrimination provided for in the aforementioned provisions is simply a special aspect of the general principle of equality, which is one of the basic principles of Community law. This principle requires that similar situations are not treated differently, except when the differentiation is objectively justified.[...] Further, the CJEU has given explanations that the principle of equal treatment imposes free and effective competition between economic operators and the equality of opportunities of economic operators, in determining the conditions for their offers and in evaluating their offers by contracting authority. In the decision CAS Suchi di Frutta, the CJDBE stated:[...] According to the principle of equality between bidders, the purpose of which is to prove the development of healthy and effective competition between enterprises participating in a public procurement procedure, all bidders must be provided with equality of opportunity when formulating their bids, which means that the bids of all competitors must be subject to the same conditions.[...]

[26] Albanian High State Control, (2016). "EU Directive on Public Procurement and Concessionary Contracts" AHSC Publication, Series 05/2016/56, Tirana, pg.37.

special law (*lex speciales*) are not the only ones that are applied in public procurement procedures,[27] as necessary elements of the general regulatory framework (*lex generales*) are also evident.[28] For example, *the principle of legality* of the procedure, *is a constant requirement of administrative law as it is seen as related to the principle of constitutionality or legality,*[29] where all public bodies whether in procurement procedures or in any other administrative procedure, must be in accordance with the law and within the scope of their administrative jurisdiction. Moreover, *the information's principle* is part of the law on public procurement, which is about the right to know about the administrative procurement procedure, as for EOs in administrative proceedings or individuals seeking information on the actions of the contracting authority. Public procurement and the procurement process that follows it, pose challenges to the contracting authorities, which must take timely actions that enable comprehensive non-discriminatory use and where the principles established in the performance of public activities are complied.

1.1 Green procurement, the European experience

One of the issues that needs to be addressed is the ***Green Public Procurement (GPP)***. Green Public Procurement represents a procedure that affects environmental protection, where the contracting authorities foresee the technical specifications, the special criteria for qualification and the calculation of the life cycle. Green procurement helps maintain the health, safety and total well-being of employees. As an example, we can bring the purchase of environmentally friendly cleaning products, which can help prevent health cases that often are caused by toxic cleaning products.[30] The directives (Directive 2004/18/EC and Directive 2004/17/EC) clearly defined the sections where and how environmental criteria can be included in bid documents during a procurement process. These sections include the contract's subject, technical specifications of the product/service/work, supplier selection criteria, contract award criteria, and the contract performance clause.[31] The use of green public procurement is being evaluated every day more and more by all the member states of the European Union, including the candidate countries, as an ***eco-friendly procedure*** and the need for predictability in green public procurement procedures represents a *"challenge"* to Albania. In order to have the effectiveness of green procurement, the use of the ***"Eco Label" is recommended***, as well as the specifications in accordance with the standards established by the European Union. According to the definition of the law,[32] the label

[27] Law no.44/2015 "Code of Administrative Procedures of the Republic of Albania".

[28] The Code of Administrative Procedures provides important principles to exercise a public activity, such as the principle of legality (article 4), information (article 6), justice and impartiality (article 13).

[29] Dobjani, E. (2016). "Administrative Law 1", EMAL Edition, Tirana, pg.30.

[30] Green Public Procurement, (2020). Retrieve from https://www.esgenterprise.com/environment/what-is-green-procurement/ accessed on 10.12.2022.

[31] See Mcobrein, V. & Ackah, MRA." Green Procurement in an Organization: A Case Study of Unilever Ghana Limited" Published by: Dama Academic Scholarly & Scientific Research Society, retrieve from www.damacademia.com, accessed on 10.12.2022.

[32] Law no.162/2020 "On Public Procurement" in article 37-Labels defines that: [...]1. When authorities or contracting entities procure work, supplies or services with specific environmental, social or other characteristics, in the technical specifications, the criteria for the announcement of the winning contract or in the conditions for the performance of the

is a form to provide technical specifications without the need of a field specialist to provide technical specifications of the work, product or service. The directive does not give *"importance"* to the field's specialist in determining procurement values, environmental technical capacities, criteria for qualification, to complement this, the EU states use labels so that the entire point of view of the environment and saving is provided in these procurement procedures.

The question to answer is: *In which fields these labels can be used?* Labels find massive use in the procurement fields and their use in bidding procedures in the Republic of Albania would bring impact as the case of the energy field, or other key sector of the economy. Specifically, labels in the field of energy[33] *(electricity, gas and other resources)* are easily accessible and usable in Europe as well in Albania. Our internationally recognized eco-label helps consumers find more sustainable renewable energy and helps them increase their positive impact on the environment. ***ECO-Energy*** is a label for renewable energy, not for companies or equipment, as the criteria of this label set rules regarding the impact of energy production on nature, taking into account tracking and avoiding double counting and provide ways to create additional impact in the struggle against climate changes.[34] From an international perspective, the EU [35] is bound by the terms of the Government Procurement Agreement of the World Trade Organization (*WTO*) and by bilateral trade agreements.[36] EU for specific sectors foresee legislation obligations for the procurement of certain goods and services, for example by setting minimum energy efficiency standards that must be comply.[37]

contract, they may require a specific label as a way of certifying that the works, services or supplies coincide with the required characteristics, if all the following conditions are met: a) the label requirements include only criteria that are related to the object of the contract and are appropriate to determine the characteristics of the works, supplies or services that are the object of the contract; b) label requirements are based on objectively verifiable and non-discriminatory criteria; c) the labels are determined by an open and transparent procedure where all relevant actors can participate, including government bodies, consumers, social partners, producers, distributors and non-governmental organizations; ç) labels should be accessible to all interested parties; d) the requirements of the label are determined by a third party, over which the economic operator applying for the label cannot exercise decisive influence.... [...]

[33] EKO-energy organization, (2021). "Ecolabel", retrieve from https://www.ekoenergy.org/ecolabel/ visited on 12.12.2022.

[34] Ibid.

The legal framework for public procurement is determined by the provisions of the Treaty on the Functioning of the European Union and by the EU Procurement Directives, interpreted by the Court of Justice of the European Union.

European Commission, (2016). "Buying green", retrieve from https://ec.europa.eu/environment/gpp/pdf/Buying-Green-Handbook-3rd-Edition.pdf , third edition, pg. 5-15.

The obligations currently apply to the following sectors: a) Office Information Technology (IT) Equipment – IT products purchased by central government authorities must meet the latest minimum energy efficiency requirements of defined by the EU Energy Star Regulation (Regulation no.106/2008 on a Community energy efficiency labeling program for office equipment). This applies on contract's funds above the threshold for the implementation of the Procurement Directives. b) Road transport vehicles – all contracting authorities must consider the operational energy use and environmental impacts of vehicles as part of the procurement process. A common methodology for calculating lifetime operational costs is provided (Directive 2009/33/EC on the promotion of clean and energy-efficient road transport vehicles); c) Buildings – Minimum energy performance standards apply to public buildings,

The Energy Efficiency Directive[38] also sets out mandatory requirements regarding the renovation of public buildings and purchase or rental agreements that meet minimum energy efficiency standards. The wide use of labels[39] must be based on at least one of the conditions cited in the reference that are widely used by contracting authorities in the European Union. In the internal law in the Republic of Albania, a good work has being done on introducing the use of green procurement through by-laws, but we are still on first steps in such a process.

1.2 Life cycle costing, application in internal procedures

Following the green approach to public procurement procedures, the issue of ***Life Cycle Costs***, which is also foreseen in our internal legislation with law 162/2020 " *On Public Procurement* ", is raised for discussion. Specifically, Article 36 of this law provides that: [...] *1. Life cycle costing covers, if possible, all or part of the following costs throughout the life cycle of a product, service or work: a) costs that are covered by the contracting authority or entity or by other users, such as: i. costs associated with the acquisition; ii. usage costs, such as consumption of energy and other resources; iii. maintenance costs; iv. end-of-life costs, such as collection and recycling costs. b) costs on secondary environmental effects related to the product* [...][40]

In the conditions where the need to have efficiency on products that emit less possible in the environment in the lifetime of the goods, service or work object of procurement, it is also necessary to calculate the cost of the life cycle by the contracting authorities. Procurement decisions are often based on purchase price, but for many products and works, the costs incurred during use and disposal can also be very significant – e.g. *energy consumption, maintenance, disposal of hazardous materials.* The life cycle costs procurement has a clear economic impact and must be taken in consideration. Since the public procurement may come as output of separate departments within a single authority, the energy and maintenance costs may not be calculated right and the establishment of procurement procedures is likely to require inter-authority cooperation.[41] Green Public Procurement can be applied to contracts both above and below the threshold of implementation of the 2014 Procurement Directives, which enable public authorities to apply during pre-procurement, as part of the procurement

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these are set at national level based on a common EU methodology. From 1 January 2019, all new buildings occupied and owned by public authorities must be "near-zero energy buildings ". (Directive 2010/31/EU on the energy performance of buildings (recast).

[38] Directive 2012/27/EU on energy efficiency. Annex III of the Directive sets out measures to be taken by central government authorities and which other public authorities may adopt voluntarily.

[39] Energy Star (2022, April) retrieve from https://www.energystar.gov/products/spec?s=mega accessed on 12.12.2022; Blue Angel, (2018, August) retrieve from https://www.blauer-engel.de/en/productëorld/sealants accessed on 12.12.2022 etc.

[40] In harmony with the law and bylaw no.285, dated 19.5.2021 "On the Approval of Public Procurement Rules" (amended) article 45 point 2 provides: [...]The most economically advantageous offer is identified based on price or cost, using the cost effectiveness method , such as the costs during the life cycle, in accordance with articles 87 and 88 of the LPP [...] b) a specific process, for another phase of their life cycle .[...]

[41] Further information, can be found in Chapter 5 and on the EU Green Procurement website: http://ec.europa.eu/environment/gpp/lw.htm.

process itself, and in contract implementation. The exclusion and selection rules are intended to ensure a minimum level of compliance with environmental law by contractors and subcontractors. Techniques such as life cycle costing, the specification of sustainable production processes and the use of environmental award criteria are available to help contracting authorities identify environmentally preferable biddings.[42] Life cycle costing approaches reveal the true costs of a contract. Taking into account energy and water consumption, maintenance and disposal costs in a general assessment may indicate that the greenest option is also the cheapest option, over the full life cycle of the product. The cost or price will be part of the assessment in each procedure,[43] and can be calculated based on life cycle costs.[44] Life cycle costing, is sometimes confused with life cycle assessment, however they are very different.[45] Where the costs of a product throughout its life cycle are calculated, the environmental impacts, such as greenhouse gas emissions, during the life cycle are also assessed.[46] Where there is no mandatory method, it is also possible to develop individual methodologies, provided these requirements are complied.[47] Determining the cost of the life cycle, as a process of an implementation as appropriate as possible, in the procurement procedures in the Republic of Albania is more necessary. This would bring efficiency, low costs and quality products, with the least possible impact on health and environment.

4. Complaint procedure and issues

In procurement procedures, EOs have the right to appeal, in accordance with the provisions of the law on public procurement and the Code of Administrative

[42] European Commission, (2016). "Buying green", retrieve from https://ec.europa.eu/environment/gpp/pdf/Buying-Green-Handbook-3rd-Edition.pdf pg. 5-15.

[43] Article 67(2) of Directive 2014/24/EU; Article 82(2) of Directive 2014/25/EU).

Beyond costs, a wide range of factors can affect the value of a tender from the point of view of the contracting authority, and this includes environmental aspects. The procurement value may also include the cost of externalities (such as greenhouse gas emissions) under specific conditions described in the section. The 2014 directives require that where environmental impacts are called in case, the calculation method and the data to be provided by bid applicants must be set out in the procurement documents. Specific rules also apply in relation to methods for assigning costs to external environmental effects, which aim to ensure that these methods are fair and transparent. The use of labels and the calculation of life cycle costs have several positive features: a) Saving energy, water and fuel; b) low cost maintenance and replacement (European Commission, (2016). "Buying green", retrieve from https://ec.europa.eu/environment/gpp/pdf/Buying-Green-Handbook-3rd-Edition.pdf pg.40-60); c) Savings in disposal costs (Directive 2012/19/EU on waste electrical and electronic equipment (WEEE Directive).

European Sustainable Procurement Network, (2016). "A Guide to Implementing Sustainable Procurement" retrieve from https://procuraplus.org/fileadmin/user_upload/Manual/ManualProcura_online_version_new_logo.pdf

[46] The 2014 directives also set out the conditions regarding how they are applied to the tender. The methodology to be used in the tender documents must be indicated and the data to be submitted by the bidders specified. The chosen method must: (a) be based on objectively verifiable and non-discriminatory criteria; (b) be accessible to all interested parties; (c) do not require more than a reasonable effort; (d) follow any common mandatory EU value calculation method, applicable to the sector. (Clean Vehicles Directive (2009/EU)

[47] Directive 2014/24/EU – point 96.

Procedures. The new law 162/2020 also brought innovation to the administrative appeal procedure. Referring to these changes, we have divided the complaints into categories. Specifically such categories are: **i)** complaints about the bid documents (in case when EOs do not agree with the criteria set in the bid documents); **ii)** the appeal for the final classification (related to the process of the Bid Evaluation Commission); **iii)** complaint about the invalidity of the procurement contract (not much addressed in practice); **iv)** appeal for cancellation of the procedure by the contracting authority. Referring to these legal provisions, the appeal must be grounded and fulfill the criteria established by the law on public procurement. A general complaint can be made from the beginning of the competitive procedure and before the conclusion of the administrative contract, but it can also be made after the conclusion of the administrative contract, within the deadlines defined in the law.[48] Law no.162/2020 "On Public Procurement" has provided for the appeal institute, specifically in its chapter XIV.[49] In these provisions, the appeal is provided directly to the Administrative Court of Appeal *(define as competent by law)*. Reserving the right to appeal only for EOs means that CAs do not have the right to appeal against the arbitrary actions of the Public Procurement Commission-PPC *(presumptive case)*, if the PPC has a decision-making that for CAs are vulnerable to the basis of their action, will have to be manifested with an complain to the decision-making. The law doesn't define for the CAs whether they can appeal the decision of the PPC, therefore we are of the opinion that the avoidance of compliance with this provision would bring confusion in practice, where in most cases it means the direct application of the regulation of the Administrative Procedures Code. In these conditions, such special law provisions does not mean that are prevalent over the general law, in case of any illegal act taken in violation of the law can be opposed by the contracting authorities. Therefore, in essence, the appeal of the CA against the decision of the PPC, where this decision seriously harms the public interest, is in the unfair conditions of the implementation of the material and procedural law, which also means the appeal of this administrative act. PPC is *"a quasi-judicial body"* that exercises administrative power in accordance with the goals assigned by law to handle complaints from the Economic Operator.

The complaining procedures is divided into procedures below the upper monetary limit and procedures above the upper monetary limit. The law[50] on complaints about bid documents provides a 10-day deadline from the publication of the contract notice or the publication of changes to the requirements in the bid documents. The Publication of the Contract Notice goes together with the bid documents, which are published in the Public Procurement System, a system that enables the entire application process until the announcement of the winner of the bid. Regarding the electronic complaint through the *E-Albania intergovernmental platforms*, it is possible to make the complaint electronically, as well as the notification on the public procurement page is done online on the website of the superior body PPC.[51]

[48] Dobjani, E. (2017). "Theoretical and practical treatise of administrative contracts in Albanian law ", Emal Edition, Tirana, pg. 356-358.

[49] Article 109 of the law provides that: [...] After the administrative review, economic operators have the right to appeal to the Administrative Court of Appeal in accordance with Article 121 of this law, as well as in accordance with the rules provided by the legislation in force for administrative courts and the adjudication of administrative dispute.[...]

[50] Ibid. Article 110 of the law.

[51] Thus, in decision no.932/2022 of the PPC (accessed at kpp.gov.al), the contracting authority has handled the complaint deadlines, as follow:[...]In terms of the legislative technique, it is a

The complaint for the procurement with a small value according to the definition of the law and by-laws is submitted to the contracting authority and not to the PPC and CA at the same time. Unlike complaints about public tenders that are carried out above the monetary limit or sub-monetary limit , where the complaint is addressed to two institutions at the same time, for the procurement of small value it is handled by the CA and the appeal against the decision of the CA is made to the Administrative Court of First Instance in Tirana.

The problems that appear among the interested economic operators, in the submission of the appeal to the Administrative Court of Appeal, is precisely the submission of counterarguments (*counter -appeal*), the failure to present this counter-appeal penalizes the subjects by making it impossible to submit the appeal to the court. Due to this fact, many economic operators, not being coherent about the change and normally presenting the procedural instrument of counter-appeal to oppose the decision of the PPC, lose the possibility of judicial review. In this light, the decision of the PPC turns into an inviolable and final decision, both in the administrative sense and in the judicial sense, for the effect of non-appearance of the counter-argument.

In conclusion, we would like to highlight the necessity of implementing the EU directives in the internal legislation in Albania in the shortest possible period, in order to have coherence between them and a quick impact in the public procurement procedure. In addition, the green public procurement is an issue that should be pushed forward, with the goal to enlarge the application of this procedure. Also, the issue of appeal procedures *(in case of further changes)*, should be accompanied by clarifications by the responsible bodies, to give space to the complaint of every economic operator and find possible examination by the relevant authority, enabling treatment as equal and legal as possible.

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Legal certainty as the element of the formal concept of the rule of law

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Abstract

This article presents a brief historical overview of the principle of legal certainty, its constituent elements, it's aspect in criminal law, as well as its role and function as a whole in the rule of law.
On the other hand, in a national setting, legal certainty is understood as entailing a state having legislation and a legal system that protects the individual against arbitrary measures from the state itself.
At the same time, on this basis, the elements and characteristics of this principle define the spaces of freedom or the activity of the individual in the state and society.[1]
The sanctioning of the human rights and freedoms accepted in the Constitution of the Republic of Albania and their societies with measures to take at the same time to synchronize the approval and must take legal standards.[2] Of course, in its decision-making, the Constitutional Court also included legal certainty, but again we cannot say that we currently have a consolidated practice of this principle. Although, the role played by some decisions of the constitutional court in relation to the weight of this principle will not be left unmentioned.
According to the Court of Justice of the EU (CJEU), the principle of legal certainty requires that rules of law be known, clear, precise, stable, certain, and predictable. Although, the Venice Commission underlined that the principle of legal certainty plays an essential role in upholding trust in the judicial system and the rule of law.[3]

Keywords: legal certainty, rules of law, justice, trust, arbitrary, res judicata etc.

Brief history

From antiquity to the Middle Ages, the requirements of accessibility and stability of law were mostly aimed at ensuring the effectiveness of rules adopted by the authorities as opposed to protecting individuals.[4]
During the time of the Roman empire, the most significant contribution to legal certainty was probably Emperor Justinian's codification. His intention was to compile "all ancient law applied since nearly fourteen hundred years" in 50 books that would form something "like a fence beyond which there will be nothing else to search",[5]
The most important century for legal certainty is, however, the 17th century, for this was when the three other logics came to fruition, even if their roots can be traced back to antiquity. The question of predictability became indispensable to define a future no longer guaranteed by God. The 19th century also set the stage for the German Rechtsstaat, the French État de droit and the theorisation of the (older) English rule

[1] Degenhart C., Staatsrecht I, Published by CF Muller Verlag, Germany, 1998.
[2] Arta Vorpsi, The regular legal process in the practice of the Constitutional Court of Albania.
[3] Report on the Rule of Law, the Venice Commission, 18 June 2012.
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[5] The Principle of Legal Certainty in the Case Law of the European Court of Justice: From Certainty to Trust", Van Meerbeeck, Jérémie, 2016.

of law, which all share the idea of a political power that guarantees individual rights and is subjected to legal principles such as legal certainty.[6] The success of the rule of law contributed to the expansion of legal certainty's subjective logic, even if its lack of justiciability paralysed the principle in practice.[7]

The concept and the elements as a whole

Legal certainty is a fundamental principle of the rule of law, recognized by most jurisdictions around the world. The principle of legal certainty has also been described as an "umbrella" principle, as it covers or gathers together several other principles, including the principles of legitimate expectations, of vested rights and of non-retroactivity.[8]

The Constitutional Court has elaborated in its jurisprudence the principle of legal certainty, both in terms of individual requests with the object of the irregular legal process, but also in direction of the review of normative acts, (laws or by-laws of the Council of Ministers with a normative character) with the object of their incompatibility with the Constitution.[9] This principle does not find expression in the Constitution literally, but we find it implied in the preamble of the Constitution where the term "rule of law" is mentioned.

The principle of legality is at the basis of every established and functional democracy. It includes supremacy of the law: State action must be in accordance and authorized, by the law. The law must define the relationship between international law and national law and provide for the cases in which exceptional measures may be adopted in derogation of the normal regime of human rights protection. legal certainty involves the accessibility of the law. The law must be certain, foreseeable and easy to understand. Basic principles such as nullum crimen sine lege/nulla poena sine lege, or the non-retroactivity of the criminal law are bulwarks of the legal certainty.[10]

The main formal standards of the principle are accuracy, clarity, and stability as a whole of the entire legal order of a given state.[11] While as the main standard in the material sense of the principle of legal certainty, non-infringement of acquired rights and legal expectations guaranteed by the acts in force are considered. Thus, the entire legal order is required to be comprehensible, predictable and non-contradictory.[12] In this way, it is estimated that citizens' trust in the stability of this order is created, as well as their conviction in the need to respect and implement it in daily life.[13] At the same time, on this basis, citizens also determine the space of freedom or the manner of their behavior in the state and society.[14] The Constitutional Court reiterates that the

[6] The Principle of Legal Certainty in the Case Law of the European Court of Justice: From Certainty to Trust", Van Meerbeeck, Jérémie, 2016.

[7] The Principle of Legal Certainty in the Case Law of the European Court of Justice: From Certainty to Trust", Van Meerbeeck, Jérémie, 2016.

[8] Groussot, General Principles of Community Law (2006), p.24.

[9] This court had the first articulation of this principle in 2003 with decision no. 31/2003.

[10] https://www.venice.coe.int/WebForms/pages/?p=02_Rule_of_law&lang=EN

[11] See decision no. 9, dated 26.02.2007 of the Constitutional Court

[12] The Rule of Law in the Constitution of the Republic of Albania Prof. Dr. Xezair Zaganjori Prof. Dr. Aurela Anastasi Dr. Eralda (Methasani) Çani Adelprint Publishing House, 2011.

[13] The Rule of Law in the Constitution of the Republic of Albania Prof. Dr. Xezair Zaganjori Prof. Dr. Aurela Anastasi Dr. Eralda (Methasani) Çani Adelprint Publishing House, 2011.

[14] Degenhart C., Staatsrecht I, Published by CF Muller Verlag, Germany, 1998.

principle of legal certainty guarantees the predictability of the normative system. The extraction of legal norms does not only serve to resolve a potential conflict or regulate a previously unregulated situation. This process should create the impression among the subjects of law that the content of legal norms guarantees security and sustainability for the future. Legal certainty is also treated as a condition for the material validity of an act, guaranteeing the immutability in principle of normative acts, where attention is paid to the regulation of situations without substantial changes in continuity, since otherwise we would place the subjects of law in positions unpleasant and unfavorable to them.

Rule of law means that no one, including government is above the law, where laws protect fundamental rights, and justice is accessible to all. It implies a set of common standards for action, which are defined by law and enforced in practice through procedures and accountability mechanisms for reliability, predictability and "administration through law". Rule of law has been considered as one of the key dimensions that determine the quality and good governance of a country.[15]

Accordingly, the rule of law encompasses the following four universal principles: "the government and its officials and agents are accountable under the law; the laws are clear, publicized, stable and fair, and protect fundamental rights, including the security of persons and property; the process by which laws are enacted, administered and enforced is accessible, efficient and fair; justice is delivered by competent, ethical, and independent representatives and neutrals, who are of sufficient number, have adequate resources, and reflect the makeup of the communities they serve."[16]

The existence of a hierarchy of norms provides a greater guarantee of the rule of law. In this framework, the competences of the various state bodies are precisely defined and the norms they produce are subject to the condition that they respect all the superior norms.

All legal entities are subject to this legal regulation. The state is not special, it cannot recognize the principle of equality: any norm, any decision that would not respect a superior principle would become a cause for a legal sanction. The state, which has the power to make the right, is obliged to submit to legal rules; in this way, the regulation function performed by the state is affirmed and legitimized. Such a model therefore assumes the recognition of an equality of different subjects with rights to the norms in force.

The criminal aspect in relation to this principle

Legal certainty is usually connected with justice, implying that the criminal justice system is just. This is however not always very clearly defined.[17] The most radical demands are present in criminal law. The principle of definiteness of forbidden actions under penalty (nullum crimen sine lege, nulla poena sine lege) may even take on constitutional dimension whereas "definiteness" here is qualified as

[15] https://www.oecd-ilibrary.org/docserver/gov_glance-2013-9-en.pdf?expires=1671620446&id=id&accname=guest&checksum=B859A6F6E5C367C4AB3DC7F37DDAADA5

[16] https://www.oecd-ilibrary.org/docserver/gov_glance-2013-9en.pdf?expires=1671620446&id=id&accname=guest&checksum=B859A6F6E5C367C4AB3DC7F37DDAADA5

[17] What Role for Legal Certainty in Criminal Law Within the Area of Freedom, Security and Justice in the EU, Annika Suominen, 2014.

"maximal" and in accordance with the rule which states that "substantive elements of an action qualified as criminal must be defined in the statute (according to the constitutional principle of exclusivity of the statute) in a way that is complete, precise and unequivocal".[18]

Formal legal certainty is the traditional legal certainty where fairness resulting from predictability is considered important. Punishment, coercive measures, prosecution and sentencing of criminals should be predictable and be applied uniformly and in a systematic order. This entails that criminal law cannot be applied retroactively. Substantive legal certainty includes that judicial practice is ethically and morally good.[19] Legal certainty can be considered denoting res judicata, the legal force of judgments and judicial decisions, meaning the finality of the decision when there is no possibility to appeal it.[20] This is however not what is the subject of study here. In relation to the area of freedom, security and justice, legal certainty can be considered encompassing more than the legal force of judicial decisions and consisting of more aspects than res judicata.[21]

Article 29 of the Constitution which states that "favorable criminal law has retroactive effect" The Constitutional Court points out that this important constitutional principle was recognized in Roman law with the formula "lex retro agit in mitius"... "every citizen should know in advance the limits of his freedom as well as the sanctions that may come to him due to crossing these limits.[22] He must not for a moment feel the danger that a new criminal law which may prescribe as punishable a certain act or omission or which may aggravate his position as a defendant, will in the future have retroactive force. The exception that is made from the general rule, giving retroactive force only to the criminal law that favors the position of the defendant, aims to respond as quickly as possible.... to the legislator's assessments on the social dangerousness of certain actions.., but it should be taken into account that "the milder law should be applied by national courts both in terms of defining the criminal offense and the sanctions provided by it.[23]

Practical application of the principle

This principle has been evidenced in the framework of the order for the prohibition of the retroactive power of the law, as well as the need to avoid legal vacuums that can be created in certain situations, thus undermining the stability of the legal system, but also the respect of material criteria in the framework of respect of due process for the individual.[24]

The change in the practice of the Constitutional Court for the extension of legal certainty to judicial decisions came as a result of the decisions of the ECtHR with the

[18] The principle of legal certainty as a fundamental element of the formal concept of the rule of law Marzena Kordela, September 2008.

[19] See Peczenik, On law and reason (Springer 2009) p. 24-27, also Ehrenkrona, Rättssäkerhetsbegreppet och Europakonventionen, SvJT 2007 pp. 38-49.

[20] What Role for Legal Certainty in Criminal Law Within the Area of Freedom, Security and Justice in the EU, Annika Suominen, 2014.

[21] See further Trechsel, Human rights in criminal proceedings (Oxford University Press 2005) p. 115.

[22] Decision no. 35/2005 of the Constitutional Court.

[23] In this decision, decision 15312/89 of the ECJ, dt. 27.9.1995, in the case of G. v. France.

[24] The Rule of Law in the Constitution of the Republic of Albania Prof. Dr. Xezair Zaganjori Prof. Dr. Aurela Anastasi Dr. Eralda (Methasani) Çani Adelprint Publishing House, 2011.

Albanian state as a party, where it stated that legal certainty should also include the activity of the courts.[25] The court emphasized that the rule of law, which is guaranteed in the preamble of our Constitution, is one of the most fundamental and important principles in the state and democratic society. One of the most essential elements of the principle of the rule of law is that of legal certainty, which requires, among other things, that the final decisions of the courts are not discussed.[26]

The problem lies in the establishment of important standards related to its recognition and implementation in practice. The Constitutional Court has done it especially in recent years, both in examining the constitutionality of normative acts, and during the assessment of the standards of due process in the constitutional sense.[27] It is required, on the one hand, that the law in a society provides certainty, clarity and continuity, so that individuals can direct their actions correctly and in accordance with it, and, on the other hand, that the law itself does not remain static if it has to shape a concept. An incorrect regulation of the legal norm, which leaves the path for the implementer to give it different meanings and which brings consequences, does not go in accordance with the goal, stability, reliability, and effectiveness aimed at the norm itself.[28]

Also, the Court in its jurisprudence has emphasized that the lack of harmonization of the provisions of a law with those of other laws may not in itself create unconstitutionality, but when the ambiguity creates such problems that lead to incorrect application of the legal provisions and violation of the principle of the rule of law and legal certainty, then it cannot be accepted that these norms are compatible with the spirit of the Constitution Court.[29]

The Constitutional Court highlights all the standards and requirements of the principle of legal certainty, emphasizing, however, that it cannot prevail in every situation, as it may happen that in each case, an important public interest takes precedence over this principle.[30]

This Court considers as a violation of the principle of legal certainty (in fact only the right acquired by a final court decision is expressly mentioned) the consideration and acceptance of the request for review by the Supreme Court College convened in the Advisory Chamber, without you given the opportunity for the other party or parties of the same process to become aware of this issue and to express themselves. e on the finding of an irregular legal process in the constitutional sense because of the violation of a previously acquired right (principle of legal security) in the consideration of the review request, are also mentioned in some other later decisions of the Constitutional Court, such as in decision no. 5/2007.[31]

Conclusions

[25] See the cases Xeraj, Balliu, Beshiri, etc. The practice of the ECHR is dealt with in more detail below in the ECHR sub-issue for the Albanian CC.

[26] Decision of the CC no. 7/2009.

[27] The Rule of Law in the Constitution of the Republic of Albania Prof. Dr. Xezair Zaganjori Prof. Dr. Aurela Anastasi Dr. Eralda (Methasani) Çani Adelprint Publishing House, 2011.

[28] See decisions no. 36, dated 15.10.2007; no. 10, dated 26.02.2015 of the Constitutional Court.

[29] See decision no. 14, dated 22.05.2006 of the Constitutional Court.

[30] Decision no. 33/2010, decisions of the Constitutional Court of the Republic of Albania 2010, ILAR Press, Tirana 2011, p. 976.

[31] Decisions of the Constitutional Court of the Republic of Albania 2005, Tirana 2006.

One of the most essential elements of the principle of the rule of law is that of legal certainty, which, among other things, has as a necessary requirement the fact that the law, its parts or special provisions, in their content must be clear, defined and understandable. Of course, they cannot predict every case that can and should arise from their recognition and application in practice. Therefore, in the first place, it is the duty of the courts or other state and social bodies, charged with the law, to fill certain deficiencies of a law naturally through its interpretation and implementation in practice. But to accomplish such a thing, first of all, the law must be understood correctly and correctly. Therefore, the purpose of its drafting should be clearly stated. It must determine the means of intervention, the subjects to whom it is directed, the certain behavior reports and the way of its implementation. The intended result must be expected and the consequences predictable for the subjects to whom the law is directed as a whole, or its special provisions.[32] The Constitutional Court reiterates the value that this element of the rule of law takes in ensuring justice in a rapidly changing society and, therefore, the positive impact it has on drafting and adopting new laws or amending existing ones to adapted to the dynamics of these changes.[33]
Legal certainty means, among others, guarantee of the reliability of the individual to the state, its institutions and to the acts they issue. Whereas, in the context of the case under consideration, legal certainty means that in cases where the court has decided finally on a matter, its decision should not be put in doubt.[34]
The Constitutional Court, affirming the principle of legal certainty and its main component elements such as legal expectations, acquired rights, has gone further by pointing out elements competing with this principle. Public interest[35] is a constitutional notion addressed several times by this court, and according to it is a constitutional criterion which competes with legal certainty and prevails over it. The CCourt has emphasized that; "...if the case arises that a different legal regulation of a relationship is directly affected by a public interest, with all its essential elements, this interest will naturally take precedence over the principle of legal certainty.[36] Guaranteeing the transparency of the judiciary is a necessity not only for changing the image of the system and increasing public trust in the judiciary and the system I justice as a whole, but also for increasing accountability, professionalism and quality in decision making.[37]

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[32] In this decision, the decisions of the Constitutional Court of the Federal Republic of Germany 2374/1999 dt. 18.5.2004 and 581/2001, dt. 12.4.2005.
[33] See decision no. 1, dated 06.02.2013 of the Constitutional Court.
[34] Decision of the CCourt no. 20/2008.
[35] Decision no. 18/2003; no. 35/2007.
[36] The role of the Constitutional Court in strengthening the rule of law, December 2011.
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Government intervention in the economy - The case of Albania

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Abstract

The object of this study will be the fuels to which the Albanian government in March 2022 applied ceiling prices. The price situation and the Government's response to the continuous increase in the level of inflation will be analyzed. Furthermore, the creation of the Transparency Board, its legality, the consequences of its decisions on the market, businesses, government and citizens will be analyzed. At the end of the analysis, it is found that the Transparency Board is a cartel agreement, an open agreement where the government together with line businesses determines the price level of some goods and fuels. His decisions directly violate fair competition and negatively affect stability and economic growth. They did not bring about the fall of the inflation rate, but its increase. They have resulted in the preservation of company profits and increased income in the State Budget, while they have impoverished the Albanian consumer. Analysis, synthesis, comparison, and statistical methods were used in this article.

Keywords: Inflation, Exchange rate, Transparency Board, Competition, Monopoly, Cartel, etc.

Introduction

Albania is included in those countries that with its production of crude oil can fully cover domestic needs and export. Before 1990 in Albania, in the socialist system where there was social ownership of the means of production, two processing factories were operating in the city of Fier and in the city of Cërrik, as well as the Complex Oil Refinery in the city of Ballsh. Combine also had a number of other factories. There were produced 12 oil by-products and all the country's fuel needs were met. Albania exported over 300,000 tons of oil, becoming one of the main exports along with copper and chrome minerals. This Combine was privatized after 1990. Its privatization failed, as did the privatizations of several large energy sectors that were returned to state ownership. Its production declined due to lack of oil supply, outdated technology and lack of investment. Liabilities to the tax system, social security and to commercial banks increased until it went bankrupt. In 2021 it was closed and the government sold it for scrap.

In 2021, more than 1 million tons of crude oil was extracted from the underground in Albania, while its needs are no more than 500 thousand tons. It exports all its crude oil and fulfills its needs for its by-products 100% from imports. In this way, the prices of imported fuels depend on the prices in the foreign markets from which they are imported. When you enter the Albanian territory, the government imposes a series of taxes. In the price of fuel, in the price of energy and water, the government includes taxes that it is difficult to collect. These goods are necessary for the citizens, therefore they are obliged to pay.

After the beginning of the crisis in March 2022, as a result of the war in Ukraine, the price level increased significantly, especially the price of basket goods such as flour, oil, rice, sugar, etc. The fuel price immediately increased from 190 ALL/liter to 265 ALL/liter in mid-March. Businesses demanded and continue to demand the removal of two taxes, the carbon tax and the turnover tax, in order to keep the price at the level of the countries of the region.
The Albanian government, despite the citizens' protests, refused to reduce any taxes with the logic that taxes are not reduced in times of crisis. In the months of January and February, the government excluded its intervention in the market, calling this action an action that takes place in the socialist system and not in the capitalist system where the market economy operates and prices are determined in the market.
In Albania, the needs for fuel are huge. According to INSTAT, by the end of 2021, 711 thousand vehicles were circulating in Albania, of which about 80% are cars and 20% are pick-up trucks, trucks, buses, engines and tractors. Half of these vehicles circulate only in two counties: Tirana and Durrës. According to official statistic 73% of them run on diesel.
About 500 thousand tons of fuel are consumed in Albania per year. This market circulates in a year 100 billion ALL (about 6% of GDP).
The government, in order to limit the galloping growth of prices, did not remove any tax, or lower their interest rate as the countries of the region and beyond did. It created a mechanism that has never been applied, created the Transparency Board, which had the competence to design the methodology for calculating the profit margin and the margin rate itself. This action did not limit the reduction of prices, on the contrary, it brought many negative consequences, consequences which fell on consumers and the business itself. In this paper, the function of the Transparency Board and its consequences will be analyzed. The authors will give their opinions on the actions of the government, regarding its intervention in the market, consulting a series of works inside and outside the country.

1. The classical definition and purpose of state intervention in the economy. Ceiling and floor prices.

a) Why does the state not intervene in the market in the socialist system? The answer is simple. Socialism has a Unique State Plan, there is a State Plan Commission that predicts per capita production and consumption according to relevant norms. It determines the price level. In this way, the state in socialism sets prices and does not intervene in the market. Everything here is social production and social consumption. "Demand and Supply in socialism are determined by plan, in accordance with the laws that operate in the socialist economy, such as the basic economic law, the law of planned and proportional development, the law of distribution according to work, etc." (Naqellari A. 2022).
In socialism there are stores in state property. The stores were the main elements in the development of trade. "It is the place where goods are transformed into money, where goods are sold."
In these stores, goods are sold goods in quantities, planned assortments and qualities. The price level is not determined by the conflict of interests of sellers and buyers but is planned, unique and unchanged for a long time.

In this way, the concept of demand does not represent the true needs of individuals but represents the needs dictated, imposed by the government. The individual is obliged to consume those products, in the quantity and variety that they are planned to consume. He cannot consume more than what is planned for him. In this way, demand is conditioned by the amount of money given to each individual and by the amount of products that are put on the market to be sold.
The supply represents the quantity and variety of products that are produced and sold in stores. Even the Supply is planned through balance sheets from the brigades production and on an economy scale. In this way, the amount of cereals, milk, meat, vegetables and all other products per capita is determined. Individuals would buy what were offered and not what they wanted. Production was harmonized with consumption, that is, Supply with Demand. They were harmonized so that there would not be excess Supply and Demand in the market, but there would be as much goods as people's needs. In this way, we could not talk about ceiling prices and floor prices.

b) Why does the state intervene in the market in the capitalist system?
In capitalism or in market economies with private ownership of the means of production, the concepts change. In the market economy there is a market concept, a concept of demand, supply and price because we have social production and private appropriation. We have the interests of the sellers and the interests of the buyers, unlike socialism where the seller and the buyer had no different interests. The seller sold at the prices they dictated and the consumer consumed what they dictated. In the market economy, the seller sells his goods and seeks to maximize profit by raising the price, while on the other hand, buyers seek goods of quality and low price in order to maximize their utility. Therefore, we have two opposing interests in the market. Where their interests match, we have a supply-demand equilibrium and a price level that none of them wants to change.
In the market economy we do not have a state market, centralized as we had in socialism, but we have a pure competitive market, monopolistic competition, oligopolies and monopolies. When market prices suffer distortions, the state intervenes through price controls.
What is meant by price control? Price control means the establishment by the state by law of a ceiling or floor price that is mandatory to be applied by all to protect consumers or businesses from unfair competition. The history of ceiling and floor prices starts a long time ago. Ceiling prices have been applied since ancient Egypt, USA, UK and other developed capitalist countries have applied them. The US government sets price limits on housing rents, medical drugs, wages, liquid gas, bottled water, etc. On August 15, 1971, in a nationally televised speech, Nixon announced, "I am today ordering a freeze on all prices and wages throughout the United States." After a 90-day freeze, the raises would have to be approved by a "payment board" and a "price commission," with the goal of eventually removing controls... Putting the U.S. economy "in a permanent straitjacket would stifle the expansion of our free enterprise system," Nixon said. In 2008, President George W. Bush emphasized that sometimes you have to "abandon free market principles to save the free market system". (Healy G. 2011).
According to a study by the World Bank, ceiling and floor prices are set by low-

income countries (LIC=low income countries), middle-income countries and, to a lesser extent, high-income developed countries. The sample includes 100 EMDEs (emerging markets and developing economies) and 15 advanced economies. The price control policies listed are taken from the most recent publication (2003-19) (Guénette J-D. 2020).
Price ceilings are also used to create a fair market that is accessible to all. Their purpose is to help curb inflation and create balance in the market. There are two opinions about these prices, some are in favor of them and some are against them.
Arguments of economists who are in favor: - Protects consumers by eliminating price increases, - Helps producers stay competitive and profitable, - Eliminates monopolies, etc.
Arguments of economists who are against: - It can lead to shortages and illegal markets, - It can create excess demand or excess supply, - It often results in losses for producers and a decrease in the quality of products and services, etc.
The increase in food and fuel prices since March 2022 has resulted in the intervention of the governments of Western countries on prices. Ceiling prices, the removal of taxes or the reduction of their rate have been used.

2. The reaction of the Albanian government to inhibit the increase in inflation.

In January and February 2022 in Albania, there was no problem with the inflation rate. It was 3.7% in January and 3.9% in February, within the objective of the Central Bank, which aims to maintain the inflation rate of 3% +-1%. In this way, the rate below 4% is an expected rate and not worrying.
In January, in a conversation with the citizens, the Prime Minister answered many questions, including a question about prices, whether the government would protect the citizens from the increase in the prices of goods. At this time, the price crisis had not yet started.
The Prime Minister answered that the prices in capitalism are set by the market and not by the government, in socialism the government set them. The prime minister did not know that in capitalism the state intervenes in the market and not in socialism. Here's how he said it:
"There are some who raise the issue of prices. I want to say it very clearly. First, the data we received from the year-end consumption are the most misleading data compared not to last year, but to all the years in a row. We have the highest consumption, in terms of money invested at the end of the year for buying. Why do I say this? Prices are not set by the government. We are no longer in the communist system where the prices are set by the government. We are in a different system, where prices are set by the market. The government can intervene when it comes to the price of energy, that is, when it comes to what are called regulated prices. Meanwhile, the prices of daily consumption in the market are the prices that are regulated by the market, not set by the government. The market has its own logic for setting prices. Which means that there is a market, as long as there is a price, to be realistic about this". (E, Rama 2022).
The quote above shows that the government would not intervene in the market even if prices were about to rise.
In March, inflation began to rise unexpectedly. One of the causes of this galloping inflation was the beginning of the Russia-Ukraine war. In March, the inflation rate

was 3.7%, rising gradually until it reached 8.1% in September and 8.3% in October (INSTAT).

The galloping increase in the prices of fuel, food and other products raised in revolt tens of thousands of people who demanded their immediate reduction. The protestors gathered from the civil society demanded the reduction of the number and level of taxes to be equal to the prices of the region. The government, faced with public pressure, reacted negatively.

At the press conference on March 16, 2022, the Prime Minister emphasized: "If we reduce oil taxes, how would we finance these needs?" There is another way to increase the small business tax and put 20% VAT on it as it was before we came, with this new measure. Or should we make the tax on profit 10%? The Prime Minister strongly emphasized that no tax will be reduced. "Not 100 people like last night, but 100 thousand people to come, the fuel tax is not removed. Not because I don't want to, but it's not possible...". (Rama E. 2022).

The Minister of Finance and Economy was expressed in the same line. In a press conference, the Minister of Finance explained that there will be no change in fuel taxation. The minister stressed that in moments of crisis it is a wrong policy to change taxation. "There was no statement about reducing fuel taxes, we continue to stand by our position. In moments of crisis, the wrong policy of changing taxation. The review of the normative act, for fishing, farmers, had no statement for a change in taxation. We have submitted for public consultation the draft law on fiscal amnesty. Let's consult as best as possible." (Ibrahimi D. 2022).

On March 12, 2022, the Government has made public the Social Resistance Package to cope with the effects of the price crisis, which had been protesting for 4 days by the citizens. It is established that the provisions undertaken as social resistance are generally not new measures but a continuation of the policies planned at the end of last year with the preparation and approval of the 2022 Budget Plan. Specifically:

Provision 1. 3.6 billion lek or 36 million dollars will be given immediately to index pensions. This will be reflected in the next pension of 673,542 retiree.

The first provision is not taken yesterday to face the crisis. Pensions are indexed to the inflation rate according to VKM 131 dated 22.2.2017. The indexation is based on a special structure of expenses where the first group accounts for 60% of the expenses.

Provision 2. 'For 434 thousand citizens of this country who benefit, the government will compensate with cash, the increase in the prices of the basket, which based on INSTAT's calculation is 7% or turned into an increase over the average consumption of calculated before the strike is 2500 lek plus. The government will give 3000 lek for 3 consecutive months as compensation for the increase in basket prices, for: - retiree who receive less than half of the minimum wage, - retiree who live alone, (in the sense of individually or as a couple) - People with disabilities, paraplegics, tetraplegics or blind people and all families who are currently in the economic assistance scheme. These groups spend on the first item of the basket "Food and non-alcoholic beverages, which also includes the basket 58.8% of expenses. The doubling of the prices of the basket of bread, oil, rice, sugar, etc. cannot be compensated with 2500 ALL.

Provision 3. Support for farmers with tax-free oil, will amount to 1.4 billion lek or 14 million USD, with an additional plus of 5 million USD, which will be disbursed immediately.

The increase in financial support is not a new provision but the materialization of

external budgetary risks, as are in this case price increases of fuel in global markets and therefore additional costs for a provision taken earlier.
Provision 4. The government will support all Albanians who use urban city and intercity lines, immediately pouring 500 million lek or 5 million dollars to pay the difference in the ticket price. Subsidy is not a sufficient solution. Control and inspection of the quality of service provided by public transport is needed.
Provision 5. It will bring into effect 2 months earlier the law on reducing into zero the tax on wages up to 40000 lek and halving the tax on wages up to 50000 lek, as well as reducing the tax on wages from 150000 to 200000 lek, which means, 56% of those in Albania who live by work and are paid by salary, pay 0 tax on salary.
Provision 6. It will bring into effect 2 months earlier the implementation of the law on the minimum wage, which in April will become 32000 lek. This will increase the employer's costs by burdening more as additional costs in production, charging further to the consumer. This provision will increase income from social and health insurance contributions.
Provision 7. The government immediately decides to add another 20 billion, $200 million, in electricity price shield funding for households and small businesses.
Conclusion: The Social Resistance Package is not a package of new provisions, but additional budgetary cost of existing government policies, included in the Budget Law 2022. The additional cost is nothing but the materialized fiscal risk of existing policies and there is no reason to be served as a package of new provision.

3. Transparency Board, the establishment of ceiling prices and its particularities.
Russia's war against Ukraine was accompanied by negative consequences in the economic field as well. Negative impacts were felt in the price of cereals and oil where Russia and Ukraine are among the largest producers in the region. The price of cereals increased in February, while oil reached 265 ALL per liter in mid-March. It increased by $130 in international stock exchanges. After this increase in the price of flour, bread, edible oil, fuel, etc., the Government created the Transparency Board in order to protect consumers.
Right from the introduction of Article 1 of this Normative Act, its object is emphasized: "determining the rules for transparency and price monitoring of some basic food products and other related products..." (NORMATIVE ACT No. 7, dated 18.3. 2022). This Act defines the method of determination and the percentage of the profit margin and not the ceiling price level. It monitors and monitoring does not mean determining the level of ceiling prices, less the price of fuels that are not mentioned at all in this Act.
The term Monitoring according to NTPA (National Territorial Planning Agency): can be interpreted as a "control" or "continuous observation" process and means continuous collection, evaluation, interpretation and provision of appropriate data, indicators or events as basis for decision-making regarding territorial planning". Monitoring: a political-economic term meaning observation of a process. In economic sciences, monitoring refers to the process and procedures that management designs to ensure that internal control is built and working in all its components according to the objectives (control environment, risk assessment, control activity and information and communication).
The creation of the Transparency Board according to the Normative Act was sup-

ported by two articles of the Constitution, in Article 11 point 3 which states: "Restrictions on the freedom of economic activity can be imposed only by law and only for important public reasons" and in the article 17 points 1 and 2 in which it is stated: "Limitations of the rights and freedoms provided for in this Constitution can only be established by law for a public interest or for the protection of the rights of others. The restriction must be proportionate to the situation that dictated it" and "These restrictions cannot violate the essence of freedoms and rights and in no case can they exceed the restrictions provided for in the European Convention on Human Rights". Three questions arise from these articles. First, do these articles of the Constitution serve to fix the profit margin and the price for a group of imported goods, second, do these agreements conflict with the European Convention on Human Rights and third, could not this situation be resolved with other simpler ways, such as with the removal of circulation and carbon taxes?

Transparency and monitoring of prices will be done - according to the government - as a result of the "special situation" determined by the Council of Ministers (CM). What does CM mean by special situation? "... when the market of some basic food products and other related products, according to the list determined by the Board, is characterized by: a) significant increase in their price in the market; b) the significant decrease in the average imports of basic food products and related products, compared to the average monthly imports of the previous calendar year, due to shortages in the international market; c) the lack of products in a proven way to such a degree that the unfavorable consequences caused by this situation cannot be avoided or prevented without the determination of provisions, in accordance with this normative act; d) any other situation created in the international market, which has brought distortions in the domestic market".

These 4 points define the particular situation. Were these points met to declare a special situation in Albania? In the opinion of the authors, none of them has been fulfilled. All the reasons presented by CM are unsubstantiated to define the situation as "special". It is enough to operate according to the law, the Competition Authority, the Albanian Energy Regulatory Authority, Water Regulatory Authority and all Institutions or organizations for the protection of the consumer, and in Albania there would be no problem.

- The significant increase in prices in the market cannot be considered a special situation without analyzing what the cause is, objective or subjective, without an analysis by the line ministries, by the Competition Authority, and by the relevant Regulatory Entities for consumer protection.

-There is no shortage of goods in the international market and imports have not decreased significantly enough to declare a special situation, on the contrary, they have increased even taking into account the rate of inflation.

Table No. 1 Imports in billion ALL and inflation in %

	March	April	May	June	July	August	Total
2021	64.5	62.9	61.9	67.2	71.6	60.8	388.9
2022	83.6	77.8	79.7	81.1	81.6	79.5	483.3

Growth in %, 22/21	13.0	12.4	12.9	12.1	11.4	13.1	12.4
Inflation %	5.68	6.19	6.67	7.38	7.5	7.96	

Source. Bank of Albania

Imports for 6 months March-August in 2022 are greater than those of 2021 for the same period.

- The lack of products is not argued with consequences that cannot be avoided or prevented because the electricity in Albania for 2021 exceeded the demand. The shortage comes not from domestic production but from government mismanagement. Energy in Albania is provided by hydropower plants and not by thermal power plants that work with oil or gas.

-Any situation from abroad that has led to the deformation of the domestic market. The domestic market has been deformed by the presence of monopolies, oligopolies and a few external factors. The market of flour, oil and fuel imports are oligopoly.

3.1 Is the Transparency Board a cartel? Interpreting Normative Act No. 7, dated 18.3.2022 of the CM (approved by the Assembly on 28.03.2022, published in the Official Notebook dated 30.3.2022), we draw the conclusion that: It is a group of people representing the government and businesses determined by this Normative Act, which is called the Board of Transparency and Monitoring of Wholesale/Retail Prices of basic food products and other related products.

This is a collegial legal body with representatives of several economic subjects, including the government, who have undertaken, with open agreements with each other, to determine the level of the profit margin of businesses based on the change in the price of imports without affecting the level of taxes that the government has decided by law. The Transparency Board currently determines the level of profit margin for wholesale and retail trade. It determines ceiling prices and exchange rates. In the Normative Act, the words "ceiling price", "exchange rate" and "stock exchange" are not mentioned anywhere.

These prices are obligatory on wholesalers and retailers. In these agreements we have two parties, the first, the government which is represented by more than 7 members from the Minister of Finance as the chairman of the Board, the Minister of Agriculture, the Director of Taxation, the Director of Customs, the Director of National Food Authority, from a high-level representatives from the Ministry of Finance and Agriculture. 6 representatives from product trading companies participate in the second party. The board can also invite other representatives from state institutions, experts in the field or interest groups. The board also takes decisions by simple majority. The government has the largest number of Board members.

This Board also has a Secretariat with representatives from the Ministry of Finance and the customs administration. The Board, as the case may be, may create another task-force organization with representatives from the General Directorate of Taxes, The State Inspectorate of Market Surveillance (SIMS) and National Food Authority. There are three bodies that deal with the profit margins of firms. Starting from the Normative Act, the question arises whether they are ceiling prices, the prices calculated after fixing the profit margin?

How is the price determined by the Transparency Board?

This form of price determination is completely abusive because it does not remove any taxes and does not reduce their percentage. It slightly lowers the profit of the firms and the prices are set based on the current price in the stock exchange, with the exchange rate obtained from the Central Bank, despite the fact that there may be products that have been in the warehouses of wholesalers for many days or weeks. For fuel is taken the Mediterranean Fuel Stock Exchange (Platts Mediterranean Stock). These prices set by the government and called ceiling prices are not like that. This way of setting prices week by week or even twice a week is completely wrong and constitutes an open prohibited price fixing agreement. This price-fixing action should have been the subject of an in-depth investigation by the Competition Authority. They are not ceiling prices that change twice a week.

The way prices are determined is given in Article 6 of the Normative Act. "The board monitors the price value of the products every week, according to the list approved by it, and sets the profit margin". The value of the price consists of: a) the price sent by the General Directorate of Customs, according to the origin of the products; b) the profit margin determined by the Board, for import and production entities, on the price calculated according to point "a", to which taxes and fees are also applied, according to the legislation in force; c) while for the subjects of retail trade, from the profit margin determined by the Board, on the calculated price, according to "a" and "b", of this point, in which taxes and fees are also applied, according to the legislation in power". This article does not refer to the Fuel Stock Exchange.

How has this article been interpreted by the Transparency Board? To make it concrete, we are giving a concrete example of the application of this Law. ... On 22.06.2022 "Transparency Board …

Decided:

1. To approve the ceiling/maximum wholesale and retail prices of petroleum by-products, for Gasoline (Prem Unl 10 ppm of the SSHEN 2282018 standard) Gasoil (10 ppm ULSD of the SSHEN 5902018 standard) and liquid petroleum gas (Propane/ Bhutan).

2. The prices approved by the Board reflect:

a. International market prices one day before the Board meeting, published by the international agency "S&P Global Platts" in USD on 22.06.2022, under FOB Med delivery conditions, for SSHEN 5902018 gasoil and SSHEN standard gasoline 2282018

b. The "premium" value according to the import invoice declared at the Customs by wholesale trading companies for gasoil of the standard SSHEN 5902018 and gasoline of the standard SSHEN 2282018, and on the basis of which the payment transaction is carried out.

c. The total value obtained (FOB Med + Premio) is converted into Lek according to the fixed exchange rate officially announced by the Bank of Albania the day before.

d. Gross margin 3 ALL/liter (including VAT) for wholesale companies.

e. On the value above, the liabilities payable on import are added:

i. excise; ii. turnover tax; iii. carbon tax; iv. VAT on import; v. marking fee, vi. tax scan;

p. The resulting value (a-e), constitutes the wholesale price.

g. On top of the resulting wholesale price, the retail gross margin of 12 ALL/liter (including VAT) is added.

h. The resulting value (f+g) constitutes the retail price with VAT, which must be announced on the sales table at fuel stations.
i. In the case of LPG (liquefied petroleum gas), the price determined according to the import invoice provided by wholesale trading companies 20220607/239.2.2, dated 07.06.2022 (IB GAZ AG).
3. The data of the oil by-product in stock exchange FOB Med and the trading prices dated 22.06.2022 on which the calculations were performed (diesel only):
·Gasoil (10ppm ULSD) FOB MED 1.325 USD/Ton
3.1 Ceiling prices (max), for the wholesale sale of products:
· 246 Lek/liter for gasoil 10 ppm ULSD standard SSHEN 5902018;
3.2 Ceiling prices (max) for the retail sale of products:
·258 Lek/liter for diesel 10 ppm ULSD standard SSHEN 5902018;
These prices are in effect until the next meeting of the Board and change based on the effects of changing prices of the stock exchange for gasoline and diesel by-products and changes in the exchange rate of the US Dollar.
5. The effects of this decision begin on 23.06.2022, at 18.00, until a second notification received at the next meeting. These prices are in effect until the next meeting of the Board and change based on the effects of changing prices of the stock exchange for gasoline and diesel by-products and changes in the exchange rate of the US Dollar.
In this decision of the Board it is stated "To approve the ceiling/maximum price of wholesale and retail trading of oil by-products..." The Board has set this right for itself without being in Article 6.
According to the data on the Government's website, the Transparency Board met 14 times from March 15/16 to June 1. In April-May alone, 10 decisions were made. On April 23, the oil price was 232 ALL/liter, on April 27, it increased by 1 ALL, or 233 ALL/liter, on May 10, it decreased by 1 ALL, or 232 ALL/liter, etc. Many times they have gathered once every two days, and there have been cases where the decision has changed two successively days, on November 1 and 2, on November 11 and 12. On November 12, the Board met and set the price of gasoline, changing it by only 1 lek. In the month of November, the Board met 8 times, on the 1st, 2nd, 11th, 12th, 18th, 22nd, 25th and 29th. The Transparency Board met to determine prices more than 50 times. The change of 1 lek is an insult to Albanian citizens because 1 lek = 0.009$ and 1 lek = 0.085 euro. 1 gram of oil 210 ALL/liter costs 0.21 ALL, so with 1 ALL you can buy 4 grams of oil.
The frequent meetings of the Board show that the government has no desire and good will to protect the citizen. With this way of determining prices, it destroyed competition in the fuel market, favoring the increase of income in the budget. The problem of rising prices could be solved very simply. If the government removed the carbon tax and the circulation tax, there would be no problem in the market. The countries of the region do not have these taxes in the price of fuel.
Finally, the Transparency Board drafts agreements for fixing the price. This price is neither a ceiling price nor a reference price. This organization (BT) did not achieve the objective for which it was created, it failed, therefore the price level must be determined by the firms themselves. Under these conditions, the Competition Authority had to publicly pronounce on the legality and consequences on the market. Are we dealing with prohibited agreements or are we dealing with a normal action? The Competition Authority can launch an in-depth investigation even when this Board is established

by a Normative Act.
Some of the negative consequences that have come to the economy from fixing prices every week and often every 3 days.
-Decreasing the daily fuel supply due to the fear of lower prices in the Stock Exchange.
-Bankruptcy of many small retail firms.
-Increasing losses from rapid price changes.
-Lack of initiative on the part of businessmen to operate in the independent market.
-It creates chaos and stress for both businesses and consumers.
-Increases unfair competition. The government should open the import market to increase the number of operators.
- The prices that are formed do not belong to the market economy and free initiative.
For these and other reasons, the Transparency Board should be dissolved.
For the Transparency Board, are expressed; IMF, Association of Hydrocarbons Companies, members of the Albanian Parliament, etc.

The IMF has consistently spoken. IMF has requested its dissolution. Specifically: "Given the challenges of the transparency board that monitors the prices of some basic food items, we see suitable to replace it with well-targeted support for the poor and exposed classes in order to protect them from the effects of price increases . For this reason, efforts to improve the social protection system in the country must continue, including expanding the coverage of the poor and needy in the informal sector." (IMF 2022)
The representatives of the Association of Hydrocarbons Company have spoken against the Transparency Board as an institution that affects the increase in prices and not its decrease, the Transparency Board affects the increase of unfair competition and the bankruptcy of a number of small firms. Specifically: "The price on the stock exchange shows big fluctuations, with +- 200-300 USD/ton. In a free market, each operator, with the study of the markets, takes the risk of closing contracts at the moment of market decline. But under the conditions that the Board strictly monitores, no one dares to buy more than the daily needs because they are afraid that a bigger drop will lead them directly to a loss with no opportunity to sell. There is no place in the world to move the price in the retail market every day. Even in countries that try to take price control to the extreme, they do the moves at most once a month, when the market has a strong trend. What our Board is doing is unprecedented. It makes no sense that at 5 in the afternoon someone buys oil for 243 Lek and at 6 in the afternoon, another buys it for 252 Lek". And further: "This is not worth anything to the consumer or the enterprise, it just creates chaos and stress for everyone. Therefore, in a free market with many operators, it is impossible to try to set a unique price without logic where every enterprise has a cost different both in operation and in purchase options. Transparency means to analyze the market, is there a barrier to the entry of new operators, and if there is, then reform and open the market. Likewise, the Competition Authority should observe whether there is an agreement on price fixing, while the tax authorities should check whether purchases and sales are correctly declared and whether taxes are paid correctly". (Hydrocarbons Association 2022).
Hydrocarbons Association: If the Board did not intervene, the price of oil would be 12 lek/liter cheaper. (07/06/2022 Top Channel)
Albanian Parliamentarian Petrit Vasili at the press conference on August 17, 2022 emphasized: "There are two ways to reduce inflation: "immediate dissolution of the

Mafia Board of Extortion and Tax Intervention".
The former President of the Republic of Albania, Ilir Meta, stated at the press conference on August 17: "It has been so long since the implementation of some measures or the suspension of the turnover tax or the carbon tax have been proposed. What happens to this tax? 200 million euros are collected per year and only 20 million euros are used for maintenance. We are here to put an end to this abuse. Where prices continue to rise, the board continues to rip off all Albanian citizens".

4. Structure of fuel prices in Albania and comparison with North Macedonia and Kosovo.

Albania, Montenegro, Kosovo and Macedonia furnish with fuel in one market, for this reason their entry prices, in Customs are almost the same. Fuel sales prices in the three countries are different. In the retail market in Albania they are much higher. The main reason for this difference is the large number of taxes and their high levels. In the last three years, the following types of taxes have been applied to the purchase of fuel in Albania:

Table No. 2 Structure of oil taxes for 1 liter in Lek

	Title	2022(31/8)	2021(15/7)	2019(15/7)
I	Tax for 1 liter in All			
	1) Excise	38.2	37	37
	2) VAT (20%)	41.3	30	30
	3) Turnover Tax	27	27	27
	4) Carbon Tax	3	3	3
	5) Other taxes (marking, scanning, pump approval, relicensing)	10	7.4	10
	5) Mrking Tax		1	1.5
	7) Scan Tax		4	1.5
	8) Pump commissioning tax			2
	Total (a+b+c+d+e+f+g)	119.5	109.4	112
II	Final price in the retail market	248		180
	Number of taxes	8	7	8

Source: Fuel Society Association for 2022. For 2019, A2. (Brakaj M. 2021). (Top Channel. 2021).

For year 2022, point 5 includes all written taxes, while in 2019 and 2021 they are distributed below according to items. The data show that taxes have been increasing both in percentage and in number. The last tax that was included in the price was that of commissioning the pumps. This service was state-owned and the tax was collected by the metrology department at 2 lek per liter of fuel.
The price of diesel from 112 ALL/liter in 2019 (7 taxes) to 2022 (8 taxes) their level went

to 119.5 ALL per liter. In 2019, taxes accounted for 62.2% of the final retail market price, while in 2022 this figure reached 48.2%. The reason for this difference is that the tax difference between these two years is only 7.5 ALL, while the difference in the final price is 68 ALL. The low price in 2019 makes taxes take a larger share of the total retail price, despite the fact that in 2022 taxes per 1 liter are 7.5 higher.
From the data in the table, it can be seen that the level of taxes and their number have not decreased but increased. This has led to increased revenue for the government and business to provide a survival profit. The entire burden of the tax has almost fallen on consumers.
We compare the price structure of oil and gasoline in Kosovo and North Macedonia with the price structure in Albania for 2022.

Table No. 3 The price structure of oil and gasoline in Albania, North Macedonia and Kosovo (Leka/liter)

		Albania		Kosovo		North Macedonia	
		diesel	fuel	diesel	fuel	diesel	fuel
1	Platts Stock Exchange Price (USD/Ton)	1200	1000	1200	1000	1200	1000
2	Density (liter per 1 ton)	1118	1340	1118	1340	1118	1340
3	Tax for 1 liter in All						
	a) Excise tax	38.2	38.2	42.1	45.04	29.7	42.1
	b) VAT (20%)	41.3	33.5	30.4	28.08	28.1	27.2
	c) Turnover tax	27	27	0	0	0	0
	d) Carbon tax	3	1.5	0	0	0	0
	e) Other taxes (marking, scanning, pump approval, relicensing)	10	8.5	0	0	0	0
	f) Environment tax	0	0	0	0	0.06	0.013
	g) Stock tax	0	0	0	0	0.6	0.014
	Sum (a+b+c+d+e+f+g)	119.5	108.7	72.5	73.1	58.5	69.3
4	Final price in the retail market	248.0	201.0	205.0	175.5	193	161.6
	Additional taxes in Albania compared to Kosovo (All/l)	47	35.6				
	Additional taxes in Albania compared to MV(All/l)	61	39.4				
	What would be the price in Albania if they removed the tax difference according to the respective country (All/l)			201	165.4	187	161.6

Note: Kosovo and NM have 18% VAT from the 20% that Albania has.
Source. Association of Hydrocarbons Companies. Monitor magazine.

In Albania, 8 taxes are applied, in Kosovo only 2 taxes, Excise and VAT. So the taxes on 1 liter of diesel are 72.5 Lek in Kosovo and 119.5 Lek in Albania. The difference is 47 ALL (119.5-72.5). The VAT in Kosovo and Macedonia is 18%, while in Albania it is 20%. Excise is higher in Kosovo and lower in Macedonia. Macedonia has 4 taxes, two of which are very low, almost without impact. Taxes for 1 liter of diesel in North Macedonia are only 58.5 ALL. The difference between taxes in Albania and Macedonia is 61 ALL (119.5-58.5).
In Kosovo, taxes on the retail price consitute only 35.4%, in North Macedonia 30.3% and in Albania 48.2%. In 2019, they occupied 62.2% because the price was low, only 180 ALL per liter.
If we compare the price of oil in Albania with the prices in Kosovo and North Macedonia, removing the tax differences, we see that oil in Albania would have a lower price per liter than in both countries. Specifically, in Albania the price would be 248-47(119.5-72.5) = 201 lek per liter compared to the price in Kosovo. Compared to North Macedonia, it would be 187 ALL per liter (248-61 (119.5-58.5).
These data clearly show that the main responsibility for the high price of fuel in Albania is the government with the high number of taxes and their high percentage.
Setting ceiling prices has not brought any big change in prices, but mostly it has increased the income for the government which did not remove any tax. It only reduced the profit margin.
These set prices have negative consequences: "If the price of fuel in Albania needs to be adjusted, it can be judged where the high prices in Albania come from. Only the enterprise has nothing in hand, but on the contrary to the accusations made against it, it applies the fairest prices in the region. All ideas with boards or still only disrupt the market, create inconceivable difficulties for economic operators, as anyone can think of those gas stations that yesterday were supplied with prices 9 lek higher than today and immediately correcting the price according to the stock market, imagine what he finds he creates in loss. Therefore, it is good that the market is left free". (Aliaj L 2022).

Conclusions and Recommendations

Albania meets most of the population's needs for food through import. Fuel needs are met 100% by imports despite producing over 1 million tons of crude oil. In March 2022, after the Russian aggression on Ukraine, the Albanian government reacted to the galloping increase in the price level of some main food products and fuel prices. With the Normative Act, it created the Transparency Board as an organization to curb price increases. From the analysis that was carried out, it was concluded that this Board, made up of many economic subjects, including the government, carries out cartel-type agreements, open agreements for fixing prices. It records every time the price changes on the Mediterranean Stock Exchange. As such, it has brought a series of negative consequences for the market, businesses and citizens. The negative consequence of its operation was that the increase in income in the budget was provided by the increase in prices, from the taxes collected by the government because the entire tax burden fell on the consumer and little on the business. The

market was denatured, imports decreased because the price changed often, so much so that merchants did not make medium or long-term contracts but bought today for tomorrow with the fear that the price on the stock exchange could decrease and they would come out with a loss.

We recommend that the Transparency Board be dissolved immediately. Activate the Competition Authority if it sees price abuse. To establish the Regulatory Body of Fuels. The government to remove the carbon tax and the turnover tax.

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Evaluating the efficiency of some hotels on the Albanian coast using DEA analysis

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Abstract

The development of the tourism sector is among priorities of the Albanian government. Albania is one of the most attractive countries for foreign tourists. The Albanian coast is rated as one of the most beautiful coasts in Europe, being compared to the Croatian and Greek coasts. Mountain and historical tourism have also received considerable development. This paper aims to analyze the efficiency of a group of hotels that operate in one of the most attractive coastal areas in the country, such as Dhërmi.

The sample consists of 15 hotels (luxury and less luxurious) that operated in Dhërmi in 2019. The efficiency evaluation was carried out using DEA data analysis, a methodology based on linear programming. The results of the analysis showed that from the hotels included in the study, only 4 were efficient. The other hotels were inefficient with values of the efficiency indicator between 0.46 and 0.90. For inefficient hotels, DEA suggests target levels of inputs and outputs, as well as reference hotels that are the best practices to follow to improve the performance of their activities.

The information gathered from the results of the analysis is needed for managers to improve the efficiency of inefficient hotels. A suggestion for further research could be the enrichment of inputs and outputs. The work can also be expanded, through a larger sample of hotels within the coastal city of Dhërmi, but also on the entire Albanian coast.

Keywords: Tourism, Albania, DEA analysis, perception, efficiency.

1. Overview of the literature

Tourism is a sector with economic, social, cultural and environmental impacts. Tourism has been the subject of different approaches, as a result of its multifaceted and multidisciplinary nature. The importance of tourism development is universally recognized. According to McIntosh and Goeldner (1986), tourism has been studied using economic, sociological and geographical approaches. It is also a resource for interdisciplinary and systems analysis. According to Claver-Cortés, Molina-Azorín and Pereira-Moliner (2006), tourism is the main leisure activity in the 21st century or, as Holjevac (2003) says, tourism appears as the most important service industry in the world, both in terms of number of employees and effects on the economic and social development of regions and countries. According to Fayos (1996) and Smeral (1998), tourism is also one of the greatest opportunities to create wealth and employment in all countries. Albania is one of those countries where the development of tourism is the focus of government policies. It is favored by the relief and natural conditions. The country offers the sea, the mountain, the field, the valley, rivers, lagoons, forests, etc. which can be visited in a short time and making it easier for the tourist to enjoy them all together. Of course, without forgetting the castles, forts, archaeological parks, etc. The competitiveness and survival of the tourism industry in general and hotel services in particular include attention to all factors that can represent competition.

One of such factors is efficiency, because only companies that are internally valued are able to take improvement measures to overcome the challenges that current contexts require. Adaptability and strategic targeting directed at areas of inefficiency is a serious concern of managers. High levels of competition put pressure on companies that operate on efficient advantages. Anderson, Fok and Scott (2000) report that the use of X-efficiency measures for hotels allows the assessment of the competitive structure of this sector. According to Chen, Liang, Yang and Zhu (2006), efficiency measures can provide hoteliers with an additional analysis in order to improve the use of their resources, also playing a crucial role in the profitability and survival of companies.

2. Material and methods

Data Envelopment Analysis, DEA (Data Envelopment Analysis) is a technique that evaluates the relative efficiency of similar units that use some inputs and produce some outputs. It is used to evaluate the efficiency of units such as; universities, banks, education, departments, insurance companies, hospitals, hotels, etc.

Some characteristics that make DEA a very popular and used technique are:

enables the use of models with several inputs and several outputs; it does not require any assumption about the functional form that connects the inputs to the outputs; units are directly comparable to a hypothetical unit, a combination of other units; inputs and outputs can be measured in different measurement units. When DEA is used, some limitations of the model must be taken into account, which are: the number of units must be at least twice the sum of the input and output variables; it is a good method to compare a unit with other similar units in the selection, not compared to a "theoretical maximum".

In this paper, the CCR model was used to evaluate the efficiency of a group of hotels operating in the coastal area of Dhermi during 2019. Dea calculates the efficiency of a unit compared to all the units under study, choosing the best possible alternative. Technical efficiency in Dea in the presence of several inputs and outputs is defined as the weighted sum of outputs divided by the weighted sum of inputs.

The efficiency of the unit under study is measured by the following coefficient:

The set of weights for a unit should be solved such that it gives the largest possible value of the technical efficiency indicator for that unit, while the values of the efficiency indicator of other units, for the same set of weights, are kept between 0 and 1 Efficient units have a technical efficiency indicator value of 1, while units that have an indicator value of less than 1 are inefficient (Nikolla and Belegu 2017).

3. Definition of variables

The following table shows the variables used, their definition.

Table 1. Definition of variables

Variable		Variable definition	Measuring
Output	Perception of hotel quality	How satisfied are the individuals who rested in the hotels	On a scale of 1 to 10
Input 1	Commodity	It refers to the comfort of the individual resting in the hotel	On a scale of 1 to 10
Input 2	Correctness	It refers to accessing the service at the specified time	On a scale of 1 to 10
Input 3	Cleanliness	Level of cleanliness	On a scale of 1 to 10
Input 4	Price	Pricing structure	On a scale of 1 to 10
Input 5	Service	How satisfied the vacationers are with the service provided	On a scale of 1 to 10

Source: Authors

Data

The data used for the realization of the work are primary data. The data was provided through a questionnaire built on questions to measure the above attributes for 15 different hotels during 2019. Specifically: HILDON ECO HOTEL; BELLE-VUE; RELAX HOTEL; HOTEL NATALI; GREECE HOTEL; SOFO HOTEL; NOAN HOTEL; EMPIRE BEACH RESORT; BLUE BOUTIQUE HOTEL; DRYMADES INN; KESIA HOTEL; OLD TOWN HOTEL; IMPERIAL HOTEL; SUMMER DREAM HOTEL; DELIGHT BEACH HOTEL. The survey was distributed to 200 vacationers, of which 100 vacationers completed it.

The data collected from the questionnaire are presented in table 2.

Table 2. Data collected from the questionnaire.

Hotels	Perception of hotel quality	Commodity	Correctness	Cleanliness	Service	Price
HILDON ECO HOTEL	9.7	2.9	5	2.7	1.40	2.00
BELLE-VUE	7.9	2.73	4.6	4.13	6.00	5.00
HOTEL RELAX	7.5	9	8	5	6.00	8.50
HOTEL NATALI	6.4	2.1	3	4.30	5.00	3.20
GRECCIA HOTEL	8.42	5.1	4.3	4.91	5.30	4.50
SOFO HOTEL	7.7	5	7.3	4.4	6.10	3.10
NOAN HOTEL	8.2	7	6.1	5.8	8.10	4.30
EMPIRE BEACH RESORT	8.2	5	4.9	8.7	3.00	6.00

BLUE BOUTIQUE HOTEL	9.	6.1	8	6.3	5.20	3.20
DRYMADES INN	8.9	4.9	3	6.1	3.60	3.20
HOTEL KESIA	6.1	7.1	5.2	4.4	3.20	1.90
OLD TOWN HOTEL	8.1	5	7	4.4	3.30	5.30
HOTEL IMPERIAL	9.3	5.6	4.1	3.2	5.	6.10
HOTEL SUMMER DREAM	8.9	3	5	3.2	6.3	3.10
DELIGHT BEACH HOTEL	8.4	6.2	7.6	3	5	6.30

Source: Authors

4. Analysis and interpretation of results

We analyzed the Dea efficiency for the first hotel, HILDON ECO HOTEL .

Extent of the problem:

Max: $9.71\mu_1$ output weight for unit 1.

With conditions:

After setting the problem, this problem is solved by means of Solver Solution in the Excel computer program and we will reach the results shown in figure 1.

Figure1. Analysis of the efficiency of **HOTELS** in the study

Dea analysis results for the units under study.

Unit	Hotels	Output1	Input1	Input2	Input3	Input4	Input5	Weight	Weight	The difference	Dea
DMI	H	Perception of hotel quality	Commodity	Correctness	Cleanliness	The service	Price	Output	Input	≤0	Efficiency
1	HILDON ECO HOTEL	9.7	2.9	5	2.7	1.40	2	1.000	1.000	0.000	100%
2	BELLE-VUE	7.9	2.73	4.6	4.13	6.00	5	0.814	1.081	-0.267	87%
3	HOTEL RELAX	7.5	9	8	5	6.00	8.5	0.773	1.734	-0.961	46%
4	HOTEL NATALI	6.4	2.1	3.0	4.3	5.00	3.2	0.660	0.804	-0.144	100%
5	GRECCIA HOTEL	8.42	5.1	4.3	4.91	5.30	4.5	0.868	1.071	-0.203	82%
6	SOFO HOTEL	7.7	5	7.3	4.4	6.10	3.1	0.794	1.492	-0.698	53%
7	NOAN HOTEL	8.2	7	6.1	5.8	8.10	4.3	0.845	1.410	-0.565	60%
8	EMPIRE BEACH RESORT	8.2	5.1	4.9	8.7	3.00	6	0.845	1.432	-0.587	72%
9	BLUE BOUTIQUE HOTEL	9	6.1	8	6.3	5.20	3.2	0.928	1.725	-0.797	58%
10	DRYMADES INN	8.9	4.9	3	6.1	3.60	3.2	0.918	0.918	0.000	100%
11	HOTEL KESIA	6.1	7.1	5.2	4.4	3.20	1.9	0.629	1.138	-0.509	66%
12	OLD TOWN HOTEL	8.1	5	7.0	4.4	3.30	5.3	0.835	1.482	-0.647	57%
13	HOTEL IMPERIAL	9.3	5.6	4.1	3.2	5.00	6.1	0.959	0.959	0.000	100%
14	HOTEL SUMMER DREAM	8.9	3	5.0	3.2	6.30	3.1	0.918	1.050	-0.133	90%
15	DELIGHT BEACH HOTEL	8.4	6.2	7.6	3	5	6.3	0.866	1.506	-0.640	78%

Weights	0.103	-	0.159	0.063	-	0.017	

Set Cell → Variable Cells

Unit	1
Output	1
Input	1

Constraint Cells

Max: C26
Variables: C21:H21
Conditions: C27=1
C21:H21>=0
K4:K18 <=0

Formulas used to solve the DEA problem

Cell	Formula	The range where the formula is copied
I4	SUMPRODUCT(C4:C4,$C$21:$C$21)	I4:I18
J4	SUMPRODUCT(D4:H4,$D$21:$H$21)	J4:J18
K4	I4-J4	K4:K18
C26	INDEX(I4:I18,C25,1)	
C37	INDEX(J4:J18,C25,1)	

Source: Authors

From the data analysis we see that the 4 hotels; HILDON ECO HOTEl, HOTEL NATALI, DRYMADES INN and HOTEL IMPERIAL result in 100% DEA efficiency, while other hotels are inefficient.

Next, we will use the Dea model to improve the efficiency of one of the inefficient hotels, as it is HOTEL RELAX.

1. 1. Solution of the DEA problem for unit 3 represented by HOTEL RELAX (figure 2)
2. In the Solver Results dialog box, select the Sensitivity Report option.

In the results of the Sensitivity Report, the absolute value of the shadow prices (Shadow Prices), in the „Difference" column, show the weights of the composite unit, which will be more efficient than the unit under study. In figure 3, an example of a composite unit is given, which is more efficient than unit 3 (HOTEL RELAX), while in figure 4 the improvement of the efficiency of HOTEL RELAX is shown, which with this use of inputs will operate in the manner the best possible.

Figure 2. Analysis of the efficiency of HOTEL RELAX.

Dea analysis results for the units under study.

Unit	Hotelet	Output1	Input1	Input2	Input3	Input4	Input5	Weight	Weight	The difference	Dea
DMI	H	Perception of hotel quality	Commodity	Correctness	Cleanliness	The service	Price	Output	Input	≤0	Efficiency
1	HILDON ECO HOTEL	9.7	2.9	5	2.7	1.40	2	0.590	0.590	0.000	100%
2	BELLE-VUE	7.9	2.73	4.6	4.13	6.00	5	0.480	0.681	-0.200	87%
3	HOTEL RELAX	7.5	9	8	5	6.00	8.5	0.456	1.000	-0.544	46%
4	HOTEL NATALI	6.4	2.1	3.0	4.3	5.00	3.2	0.389	0.576	-0.187	100%
5	GRECCIA HOTEL	8.42	5.1	4.3	4.91	5.30	4.5	0.512	0.722	-0.210	82%
6	SOFO HOTEL	7.7	5	7.3	4.4	6.10	3.1	0.468	0.899	-0.431	53%
7	NOAN HOTEL	8.2	7	6.1	5.8	8.10	4.3	0.499	0.927	-0.429	60%
8	EMPIRE BEACH RESORT	8.2	5.1	4.9	8.7	3.00	6	0.499	1.080	-0.582	72%
9	BLUE BOUTIQUE HOTEL	9	6.1	8	6.3	5.20	3.2	0.547	1.108	-0.561	58%
10	DRYMADES INN	8.9	4.9	3	6.1	3.60	3.2	0.541	0.726	-0.185	100%
11	HOTEL KESIA	6.1	7.1	5.2	4.4	3.20	1.9	0.371	0.745	-0.375	66%
12	OLD TOWN HOTEL	8.1	5	7.0	4.4	3.30	5.3	0.492	0.877	-0.385	57%
13	HOTEL IMPERIAL	9.3	5.6	4.1	3.2	5.00	6.1	0.565	0.565	0.000	100%
14	HOTEL SUMMER DREAM	8.9	3	5.0	3.2	6.30	3.1	0.541	0.631	-0.090	90%
15	DELIGHT BEACH HOTEL	8.4	6.2	7.6	3	5	6.3	0.511	0.805	-0.294	78%

Weights	0.061	-	0.073	0.083	-	-

Set Cell — Variable Cells

Unit	3
Output	0,46
Input	1

Constraint Cells

Max: C26
Variables: C21:H21
Conditions: C27=1
C21:H21>=0
K4:K18 <=0

Formulas used to solve the DEA problem

Cells	Formula	The range where the formula is copied
I4	SUMPRODUCT(C4:C4,$C$21:$C$21)	I4:I18
J4	SUMPRODUCT(D4:H4,$D$21:$H$21)	J4:J18
K4	I4-J4	K4:K18
C26	INDEX(I4:I18,C25,1)	
C37	INDEX(J4:J18,C25,1)	

Source: Authors

Figure 3. The composition values of HOTEL RELAX.

Unit	Hotels	Output1	Input1	Input2	Input3	Input4	Input5	Composition weights	Weights %
DMI	H	Perception of hotel quality	Commodity	Correctness	Cleanliness	The service	Price		
1	HILDON ECO HOTEL	9.7	2.9	5	2.7	1.40	2	0.4717	47%
2	BELLE-VUE	7.9	2.73	4.6	4.13	6.00	5	0.0000	0%
3	HOTEL RELAX	7.5	9	8	5	6.00	8.5	0.0000	0%
4	HOTEL NATALI	6.4	2.1	3.0	4.3	5.00	3.2	0.0000	0%
5	GRECCIA HOTEL	8.42	5.1	4.3	4.91	5.30	4.5	0.0000	0%
6	SOFO HOTEL	7.7	5	7.3	4.4	6.10	3.1	0.0000	0%
7	NOAN HOTEL	8.2	7	6.1	5.8	8.10	4.3	0.0000	0%
8	EMPIRE BEACH RESORT	8.2	5.1	4.9	8.7	3.00	6	0.0000	0%
9	BLUE BOUTIQUE HOTEL	9	6.1	8	6.3	5.20	3.2	0.0000	0%
10	DRYMADES INN	8.9	4.9	3	6.1	3.60	3.2	0.0000	0%
11	HOTEL KESIA	6.1	7.1	5.2	4.4	3.20	1.9	0.0000	0%
12	OLD TOWN HOTEL	8.1	5	7.0	4.4	3.30	5.3	0.0000	0%
13	HOTEL IMPERIAL	9.3	5.6	4.1	3.2	5.00	6.1	0.3145	31%
14	HOTEL SUMMER DREAM	8.9	3	5.0	3.2	6.30	3.1	0.0000	0%
15	DELIGHT BEACH HOTEL	8.4	6.2	7.6	3	5	6.3	0.0000	0%
Compositi on values		7.5	3.129	3.648	2.280	2.233	2.862		

Source: Authors

Figure 4. Improving the efficiency of HOTEL RELAX.

Improving Dea efficiency for the hotel 3

Unit	Hotelet	Output1	Input1	Input2	Input3	Input4	Input5	Weight	Weight	The difference	Dea
DMI	H	Perception of hotel quality	Commodity	Correctness	Cleanliness	The service	Price	Output	Input	≤0	Efficiency
1	HILDON ECO HOTEL	9.7	2.9	5	2.7	1.40	2	1.293	1.293	0.000	100%
2	BELLE-VUE	7.9	2.73	4.6	4.13	6.00	5	1.053	1.399	-0.345	87%
3	HOTEL RELAX	7.5	3.13	3.65	2.28	2.23	2.86	1.000	1.000	0.000	100%
4	HOTEL NATALI	6.4	2.1	3.0	4.3	5.00	3.2	0.853	1.039	-0.186	100%
5	GRECCIA HOTEL	8.42	5.1	4.3	4.91	5.30	4.5	1.123	1.386	-0.263	82%
6	SOFO HOTEL	7.7	5	7.3	4.4	6.10	3.1	1.027	1.930	-0.903	53%
7	NOAN HOTEL	8.2	7	6.1	5.8	8.10	4.3	1.093	1.824	-0.731	60%
8	EMPIRE BEACH RESORT	8.2	5.1	4.9	8.7	3.00	6	1.093	1.852	-0.759	72%
9	BLUE BOUTIQUE HOTEL	9	6.1	8	6.3	5.20	3.2	1.200	2.231	-1.031	58%
10	DRYMADES INN	8.9	4.9	3	6.1	3.60	3.2	1.187	1.187	0.000	100%
11	HOTEL KESIA	6.1	7.1	5.2	4.4	3.20	1.9	0.813	1.471	-0.658	66%
12	OLD TOWN HOTEL	8.1	5	7.0	4.4	3.30	5.3	1.080	1.917	-0.837	57%
13	HOTEL IMPERIAL	9.3	5.6	4.1	3.2	5.00	6.1	1.240	1.240	0.000	100%
14	HOTEL SUMMER DREAM	8.9	3	5.0	3.2	6.30	3.1	1.187	1.359	-0.172	90%
15	DELIGHT BEACH HOTEL	8.4	6.2	7.6	3	5	6.3	1.120	1.948	-0.828	78%

Weights	0.133	-	0.206	0.082	-	0.022	

Set Cell

Variable Cells

Unit	3
Output	1
Input	1

Constraint Cells

Max: C26
Variables: C21:H21
Conditions: C27=1
C21:H21>=0
K4:K18 <=0

Source: Authors

5. Conclusions and recommendations

The purpose of this study was to evaluate the efficiency of 15 hotels in the tourist area of Dhermi in Albania. In order to achieve this, the CCR Dea model was used, with input orientation. The results of the CCR model showed that during 2019 only 4 hotels were efficient, while the other hotels were inefficient with values of the efficiency indicator between 0.46 and 0.90. The study shows how the efficiency of inefficient units can be improved, taking unit 3 (HOTEL RELAX) as an example.

From the efficiency analysis, referring to the result of the sensitivity report), the absolute value of the shadow prices (Shadow Prices), are the weights of the composite unit, which is more efficient than the unit in study 3. The average of the weights about 47.17% for unit 1 (HILDON ECO HOTEL with efficiency score 1) and 31.45% for unit 13 (Imperial Hotel with efficiency score 1), form the composite unit (assumed). This hypothetical unit turned out to give the same output as the output of unit 3, but reducing the input perceptions.

A recommendation for future research could be the enrichment of input and output variables. The paper could also be extended through a larger sample of hotels and an enriched dataset covering more variables. The larger sample may also contain hotels from other popular tourist destinations in Albania.

This study can be used by managers to increase the performance of tourist hotels, with the aim of increasing the number of vacationers.

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Legal reform regarding the deadline for the preliminary investigation -Innovations and problems

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Abstract

The preliminary investigation as part of the criminal proceeding has its own procedural time frame, within which this procedure should be finalized.
These procedural deadlines are part of the right to a due process, provided by Article 42 of the Constitution of the Republic of Albania, to conduct the trial within a reasonable time, although not expressly provided for in this provision.
The preliminary investigation and its deadline, as all deadlines, has its start and end. Legal reform in CCP brought improvements and adjustments in the duration of the terms of the preliminary investigation, the control over this stage. Investigation and its extension.
The time limit for termination of investigations is three months for the general jurisdiction and 6 months for the special jurisdiction, from the date that the name of the person whom the criminal offence is attributed to has been written in the register of notification of criminal offences. The maximum time limit within which criminal proceedings must be completed remains unchanged. Changes and innovations are made in the control of the preliminary investigation, by the preliminary investigation judge, but also by the preliminary hearing judge, when the latter decides to return the preliminary investigation for further actions in way to be completed.
The legal provision regarding the validity and use of investigative actions /evidence /means of evidence search, carried out beyond the deadlines for the completion of the preliminary investigation, remained unchanged.
But during the preliminary investigation and its deadlines, with the legal changes brought about by the reform, problems emerged in practice during its implementation, such as:
What were the deadlines that the court would apply, when returning the acts of investigation for completeness, the special ones provided by the CC. Procedure? Could the court set deadlines for the completion of investigations, for the conduct of additional investigative actions? Could the court extend the maximum term of 2 years or 3 years?
These and other problems emerged in practice, which will be part of this article.
The methodology used in this paper will be interpretative, comparative, and analytical of the current legal provisions. The jurisdiction of the High Court and the ECtHR shall be interpreted and analysed in relation to the deadline for the preliminary investigation. These and not only will be part of the treatment through this article.

Keywords: term of preliminary investigation, its extension, its control, preliminary investigation judge and preliminary séances.

1. Is the term of the preliminary investigation procedural or constitutional?

The Constitution of the Republic of Albania, in the chapter on fundamental human rights and freedoms, provides in Article 42 that:

1. The freedom, property, and rights recognized in the Constitution and by law may not be infringed without due process.
2. Everyone, for the protection of his constitutional and legal rights, freedoms, and interests**, or in the case of an accusation raised against him**, has the right **to a fair and public trial, within a reasonable time, by an independent and impartial court specified by law**.

So, the Constitution provides that anyone against whom a criminal charge has been brought has the right to a trial within a reasonable time. However, although this provision does not speak literally about the reasonable term of the preliminary investigation, we agree that this provision, given the purpose for which it was decided, involves also the completion of investigations within a reasonable time, since the completion of preliminary investigations within a reasonable time frame, is part of the right to complete the investigation and trial of the criminal charge in its entirety within a reasonable time.

On the other hand, the precise calculation of the time-limits of preliminary investigations has an impact on the usability of the evidences**,** based on which the defendant is judged. Obtaining such evidence in excess of these deadlines and not in accordance with the procedural provisions regarding the extension of time limits would result in the violation of the constitutional principle that no one may be declared guilty on the basis of data collected in an unlawful manner, within the meaning of Article 32/2 of the Constitution.[1]

The Constitutional Court states in its jurisprudence that obtaining evidence unlawfully constitutes an important aspect of respect for the right to a due process, provided by Article 42 of the Constitution and Article 6 of the ECHR. In this regard, the task of the Court is to assess whether the process including how to obtain evidence, has been fair. The basic constitutional principle relating evidence to due process is sanctioned in Article 32/2 of the Constitution, according to which no one may be found guilty on the basis of data collected unlawfully. In order to determine whether the process has been due, it should be checked whether the right of defence has been respected and it should be verified in particular whether the applicant has been given the opportunity to present his observation regarding the authenticity of the evidence and object its use[2].

2. **The position of the European Court of Human Rights (ECtHR) regarding the completion of investigation deadlines.**

The European Convention on Human Rights (hereinafter the ECHR) provides in its article 6 that:

The right to a fair trial.

1. In the determination of his **civil rights and obligations or of any criminal charge against him**, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.

[1] Constitution of the Republic of Albania, as amended by Article 32/2 "No one may be found guilty on the basis of data collected unlawfully.".

[2] www.gjykatakushtetuese.gov.al Decision no. 57 of 21.12.2012.

In guaranteeing this article, the jurisdiction of the ECtHR has analyzed in its jurisprudence not only the trial within a reasonable time not only in judicial aspect, but also the deadlines of preliminary investigations as an important element of the trial as a whole. The ECtHR's position on the reasonable time limit has been expressed in a number of cases of its case law:

"The reasonable character of the duration of a procedure is assessed according to the circumstances of the case, which require a general assessment[3].

However, some stages of the procedure may have taken place at an acceptable rithm, yet the overall duration of criminal prosecution may not exceed the "reasonable deadline[4]".

The ECtHR Court provides that: "A case is also of a very cautious nature when the suspicions pertain to white collar criminality ", when it comes to, for example, large-scale fraud involving several companies or for coclaved deals and for which a lot of expertise is needed[5].

In another decision, the ECtHR provides that: "However much a case may present some cohesive nature, the court cannot consider "reasonable" long and unexplained periods of stay in place of the procedure, in which there was a period of time of thirteen years and five months, in particular between the presentation of the case to the investigating judge and the questioning of the accused and witnesses, an interval of five years, as well as one year and nine months between the moment when the file was returned to the investigation judge and the resubmission of the interested for trial[6]. The work overload cited as an argument by the authorities and the various measures taken to remedy the situation may rarely have any decisive weight in the eyes of the Court[7].

The ECHR makes a detailed provision for the principle of "reasonable time limit" starting from Article 5 of the convention sanctioning the right to liberty of person and continuing with the exceptions and sanctioning the right to be brought before a court for questioning and to be tried within a reasonable time.[8] To continue with the provisions of Article 6 of the ECHR as cited above for due process.[9]

4. Duration of the term of the preliminary investigation.

The preliminary investigation is the first stage of criminal proceedings and the only stage during which evidence is collected by the prosecutor and the Judicial Police Officer (JPO) to prove the criminal offense and its perpetrator, therefore the code has

[3] See ECtHR case, Boddaert k. of Belgium, § 36.
[4] See ECtHR case Dobbertin, k. of France, § 44.
[5] See ECtHR case, Djerk k. Frances, § 30.
[6] See ECtHR case, Adiletta with others k. of Italy, § 17, § 17.
[7] See ECtHR case, Eckle k. of Germany, § 92.
[8] European Convention on Human Rights Article 5/3 " Everyone arrested or detained in accordance with the provisions of paragraph 1.c of this article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial."
[9] See the official website of the ECtHR https://hudoc.echr.coe.int/ for the cases mentioned.

set the following preliminary investigation deadlines[10]:

2. *The time limit for termination of investigations is three months, from the date that the name of the person whom the criminal offence is attributed to has been written in the register of notification of criminal offences, and six months for criminal offences provided for in letters "a" and "b" of Article 75/a of this Code.*

The time-limits set by the legislator seem reasonable, in order to discipline the prosecution body to complete the preliminary investigation within a certain time, but not always these time-limits, with all due diligence, fail to be respected by the prosecutor, therefore the legislator has also foreseen the institute of extension of the Prolongation of investigation time limit.

The legislation makes a separation between the time limit that is applied to ordinary juridication and those in the jurisdiction of the special court, where it is rightful for reasons of complexity that they present that the investigations cannot be closed within 3 months, extending the time limit to 6 months[11].

Through law no. 35 /2017 becomes a division of the articles regulating the extension of the terms of preliminary investigations and reforming the rights of the parties in the process as well as the dispositions of the prosecutor at the end of preliminary investigations.

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4.1. Extension of the term of preliminary investigation through the decision of the prosecutor.

The extension of the investigation deadlines comes to the assistance of the prosecution body, when it is objectively impossible to complete the preliminary investigation, within the time limits set by the code, 3 months for the prosecution with ordinary jurisdiction and 6 months for the special prosecution. Therefore, the legislator provides the periodic extension of the terms of the preliminary investigation every 3 months for the prosecution office with ordinary jurisdiction and 6 months in the case of the special prosecution office, in order for the prosecutor to carry out the investigative actions[12].

On the other hand, the legislator has decided that when the time-limits of preliminary investigation can be extended, these criteria are objective, so the prosecutor extends the preliminary investigations, when he cannot, within the time limit of 3 months or 6 months, close the investigative actions and these investigations will be exhaustive, regardless of what result they would bring. These periodic extensions are made by the prosecutor in cases of complex investigations or objective inability to complete them within the extended time limit[13]. So, the legislator has established as a legal criteri of extension, the objective impossibility to complete the investigations, with all

[10] Code of Criminal Procedure of the Republic of Albania, Article 323/2.

[11] The Constitution of the Republic of Albania categorized the jurisdiction of criminal offenses into those within the jurisdiction of ordinary courts and those within the competence of the special court.

[12] Article 324 1. A prosecutor may prolong the period of investigations up to three months. For the Special Prosecution Office, this time limit is up to six months

[13] Article 324 2. Further prolongations, each of them not more than three months, may be done by the prosecutor in case of complex investigations or when it is objectively impossible to terminate them within the prolonged period..

due diligence of the prosecutor because the investigations are complex and need to carry out many investigative actions, as may be the in-depth expertise that requires special knowledge. The other legal condition that the legislator has imposed is also the objective impossibility to close them within the set or extended time limit. Such situations are not necessarily complex, the prosecutor has shown due diligence, has determined the investigative actions to be carried out, has initiated the requests to obtain the evidence that is needed, but the receipt of this evidence has been delayed. Such a situation could be the taking arougatory letter out the territory of the Albanian state, which in practice takes up to 2 years.
The lawmaker has given the prosecutor the possibility to make periodic extensions every 3 months and 6 months, up to a maximum of 2 years.
In the meantime, the code exceptionally provides for an extension beyond the 2-year time limit, for cases of charges of organized crime and for crimes tried with a trial panel, the investigation period may be extended only with the approval of the General Prosecutor or the Head of the Special Prosecution Office for up to 1 year, for any extension not exceeding three months, without prejudice to the time limits for the duration of detention.
In exceptional cases, the 2-year term of investigation may be extended only with the approval of the General Prosecutor up to 1 year, for any extension not exceeding three months, without prejudice to the terms of the duration of detention[14]. So, the maximum period within which the preliminary investigation must be completed is 3 years, from the moment the name of the person attributed the criminal offense is registered.

4.2. Consequences of the evidence obtained after the expiry of the deadline.
The lawmaker has shown maximum care, not more for exctention rather than for the consequence that comes when the evidence is taken in excess of the investigative deadlines, since the lawmaker's goal is for the prosecutor to obtain the evidence within a period of validity and extension of the investigation and cannot leave his subjective discretion. In the present case, the lawmaker tries more than to discipline the prosecutor, to force him to conduct the investigative verifications as soon as possible, and if he cannot, make the extension and the evidence is obtained only within this extension period, otherwise, the evidence obtained after the expiry of the deadline cannot be used[15]. This incoming consequence on the evidence, the unusability, places the prosecution body in a situation of maximum lawfulness and diligence in relation to the extension of the preliminary investigation.

[14] Article 324/ Beyond the period of two years, for organized crime and for crimes that are adjudicated by a judicial panel, the term of the investigations may be prolonged only with the approval of the Prosecutor General or Chief of Special Prosecution Office, up to one year, not more than three months for every prolongation, without prejudice to the time limits of the precautionary detention in prison.
Puted in the CCP with law no8460 date 11.02.1999 for some changes on CCP
In exceptional cases, the 2-year term of investigation may be extended only with the approval of the General Prosecutor up to 1 year, for any extension not exceeding three months, without prejudice to the terms of the duration of detention.
[15] Article 324/3. Evidence obtained after the expiry of the deadline may not be used

5.Jurisdiction of the Supreme Court.

The position of the High Court has been different over the years, without creating a consolidated jurisdiction about this iusses. With some decisions of the Criminal Chamber, namely with decision no. 67, dated 04.02.2004 states: "...The Criminal Chamber of the High Court, as before, explains that, with the content of paragraph 4 of Article 324 of the Criminal Procedure Code, all those actions consisting in the collection of evidence by the investigating body (investigation) and that the investigative actions carried out (evidence collected) after the end of the investigation period, or after the end of the extended investigation period, cannot be used by the court. However, this does not mean that, during the judicial review, the court cannot obtain them, even primarily, in accordance with the law as new evidence...".

This position seems fair to us and in accordance with the constitutional and procedural norms and principles of prosecution by the prosecution body. In this case, the High Court rightly accepts, as the provision provides, only the unusability of investigative actions carried out outside the investigation deadline or beyond its extension, but it gives the prosecution body the possibility, with those valid evidence in its posesion, to request the trial of the defendant, in the state of the proceedings. Further, this jurisdiction determines that, if these investigative actions are unusable, the court by the rules of ordinary trial may take them on its own.

But in another position, not just the Supreme Court in decision no. 5, of 2008[16], in the initial jurisdiction, with the defendant Lulezim Basha, this court has argued that not only the investigative actions carried out in excess of the preliminary investigation deadline, but also the acts drafted in excess of this deadline are unused, such as the summons to serve the indictment, the act of service of the indictment and the request for trial, leaving the person with the status of the person under investigation and not receiving the status of defendant. Failure to obtain the status of defendant, due to the invalidity of the act of service of the charge, resulted in the dismissal of the trial, because the court did not have a person with the status of defendant, a status that is granted only by the prosecutor by the act of notifing the charge. This jurisdiction of the High Court, incorrect in our legal opinion, denied the prosecutorial body the constitutional functions, exercises the criminal prosecution, as the exclusive powers of the prosecutior.

At the same time, this leads to non-complete investigations and to discover the truth, since both the victim and the defendant have their legal interest in bleaching the truth and having a final decision, either to dismiss the prosecution, or to acquit the court, which should come after a full and not unsuccessful investigation.

The Constitutional Court, in decision no.57/2012, has stated "that not every procedural violation implies a violation of due process, so that we have a violation of this principle when the right in substantiall way is violated. In the present case, this position of the Supreme Court is contrary to this position and to the Constitutional position.

However, this unfair jurisdiction of the Supreme Court was not taken in consideration by the legal reform experts in the Criminal Procedure Code and was not reflected in the changes that the provision underwent.

[16] www.gjykataelarte.gov.al

6. Checking the decision to extend the deadline for the preliminary investigation.

The decision to extend the preliminary investigation is a decision that can be appealed and controlled at the preliminary investigation judge[17]. This control is necessary to avoid any kind of subjectivity or illegality in the extension of the preliminary investigation. The CCP, legitimizes only two subjects who can make an appeal and these are the defendant and the victim[18]. So the code restricts the right to appeal since it only recognizes 2 subjects, the defendant and the victim, while it does not entitle the person under investigation to have the right to appeal. This is a legal provision that needs to be adjusted, since most practically the extensions are made precisely when investigative actions are being carried out and the person has the status of the person under investigation and not all investigative actions have been completed. In practice, but also legally, the person acquires the status of defendant, by the act of notifying the accusation, which comes to the conclusion of preliminary investigations, when there is no need for either investigative actions or extension of the preliminary investigation, therefore this legal regulation should change, recognizing the right to appeal also to the person under investigation, since the extension of the investigation deadline and taking of evidence are directed and affect precisely the person under investigation. The time limit within which an appeal is made against the extension decision is 10 days starting from the day after the prosecutor notifies the decision[19]. In practice, various problems have been noted. The CCP has provided for the right to appeal against the extension decision, within 10 days from the moment of notification, not from the moment of receipt of the decision to extend the investigation and notification of this extension. Extension decisions in practice are generally announced at the end of the investigation, along with notification of the termination of the investigation, even though these decisions may have been taken a long time in advance. These decisions are not recorded in a special register in the prosecution office and the prosecutor's office must inform the persons about this extension, so that the parties have the possibility to appeal and effective control. Notification of these extensions at the end of preliminary investigations, when all the evidence has been obtained, leaves the right to appeal an in-effective remedy since it practically does not control it. Even if you're going to make an appeal, it's just formal. At this point there is therefore no need to adjust.

This appeal is processed in the Counseling Chamber, therefore the parties should

[17] Law No.8737, dated 12.2.2001, On the body and functioning of the Prosecution Office in the Republic of Albania. The law with nr. 97/2016 On the body and functioning of the Prosecution Office in the Republic of Albania. The verification by a judge comes as a need to change the organizational structure of the prosecution system from a centralized structure subordinated to the head (Law no. 8737/2001), in a decentralized system where the prosecutor became the owner of his case (law no. 97/2016).

[18] Article 325 Appeal to extend the term of investigations.

The defendant and the victim have the right, within ten days of notification, to appeal to the district court against the decision of the prosecutor to extend the term of investigations.

[19] Article 325 Request for prolongation of investigation time limits.

The defendant and the victim are entitled, within ten days of notification, to appeal the decision of the prosecutor prolonging the investigations in the district court

make an exhaustive and argumentative appeal[20].
But where consist the control on the extension of the deadline for the preliminary investigation?
Of course, the court checks whether the prosecutor has shown due diligence to complete the investigative actions within the period of 3 months or 6 months. If he could not, are we in cases where the investigation was complex and he could not carry out the investigative actions with all due care/diligence that he has shown? Should it fully abrogate the extension decision, as it has not met the legal conditions for the extension, or should it reduce the awakening time to a new procedural deadline? Should I declare the evidence obtained during this extension, which has been abolished, unusable? The provision, meanwhile, provides that: When an appeal is accepted and investigations are not to continue, the court orders the prosecutor to complete them within a period of no longer than 15 days. In this case, the court rescinds the extension decision and leaves 15 days to the prosecutor to compile the documents for the conclusion of the investigation, such as the conclusion of the investigation, the notification of the accusation, the request for dismissal or the request to send the case to trial.
Meanwhile, the other decision of the preliminary investigation judge is to modify the decision to extend the preliminary investigation, in terms of its extension, by setting a deadline for the court itself[21]. In this case, the court determines the time limit within which the investigation must be completed, leaving a time limit that it considers reasonable to conduct investigative actions and to close them.
The Criminal Procedure Code provides for the right of only the defendant, when he is notified of the completion of investigations, to request the conduct of additional investigative actions. In this case, the prosecutor himself extends the preliminary investigations and completes them within 30 days or up to 2 months, but without exceeding the overall deadlines of the preliminary investigation[22].

6.1. Problems of checking the extension of the deadline of the preliminary investigation.

If we are going to analyze the first case when the court decides that "investigations cannot continue", how should it be understood and what is the court obliged to express in the provision of its decision?
In this case, the court found fair, legal and convincing the grounds presented by the defendant and/or his defender, accepting the request. "Investigations cannot continue" should be understood in the sense that the prosecution body can no longer gather

[20] Article 325/2. The appeal is reviewed by the judge who adjudicates the parties' requests during the preliminary investigations in the Counseling Chamber within 10 days from the filing of the appeal with the court secretary.
[21] Article 325/3 When the appeal is accepted, but investigations must continue, the court orders the prosecutor to conclude them within a time limit established by the same court. Evidence collected within this time limit may be used
[22] Article 327/5. Where the prosecutor accepts the defendant's request to conduct additional investigations, they must be completed within thirty days of the submission of the request. This time limit can be extended only once and no longer than two months and in any case without exceeding the overall investigation deadline.

evidence and cannot carry out the actions for which it has made the extension. Should the court state in this decision about the procedural acts that the prosecutor has to perform to complete the deadline for the preliminary investigation, occurred in the conditions when the code has foreseen the deadline within which it has to end, 15 days. In the second case, when the court decides that the investigations can continue for a certain period of time by itself, the same reasoning applies. The court should set a reasonable time limit for the prosecution body to gather the evidence for which it has made the extension and to complete the investigations in a fair resolution of the case. In this case, it is understandable that the court does not find the extension period right, considering that these evidence can be collected in a shorter period. In this sense, the court should take into account the type of evidence required to be obtained, the institutions involved, the difficulty of obtaining it, so that the time limit left by it gives the prosecution the opportunity to provide the true evidence within this time limit, which should be sufficient for this purpose.

6.2 Return of documents by the Preliminary Hearing Judge.

A new procedural figure was created with the amendments of the Criminal Procedure Code and this is the preliminary hearing judge, who has the exclusive function of controlling the nvestigations, whether it is complete or not. When the judge deems the investigations to be incomplete, he may order these investigations to be completed, the court shall order them to be completed, determining the direction and, where appropriate, the acts to be performed[23]. The Code does not provide deadlines avalibel for the prosecutor to complete these investigations. The question that is asked is when the court returns the documents for completion to the prosecutor, should it set a deadline within which the investigative actions should be completed?
How long should this deadline be? Does it have to comply with the time-limits for the preliminary investigation provided for in Article 324 of the Code of Criminal Procedure. Is this deadline part of the preliminary investigation period or is it a judicial term? In practice, we have seen different positions from the courts, they have set a deadline within which the actions should be completed, but there were also cases when the court returned the investigative actions for completion and did not set a deadline within which the investigative actions should be completed.

Conclusions and recommendations

The reform of the Criminal Procedure Code brought about the creation of 2 clear procedural figures: that of the Preliminary Investigation Judge (PJSP) and that of the Preliminary Hearing Judge (PJSP). Each of these new procedural figures had a control on the deadline for the preliminary investigation.

[23] Article 332/ç Decision to complete investigations.
When preliminary investigations are deemed to be incomplete, the court orders their completion, determining the relevant direction and, as appropriate, the acts that must be conducted. When finding out invalid acts or non-usable evidence, the court shall declare them by means of a decision and, when possible, shall order their repetition. The court determines the time limit within which investigations must be completed and the date of the new hearing.

In particular, the PJSP checks the decision to extend the time limit for the investigation, while the PHJ, sets the procedural time limits within which the investigation must be completed, when reversing the acts to complete the investigations as incomplete.
Some questions are risen, should the decision to extend the term of investigation be taken by the court, as an entity over the parties, through the control it does? What are the deadlines that the court must respect, when returning the acts of investigation for completeness, the special ones provided by the Criminal Code Procedure? Can the court set deadlines for the completion of investigations, for the conduct of additional investigative actions? Should the court determine what are the acts that the prosecutor should compile, when she quashes the extension decision and leaves it until she completes the investigations? Can the court exceed the maximum term of 2 years or 3 years?
On the other hand, at a moment when this decision of the prosecutor is subject to appeal to the court, in the legal logic, as long as the court has its object and examines the appeals against the extensions of time limits made by the prosecutors, in this case, it is right for it to make the decision to extend or not the time limits of investigations, but not limited only to the extension of time limit, but also to the orientation of the prosecutor on the investigative acts / actions that he should carry out.
In its dispositions, the court in this case should not exceed the legal provisions regarding the terms of preliminary investigations, and at the same time always taking into account the concept of a reasonable term sanctioned by the ECHR, the Constitution and other legal acts.
It is necessary to intervene in the articels sanctioning the right to appeal against the decision of the prosecutor to extend the time limits, in order to gain access to this case and the person under investigation as a legitimate subject to appeal against the decision of the prosecutor to extend the time limits of preliminary investigations.

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Foreign direct investments in the tourism sector – Case of Albania

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Abstract

Foreign direct investment is a very important segment of a country's economic activity, due to the positive effects they bring. In a vacant way, their role is unwavering, especially in the economies of transition countries, as it has been and continues to be Albania of the 1990s, where foreign direct investment is often considered the locomotive of economic growth, due to the significant effects they have had in this direction.
Today, growth from the tourism industry is regarded as appropriate and considerable. Many nations view tourism as a potentially effective and promising means of economic growth. One of the ways that many nations can grow their tourism industries is through foreign direct investment (FDI). Tourism-related FDI poses unique problems and worries. However, the sector is increasingly being regarded to generate export income, create jobs, encourage economic diversification and a more services-oriented economy, aid in the revival of various fading metropolitan districts and cultural activities, and open remote rural areas.
Over time, it has become clear that tourism is crucial to a nation's growth, economy, and well-being. The fact that there are more and more travel destinations around the world and that investments in the industry are rising has led to the transformation of tourism into a sector that is closely related to socioeconomic development through the establishment of businesses, the expansion of infrastructure, and the receipt of export revenues. Capital, infrastructure, expertise, and access to international marketing and distribution networks are crucial in the tourism industry. Foreign direct investment (FDI) is typically thought to be one of the most effective techniques that might link all the components. Because of this, emerging nations are becoming more and more interested in luring such investment. Nevertheless, it is important to note that many nations approach FDI with skepticism and hope at the same time, despite all these realities.
This paper is going to analyze the characteristics and the level of FDI-s in in Albania during the last years. It will try to provide a panorama of FDI-s in Albanian tourism sector during the last years.

Keywords: FDI-s, tourism sector, Albania.

Introduction

Tourism is one of the most important sectors and with the major impact for the Albanian economy, both in monetary and employment terms, but also for its positive forecasts of further growth. The tourism sector in Albania during 2020 recorded a direct contribution of 169.7 billion ALL, with a total contribution of 10.6% of GDP, positioning this sector as one of the main contributors to the economic development. This, mainly, reflects the economic activity generated by industries such as hotels and other accommodation facilities, travel agencies and tour operators, airlines, and other ways of transporting passengers.
In 2020, the tourism sector recorded a 17.5% contribution to overall employment in Albania, creating about 194,600 new jobs. Investments in the tourism sector are 7.5%

against the total of all investments made in the country. Europe is the main source of tourists visiting Albania, occupying a volume of about 92.4%. However, tourists from the United States of America, or Asia and especially China, have marked a significant growing interest, thus indirectly encouraging the development of other tourism subsectors, especially historical and cultural tourism. However, compared to other Mediterranean basin countries, tourism development in Albania is still far from the potential representing the country's natural, historical, and cultural assets. Infrastructure, accommodation capacities, quality of services, supply and tourist product are all factors that have somewhat curbed the sustainable and consistent development of tourism in Albania, causing for an uncontrolled and chaotic development that has kept this industry on its feet, but jeopardizing its sustainability in long-term development.

1. Foreign Direct Investments in Albania

1.1. Some statistical data on FDI-s in Albania

Foreign investment can be used as a powerful development instrument for the country by contributing through capital improvement in the country, the introduction of new technologies, increasing productivity, improving the environment, creating jobs.

According to the balance of payment report published by the Bank of Albania, during year 2020, foreign direct investments in Albania have been 933 million euros. Mainly investments in Albania come from neighboring countries such as Italy and Greece. According to reports of the Albanian Investment Development Agency (AIDA), the sector with the highest foreign investment presence is that of services with 33% against the total of active companies or otherwise 4,204 companies. This sector is followed by that of trading resulting in 31% or a total of 4,025 companies. Other high-presence sectors of companies with foreign/common capital are those of the processing industry, construction, and information & communication with 1,598, 1,218 and 840 companies respectively.

According to statistics published by the Bank of Albania, foreign direct investments marked annual-based growth of 10% in 2021, reaching 1.03 billion euros. Even during the first six months of 2022 there is an increase in these investments in some sectors. Foreign direct investments marked significant increases in the first half of this year. Despite the pessimism that prevailed after the completion of the TAP pipeline, foreign investment is continuing to grow, supported by the high contribution of reinvested profits, but also by a strong increase in foreign national investment in real estate. According to the Bank of Albania, foreign direct investment in the first half of this year reached a record 634 million euros, the highest historical level ever recorded for this time of year. The value of foreign direct investment so far this year is growing by 35%, compared to the same period a year ago. Separately, the second quarter of the year also marked a record influx of Foreign Direct Investments, with 337 million euros. This value is 43% higher compared to the same period of the last year and at the same time the highest value of foreign investment ever recorded in a single quarter. Foreign direct investment is an important contributor to the increase of production capacities and economic growth, but also in balancing the external position of the economy. In the first two quarters of this year, foreign direct investment has exceeded the value of the current account's deficit. This factor may have had a significant impact on the overprice of the local currency on the exchange rate with the Euro.

Graph 1: Foreign Direct Investment (in million euro)

Source: Bank of Albania

If we analyze the sectoral division of FDI-s in Albania, there are some new developments. For year 2021, the sector that has absorbed the most foreign direct investment is that of real estate, so the property market is going through a rapid growth cycle in the last 2-3 years that has become the subject of discussions, debates, mainly regarding growth sources and resources where demand and price growth are being supported. What we also notice by looking at statistics is that demand in the property market relies not only on the demand of resident citizens, Albanians but also foreign investors. According to INSTAT, for the first six months of 2021, Albania had approximately 142 million euros of foreign investment in the real estate sector. This value accounts for more than 20% of the total foreign direct investment, being the sector that brought the largest investment flow for this period. Last year, foreign buyers' transactions accounted for about 21% of the official volume of the real estate market in Albania, measured by INSTAT. Due to Albania's position, the climate, the favorable taxation system compared to the countries where they live, more and more foreign citizens are deciding to invest in a property in Albania, especially in coastal areas. Always referring to the Bank of Albania data, the total stock of foreign investment in real estate, in mid-2021 year, reached 932 million euros, up 42.5% compared to the same period a year ago. Property investments already account for 9% of the total foreign direct investment stock in the country.

This fact shows that the cycle of the new flowering of the real estate market in Albania is also attracting attention from foreign nationals and foreign investors. Within these there may be different typology, one which is understood to be related to properties on the coast. There has been a growing interest in foreign citizens for years to buy property in coastal areas, typically these citizens came from Central and Eastern European countries.

2. Advantages of investing and legislation in the tourism sector

2.1. Advantages of investing in the Albanian tourism sector

According to AIDA (Albanian Investment Development Agency), Albania has adopted a liberal framework designed to create an attractive climate to foreign investors. The aim is to attract significant capital investment in tourism sector which

is considered strategic for the country's development.

- The liberal and reformist investment climate

The tourism law offers highly competitive incentives for foreign investors. The law offers a string of changes for Albania's tourism sector, aiming to turn it into one of the most important sectors of the economy in the coming years.

- Competitive labor costs

The average salary in Albania is one of the most competitive in the region.

- Competing taxes and incentives

Albania's tax system makes no difference between foreign and local investors. The competitive tax rate, VAT for tourism accommodation facilities, is 6%.

- The optimum geographical location

Albania's strategic location in the Western Balkans. Link with Italy through various ports in the Adriatic and Ionian Sea. Albania is a bridge between northern and southern Europe with an increasing network of transport links such as ports, roads, and airports.

2.2. **Investment Legislation in the tourism sector**

The investment legislation in the tourism sector aims to promote Albania as an attractive tourist destination for local and foreign visitors, supporting the development of sustainable tourism, ensuring that tourist service providers meet tourist requirements, in a healthy and safe environment, and respecting the needs of today's host communities and future generations.

- The Tourism Law

Law No. 93/2015 on Tourism offers a very competitive offer for foreign and local investors. The tourism law offers an attractive legislative framework for investments in the tourism sector, aiming to turn it into one of the most important sectors of the economy in the coming years.

- The Legislation on Strategic Investments

Albania has adopted a liberal framework designed to create a favorable investment climate for foreign investors. Special legislation for strategic investments is aimed at promoting and attracting strategic investment. The legislation's goal is to attract significant capital investments that are implemented in economic sectors which are considered strategic for the country's development. The objectives of this legislation are related to the country's economic development, employment, and development of regions. To this end, the legislation provides strategic investors with incentive and support mechanisms, considering these investments as priority and guaranteeing a range of measures, services, and administrative amenities.

- Some other incentives in the tourism sector

a. Exemption from taxation of corporate income

Accommodating objects such as "Four- and Five-Star Hotels, of special status" and holders of an internationally recognized and registered brand, are exempt from

taxing corporate income for a 10-year period for those facilities that receive special status until December 2024 starting at the beginning of the business activity, but no later than 3 years after obtaining special status.

b. Building tax exemption

The four-and-five-star hotel/resort, special status, as defined in tourism legislation and which are holders of an internationally recognized and registered brand name are exempted from the tax on buildings.

3. **Foreign direct investments in tourism sector**

Tourism development could not be done only by the government, so it is necessary to have funds and projects coming from other countries that have a great impact in tourism development. According to the National Agency of Tourism, there are some important foreign projects related to the tourism sector, which have started implementation in Albania:

- Port of Durres

The most famous project recently is the project of the port of Durres. This port is one of the sandiest in Albania, precisely its reconstruction will give tourism a boost. This project is expected to pass an expenditure of 2 billion euros, which will be invested by a foreign firm with nationality from the Emirates. The company is very famous mainly for these kinds of projects. This project is called the Durres Yacht & Marina Project, which will be 100% funded by a foreign investor. This type of project will have the function of a very important center of regional development as well as tourism. This project is being closely managed by AIDA (Albanian Investment Development Agency), which took over the management of the interests of the Albanian side. This type of project will make the relocation of the port and reconstruct the old part. It is thought to be the highest value investing ever made in tourism in the Balkan region.

- Vlora Airport

Vlora Airport is another investment funded by a foreign investor. This airport is expected to cost about 103 million euros, which will be financed through concessions. So, the airport is expected to be used for the next 35 years by an Italian firm which has financed this project. The only gain the government will receive is promotion of tourism and the value of concession.

- Blue Corridor

Highway investments are a very important element in the development of tourism, as it facilitates travel from one country to another by allowing tourists to move as many places as possible at a given time, increasing their personal spending, and increasing the income that indirectly is coming from tourism. This investment is known as the "Blue Corridor" project, which is fully funded by the Berlin process or otherwise

known as WBIF. This corridor will create the Milot – Fier axis, is expected to cost 1.18 billion euros and will enable some changes to the legal code for this highway, allowing a higher speed for cars in circulation.

- Investments in the northern Albania region

One of the regions with the largest and fastest development has been the northern region of Albania. Here we can mention Koman – Shala – Valbona and Boga – Theth relief. These areas have been the most affected areas by foreign investment, mainly investment coming from the European Union. The IBAS project was the project which enabled the creation of private businesses.

3.1. The expected effects of these investments

- Port of Durres

This is thought to be one of the largest investments ever made in tourism in a Balkan country, the expectations from this project will be as follows:
- Increasing the number of businesses to be created and located around the Durres coast, which will indirectly increase the number of customers.
- The possibility that multimillionaires will stay with their luxury boats at the port of Durres, where they will pay for the necessary expenses, as well as the expenses of staying near the port and sailing at the sea.
- It will create an increase in Albania's image, attracting as much attention as possible from foreign tourists. Already many and many people will use the port to travel.
- It will cause even the most important place around Durres, which is Tirana, to be overcrowded by foreign tourists.

- Vlore Airport

A new diversification is coming to Albania's airlines, which will bring some positive effects:

- It will already be easier for holidays to choose between airlines and their prices.
- It will be easier to determine more flexible schedules and reduce travel delays.
- This new airport will enable countries that have not had direct travel with Albania, make contracts and have their direct lines.

- Blue Corridor

Already the movement through Albania becomes even easier with the new highway, which has no speed limits, simply positive effects, which are:
- Firstly, this project will shorten the time for a tourist to move from one place to another.

- With time reduction and speed increases, long waits through traffic are minimized and fuel spending is minimized, which will indirectly bring benefits not only in tourism but also in the environment.
- While it will be one of the most major highways there will be an increase in businesses near it, such as hotels, motels, fuels, restaurants, fun resorts for families, etc.

➢ Investments in the northern Albania region

One of the most developed areas in recent years is the north of Albania, this for the very fact that EU funds dedicated themselves to areas that have been difficult to explore, these investments brought these effects:
- It enabled the creation of new hostels and infrastructure around these hostels.
- The areas that were previously impossible to explore became accessible to foreign tourists and local tourists as well.
- Forest-covered areas such as Valbona, were reconstructed and became explorable areas, already Valbona is one of the protected areas of UNESCO.
- The infrastructure was created to move towards mountainous regions such as Theth and Boga. This infrastructure enabled private investment in these areas.

Conclusions

- Today, growth from the tourism industry is regarded as appropriate and considerable. Many nations view tourism as a potentially effective and promising means of economic growth. One of the ways that many nations can grow their tourism industries is through foreign direct investment (FDI).
- Tourism is one of the most important sectors and with the major impact for the Albanian economy, both in monetary and employment terms, but also for its positive forecasts of further growth. The tourism sector in Albania during 2020 recorded a direct contribution of 169.7 billion ALL, with a total contribution of 10.6% of GDP, positioning this sector as one of the main contributors to the economic development.
- Infrastructure, accommodation capacities, quality of services, supply and tourist product are all factors that have somewhat curbed the sustainable and consistent development of tourism in Albania, causing for an uncontrolled and chaotic development that has kept this industry on its feet, but jeopardizing its sustainability in long-term development.
- Compared to other Mediterranean basin countries, tourism development in Albania is still far from the potential representing the country's natural, historical, and cultural assets.
- According to statistics published by the Bank of Albania, foreign direct investments marked annual-based growth of 10% in 2021, reaching 1.03 billion euros. Even during the first six months of 2022 there is an increase in these investments in some sectors.
- If we analyze the sectoral division of FDI-s in Albania, there are some new developments. For year 2021, the sector that has absorbed the most foreign direct investment is that of real estate, so the property market is going through a rapid

growth cycle in the last 2-3 years.

- The investment legislation in the tourism sector aims to promote Albania as an attractive tourist destination for local and foreign visitors, supporting the development of sustainable tourism.
- Special legislation for strategic investments is aimed at promoting and attracting strategic investment. The legislation's goal is to attract significant capital investments that are implemented in economic sectors which are considered strategic for the country's development.
- There are some important foreign strategic projects related to the tourism sector, which have started implementation in Albania during the last years which is expected to have a great impact on the Albanian tourism and economic growth also.

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Improving the traffic level of service in an urban road segment of Tirana

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Abstract

Nowadays, with a very dynamic development of the economy and as a result of the increase in the demand for movement by vehicles, in some major cities of Albania, traffic congestion has become a worrying problem in many urban road segments, especially in large cities, where mainly the city of Tirana (Albania capital city). This traffic jam has a negative impact on road users in direct and indirect economic losses, such as excess fuel consumption, long travel times, vehicle consumption, driver stress due to fatigue, air pollution from vehicle exhaust and also acoustic pollution. One of the problematic road segments is the one from "Lana Bridge" on Elbasan Street to the entrance to the Sauk neighborhood.
The speed of the free flow of traffic is an important characteristic for the analysis of the capacity and level of service of urban roads, but in this case of traffic congestion in several hours of the day, the judgment on the speed of the flow as an indicator cannot is accepted, since the movement of traffic is done at a very low speed and often with traffic jams. The objective of this study is to analyze the situation, determine the causes and propose solutions with easy measures without interfering with the road infrastructure. As it is known from the theory of traffic engineering that the flow of traffic on a road or road segment is influenced by many factors such as the volume of traffic, the purpose of the movement, the economic development of the urban area, the characteristics of the road, the weather, the environment, and the drivers vehicles. All these factors, individually or in combination, affect the speed of the free flow and consequently lead to traffic jams. Quantitative measures of these factors require analysis and evaluation, to provide quick and possibly cost-free solutions.

Keyword: urban road, traffic jam, O/D matrix, trip purpose, peak hour.

1 Introduction

The problem of overpopulation in urban areas is the most common problem that appears in big cities. One of the main causes of urban overpopulation is urbanization due to the development and concentration of the economic and industrial sector in a small territorial area.
Mobility in urban areas is one of the sharpest problems faced by traffic management bodies. Currently, the traffic jam in several time slots in the road segment under study is a major problem that requires a solution. As a result of the traffic jam in this road segment, many social and economic activities and requests for movement of the community are hindered. The traffic jam causes delays, economic losses, environmental pollution and especially a lot of stress for the drivers who are the daily

users of this road segment.
The causes of traffic jams can be different and related, such as the ability of drivers (individual behavior), the increase in the number of vehicles or even the road infrastructure. In many urban areas of the city of Tirana, many of these indicators do not work efficiently, enabling traffic jams and, as a result, the Level of Service (LoS) (Highway Capacity Manual) will decrease, and it will bring a decrease in the speed of vehicles on the road.
From the official data, it can be seen that the development of the city in recent years has made significant progress in terms of economy, the increase in the number of the population by 1.0 - 1.5% per year (Tirana Municipality), the increase in the number of cars by an average of 4-5% per year (Institute of Statistics), but also a development in the road infrastructure.
Of course, these developments affect the increase in demands for movement, and as a consequence, the need for transport infrastructure and traffic management. So the city of Tirana the capital city of the country is facing the above problems of traffic jams in some main arteries of the road network. Traffic congestion problems are caused not only by road infrastructure, by rapid urbanization, but also by the quantity, quality and analysis of data related to mobility, as well as the lack of traffic planning and control systems, etc. (O. Z. Tamin 1984).
One of the main axes that has a problem with traffic jams is the road segment from the Lana River Bridge, Elbasan Road to the entrance to Sauk Figure 1.

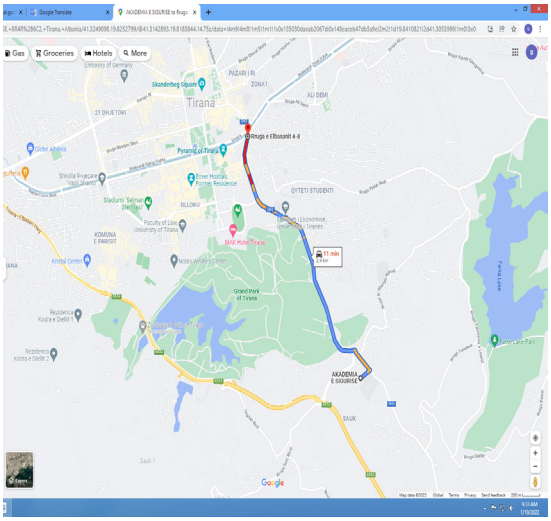

Figure 1 The track of the road segment taken in the study.
The bad traffic situation not only in this road segment but in general in the main axes of the city, have almost not been taken into analysis to solve the traffic jam problem. Although Studies have been done for the Traffic Management Plan (PMM), or Studies for Urban Traffic and Signalization Plans, currently there are serious problems with traffic flows in some time slots.
The basic performance evaluation parameters of a road segment can be speed of movement or LoS, delays, and safety of movement. In order to solve the situation, it

is required to do a detailed analysis of the causes of traffic jams, their classification and to intervene with the least possible measures and costs.
Traffic volume is also an important factor affecting the conditions of free flow of traffic.
Analysis of traffic flow, volume, purpose of movement, "peak" hours, origin and destination of movements, are the quantitative factors that influence and must be carefully studied to understand traffic behavior. By determining the causes, we enable the scanning and diagnosis of the traffic jam condition. In addition to the factors mentioned above, the road infrastructure, or the attributes of the vehicle drivers, also have a major impact on traffic mobility. In this analysis, we will not deal with the road infrastructure since this road segment has good geometric parameters, and on the other hand, it is not possible because there is no physical possibility due to the buildings that are next to the road.

2 Study Area

The road segment alignment from "Lana Bridge" on the Elbasani road up to Sauk. It is a main urban road which also serves as the main entrance/exit axis from Tirana to the South-Eastern area of the Albania. The geometric parameters of the road segment of this urban area are very good, the road has four lanes, two lanes in each direction (2x2). The road segment under analysis has a length of 2.9 km, with 2 intersections with traffic lights, and 6 entrance/exit access for vehicles on the main road under study.
Also, this road segment is one of the roads served by urban public transport, with 4 urban lines that serve the entire area.
The area through which this road segment passes is one of the commercial, economic, social, medical, and educational areas with great density. Commercial units extend along the entire road segment. The number of vehicles entering and leaving the side access/exit roads has a not very significant impact on the performance of the main road under study.

3 Methodology

Traffic management methods often apply network flow models that use data collected by a monitoring system to assess the current state of the network and predict its evolution over time. Origin-Destination (O/D) travel flows constitute one of the main elements to evaluate the condition of the network or a road segment.
This paper is focused on the collection and analysis of travel data such as origin/ destination, purpose of travel, and "peak" hours during the day. Traditionally, in order to obtain all the data for traffic volume parameters, in order to carry out studies and engineering analyzes for traffic planning or management, three measurement methods are used;

- Automatic.
- Manual.
- Interview on the street.

The application of each method provides different traffic data. The application of one or another method depends on the purpose of the study. The developments of the last decade in Intelligent Transport Systems (ITS) enable the collection of many traffic parameters in real time and in a large spatial area. Such data have the potential

to improve the accuracy of traffic parameter and network condition estimates along with traffic forecasts and, therefore, result in more effective traffic management.
The traffic jams of the road segment taken in the study are only for a few hours of the day. This shows that the large flows in these special hours of the day have almost the same origin and destination, and almost the same goals. In our case, the goal is to improve LoS, through the application of soft measures. And for this reason, we need to know the origin and destination of the trip, but also the purpose of the trip.
From the data of the Directorate of Mobility and Traffic Management near the Municipality of Tirana, it results that the volume of traffic is not high, but a small reason is enough (stopping the vehicle, poor maneuvering of the vehicle, stopping the bus on the side of the road, or passing pedestrians not on the white lines) during traffic movement in several "peak" hours and cause traffic jams and long queues. Figure 2 shows the traffic jam situation during the morning of the road segment under study (the red sign indicates a traffic jam)
.

Figure 2. ***Work Day Traffic jam.***
Based on these information or concerns, we judge that in order to achieve results in traffic management, we need data on the daily and hourly distribution of traffic flows, "peak" hours, O/D matrix, and the purpose of the trip. What is much more important for the purpose of our analysis is the benefit of the O/D matrix and the purpose of the trip. But this requires conducting an interview on the road, stopping vehicles and filling in the O/D matrix, as well as the purpose of the trip. In order to benefit from this database, a very large volume of work, many human resources and technical tools are required. Not having the opportunity for an interview of the above kind, we relied on the data received from the Municipality of Tirana, according to a Study of the Urban Traffic and Signaling Plan in 2018 (Tirana Municipality).

The methodology used is structured in three steps. In the first step, information was collected from the Municipality of Tirana regarding the hourly and daily traffic flows in this road segment, the O/D matrix and the purpose of the trip.
The second step was the processing of the data obtained by evaluating the daily hourly traffic flows for 12 hours (07.00-19.00) as well as the "peak" hours.
The third step is the analysis of the weight occupied by O/D trips according to public or non-public institutions that carry out their activity in this area and that use this road segment.
From the data processing, we obtained the daily average hourly flows for 12 hours (07:00-19.00) on working days, from Monday to Friday. All data collected, analyzed, and selected manually, benefiting Tables 1, and 2.
In order to clearly understand the "peak" hours of the traffic flows, we also obtained the data of the traffic flows with periods every half hour.

Time	Actual traffic flow (v) vehicles/hours/direction	Capacity (c) vehicles/hours/direction	LoS v/c
07.00-07.30	579	1900	0.30
07.30-08.00	1185	1900	0.62
08.00-08.30	1014	1900	0.53
08.30-09.00	684	1900	0.36
09.00-09.30	540	1900	0.28
09.30-10.00	463	1900	0.24
10.00-10.30	320	1900	0.17
10.30-11.00	309	1900	0.16
11.00-11.30	340	1900	0.18
11.30-12.00	359	1900	0.19
12.00-12.30	367	1900	0.19
12.30-13.00	323	1900	0.17
13.00-13.30	338	1900	0.18
13.30-14.00	299	1900	0.16
14.00-14.30	268	1900	0.14
14.30-15.00	280	1900	0.15
15.00-15.30	1090	1900	0.57
15.30-16.00	1083	1900	0.57
16.00-16.30	607	1900	0.32
16.30-17.00	379	1900	0.20
17.00-17.30	376	1900	0.20
17.30-18.00	269	1900	0.14
18.00-18.30	250	1900	0.13
18.30-19.00	227	1900	0.12

Table 1 Traffic flows every half hour

From the data analysis, we conclude for peak hours 07:30-0
8:30 12:00-13:00 and in the afternoon peak hour 15:00-16:00.

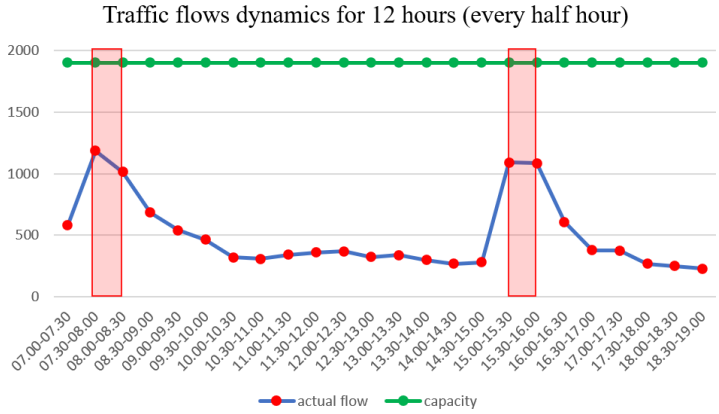

Figure 4 shows clearly the peaks (breaks) of the maximum flows of "peak" hours.

Figure 3. Dynamics of traffic flow for 12 hours (measured every half hours).

From the collected data, we evaluated the hourly traffic flows for 12 hours, (07.00-19.00) "peak" hours in the morning, and later in the day.

With the data collected for the road segment, we have evaluated the purpose of the journey, traffic flows and traffic destinations originating from the Lana Bridge to the Safety Academy in entrance to the Sauk neighborhood.

All destinations	Vehicles/hours	% of Vehicles	Proposed moving hours
Economy Faculty	160	13.5%	9:00
Justice Faculty "Luarasi"	165	13.9%	9:00
The student city	0	0.0%	
Kindergartens	70	5.9%	8:00
Nursery school	60	5.1%	8:00
Faculty of History and Philology	125	10.5%	10:00
US Embassy	0	0.0%	
Hospital	0	0.0%	
Police academy	90	7.6%	10:00
Guard of the Republic of Albania	30	2.5%	10:00
Sauk neighborhoods	0	0.0%	
Elbasan	0	0.0%	
Total	700	59%	

Table 2 Origin Destination, flow at "peak" hour and proposed time moving (soft measures)

According to the quantitative data obtained according to the above Table, traffic jams in the "peak" hours are due to the purpose of the journey of the drivers of the vehicles destined for the area in the Faculty of Economics, Faculty of History and

Philology, Faculty of Foreign Languages, US Embassy, the Terminal of intercity lines for passengers in the South-East area, in some kindergartens and nurseries schools, in the area of Sauk, and in the Police Academy.
Soft measures to improve the traffic flow consist in changing generally the university and other destinations as showed in Table 3 (R. Dowling)
The graph after the intervention of soft measures. As you can see, we have a square of the "peak" hour curve and improvement of the LoS.

Time	Actual traffic flow (v) vehicles/hours/ direction	Traffic flow after application of soft measures	Capacity (c) vehicles/ hours/direction	Actual LoS v/c	After LoS v/c
07.00-07.30	579	579	1900	0.30	0.30
07.30-08.00	1185	815	1900	0.62	0.43
08.00-08.30	1014	850	1900	0.53	0.45
08.30-09.00	684	856	1900	0.36	0.45
09.00-09.30	540	718	1900	0.28	0.38
09.30-10.00	463	647	1900	0.24	0.34
10.00-10.30	320	320	1900	0.17	0.17
10.30-11.00	309	309	1900	0.16	0.16
11.00-11.30	340	340	1900	0.18	0.18
11.30-12.00	359	359	1900	0.19	0.19
12.00-12.30	367	367	1900	0.19	0.19
12.30-13.00	323	323	1900	0.17	0.17
13.00-13.30	338	338	1900	0.18	0.18
13.30-14.00	299	299	1900	0.16	0.16
14.00-14.30	268	268	1900	0.14	0.14
14.30-15.00	280	280	1900	0.15	0.15
15.00-15.30	1090	729	1900	0.57	0.38
15.30-16.00	1083	864	1900	0.57	0.45
16.00-16.30	607	867	1900	0.32	0.46
16.30-17.00	379	699	1900	0.20	0.37
17.00-17.30	376	376	1900	0.20	0.20
17.30-18.00	269	269	1900	0.14	0.14
18.00-18.30	250	250	1900	0.13	0.13
18.30-19.00	227	227	1900	0.12	0.12

Table 3 general traffic flows every half hour

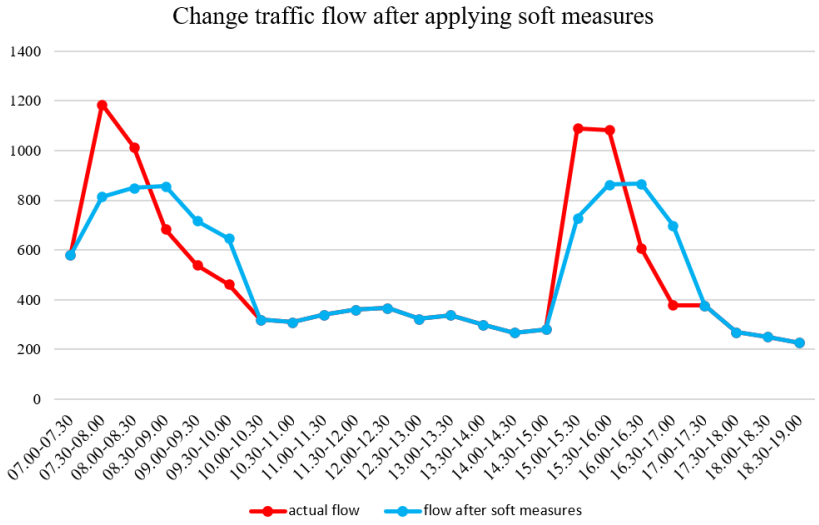

Figure 4 Change traffic flow after applying soft measures

4 Conclusions

The recommended Mobility Management techniques should be supported and planed by government, public and non-public institutions in the metropolitan area. By applying the change of working hours according to the above examples we can manage the flow of vehicles in the "peak" time bands average 25% before day and 43% after day. With these soft mobility management measures, i.e., in the demand for movement, our goal is to smooth the curve of time flows by eliminating the "peak" hours of the morning and after the day. (See Figure 5 blue curves).

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Albanian court cases against new types of money laundering in Albania

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Abstract

Albania continues to be at high risk among other Southwestern Balkan countries, due to considerable illegal activity of money laundering. This situation is caused because of legal malpractice and institutional lack of reaction with proper measures to prevent illicit flow money being enrolled in financial and economical activity. Albania has a long history of challenges fighting money laundering and is one of the countries that are constantly monitored by international institutions, such as Moneyval.

Albania has several government institutions that are responsible for monitoring economic and financial activities in order to prevent money laundering. During all these years, the law enforcement agencies of the financial investigations, prosecutor office and the courts have followed cases, which have resulted in punishments for the offenders. Through the investigation of these court cases, researchers and academics have become aware of the types of schemes that have been used by criminals to money laundering in Albania. The interest arises studying these cases is to understand the criminal modus operandi and to make possible building and developing new mechanisms to prevent and fight this criminal phenomenon in a very efficient way.

This paper aims to analyze the main final court decision that has convicted the perpetrators of money laundering crimes in Albania. The analysis will focus more on the most frequent forms of money laundering detected by Albanian law enforcement agencies, evaluating them as generalized cases to better understand criminal behavior and their current trends in the economic and financial activity in our country. The paper will also focus on giving recommendations on how to react institutionally to the current proven cases of money laundering, in order to reduce the possibility of their repetition, by changing the administrative practices and regulatory framework in some sectors of economic and financial activity. This research is intended not only to study and bring to the attention to the public and other researchers the current situation obtained from the court decisions against money laundering in Albania, but also as an incentive paper to intensify the future work, in order to find and implement new effective means against illicit flow moneys in our country.

Keywords: Court Decision, Money Laundering, Criminal Code, Illicit Flows.

Introduction

This paper related on court cases on forms and types of money laundering in Albania is presented as a need for familiarization and updating with the new methods of this phenomenon with criminal consequences for our country. This document refers to concrete cases, which have been exhaustively investigated by the law enforcement bodies, for which the respective decisions have been given by the courts.

For many years, Albania has been in a threatening reality of the security of markets and assets, which come as a result of criminal flows that try to induce in the economy. Since 2011[1], Albania was listed for the first time in the "grey zone" by the Committee

[1] https://rm.coe.int/report-on-fourth-assessment-visit-anti-money-laundering-and-combating-/1680715a9f.

of Experts for the Evaluation of Measures against Money Laundering and Terrorist Financing (Moneyval), which is a permanent specialized structure at the Council of Europe. In the assessments that this committee has carried out for years on Albania, regarding measures against money laundering and terrorist financing, it considers this country on the gray list, as a result of the high and continuous risk of money laundering.

Due to the reforms undertaken and reflection on the ongoing recommendations of international institutions, Albania came out of the gray area in 2015[2], marking a positive step for economic-financial stability and immunity from illegal flows in these areas. However, our country was given five years to address the problems to finally get out of the danger zone. In the 2018 report[3], Moneyval decided to include Albania in the list of countries that would be subject to an extended follow-up or monitoring by this mechanism, due to the problems that were found in the last report, related to the measures against prevention of money laundering and the fight against terrorism. In 2020[4], due to the deficiencies found in not fulfilling Moneyval's recommendations and strategic weaknesses to combat money laundering, Albania was again included in the gray list and currently is continuing to remain under extended monitoring regarding the fulfillment of obligations to implement changes in the legal framework and all other necessary measures in accordance with the standards required. This period serves as another test for our country, raising expectations not only for the requested legal changes, but also in strengthening the commitment and executive institutional and law enforcement arrangements to investigate and punish cases of money laundering effectively.

Another serious international source of expertise that monitors Albania for the risk of money laundering is the Basel Institute of Governance based in Switzerland. This institution is dedicated in its activity to prevent and fight corruption and money laundering worldwide, analyzing for each country specific indicators, which are translated into ranking indices according to the established realities. In 2021[5], the Basel index, during its periodic publication, ranked Albania in 72nd place out of 110 countries included in the analysis, underlining that the most negative score that derives the final result for this country is focused on financial transparency.

With the aim of understanding the international evaluations on the money laundering situation in Albania, we have also referred to the annual monitoring carried out by the US State Department (USSD) in this field. In his latest report[6], it is cited that Albania remains vulnerable to money laundering due to corruption, organized crime networks and weak legal and governmental institutions. USSD emphasizes that our country has an extensive economy based on cash and the informal sector, with large remittances from abroad. The main income is generated from crimes such as drug trafficking, tax evasion and smuggling. It is also emphasized that Albanian organized crime organizations have links with networks operating in Europe and South America.

The US Department of State specifies that investment in real estate and other business projects are among the most used methods for hiding illegal income. But, despite numerous investigations into money laundering, the number of those prosecuted or

[2] https://rm.coe.int/annual-report-for-2015/1680714c11.

[3] https://rm.coe.int/moneyval-annual-report-2018/168097e0a2.

[4] https://rm.coe.int/moneyval-annual-report-2018/168097e0a2.

[5] https://baselgovernance.org/publications/basel-aml-index-2021.

[6] https://www.state.gov/reports/2021-country-reports-on-human-rights-practices/albania.

convicted remains low. The report states that ongoing judicial reforms, including the vetting of judges and prosecutors as well as the creation of specialized police units to target economic and financial crimes, have improved Albania's prospects for addressing the issue of money laundering.
From the international references of the above reports, it can be seen that Albania continues to have considerable problems with money laundering, so the need to find efficient preventive methods should keep also the academic and student levels engaged. In this context, knowing the jurisprudence of Albania on the cases judged for money laundering offenses in recent years, the study of these phenomena is carried out in a more complete way and measures are taken to cut the way in the future. For this reason, the cases that will illustrate the phenomenon of money laundering in our country are an initiative to fulfill together the academic and research mission that belongs to us for the prevention and fight against this serious crime in Albania.

Criminal Law and Money Laundering

The criminal offense "Proceeds laundering as a criminal offense or criminal activity", provided by Criminal Code of Albania[7], defines the forms of proceeds laundering as a criminal offense, such as:
• Exchange or transfer of property, in order to hide or cover its illegal origin, knowing that this property is the product of a criminal offense or criminal activity;
• Concealing the true nature, source, location, disposition, ownership, or rights in respect of property, knowing that such property is the product of a criminal offense or criminal activity;
• Gaining ownership, possession or use of property, knowing, at the time of taking it over, that this property is the product of a criminal offense or criminal activity;
• Carrying out financial actions or fragmented transactions, to avoid reporting, according to the legislation for the prevention of money laundering;
• Investments in economic or financial activity of money or items, knowing that they are products of a criminal offense or criminal activity;
• Advising, assisting, inciting or publicly calling for the performance of any of the acts defined above.

Court Cases of Money Laundering

Case No 1

In 2015, the commercial company "NG" was founded in Norway, with a capital of about 3,000 Euros. The first contract is signed for the sale of 5% of the shares of the Norwegian Company "NG" to the Norwegian citizen GE at a price of 150 Euros and 95% of the shares to the citizen O. J, at a price of 2750 Euros. Only a few weeks later, O. J sold to J. B 40% of the shares purchased in the Norwegian Company "NG", with a sale price of 600,000 Euros. Referring to the financial documentation sent by mail from the Norwegian authorities, it appears that the only investment made in the company "NG" is the initial capital in the amount of 3,270 Euros. After that, no other investment was made by the partners in cash or in kind or through the profits of the company. According to the accounting office, the amount of the initial capital of this company was spent in 2016 with payments in small amounts, rent, legal expenses, etc.

[7] Article 287 of the Criminal Code of Albania.

The citizen O.J opened a personal bank account in Albania, at the "IB" Bank, and only six days after opening this account, a transfer worth 200,000 Euros arrived from the Philippines. The sender of the funds turned out to be J. B. and the details of the transfer are "capital investment". Also, Citizen J. B opened a personal bank account with the same bank in which, on the same date when the transfer to Citizen O. J arrived, a transfer from the Philippines worth 300,000 Euros arrived. The sender of the transfer is the citizen J.N himself and the details of the transfer are "capital investment". In the above transactions, the true origin of the source of income is hidden. By concealing the true nature of the transactions, the perpetrators in question have realized the displacement of significant monetary values derived from criminal activity. The money was transferred to Albania, with the aim of hiding its illegal origin and then investing it in legal economic and financial activities.

Buying cheap and selling a company's shares at a high price is known as a common scheme used to launder money that comes from an illegal financial activity. Moreover, in the case under trial[8], the money was transferred from the Philippines, a country known as a tax haven. In conclusion by court it is established that the total sum of 500,000 Euros transferred by citizen J.N from the Philippines to the accounts of citizens JN and OJ in Albania has an illegal criminal origin. The two defendants in cooperation between them have transferred this money to Albanian banks, using as justification the purchase of the shares of the company "NG", in order to hide or cover their illegal origin, thereby committing the criminal offense of money laundering of the money provided for in article 287 of the Criminal Code.

Case No 2

In this case, the court confirmed that the citizen X. T worked on behalf of other two suspects V.C and S.C, in the period 2003-2006, based on a power of attorney, which provided that he worked on behalf for the amounts it converted, to justify the purchase of an informal object. His work was done informally as a currency exchange office and all the money he converted in the years 2003-2006, he transferred to the bank accounts of the suspects, keeping his profits.

In the trial, it was proven that the suspect X.T cooperated with other two citizens, not only in the years 2003-2006, but extended this cooperation for cleaning the products of the criminal offense in the years 2014-2017. In the court session, the citizen X.T admitted that he carries out money exchange activity in a building owned by other suspects and specifically by "CGroup Ltd", which he informally bought only the first floor of the building. Due to the future ownership of this object, it is proven that this sale was fictitious, just to justify the continuous collection of sums of money to S.C and CGroupLtd.

As was mentioned above, until this stage of the investigation, there is evidence that the suspect X. T has cooperated intensively and continuously with other citizens to launder over 100,000 Euros, taking his share of the profit. In the conditions where, until 2006, X.T acted as a natural person and provided assistance in the cleaning of the proceeds of the criminal offense in this capacity, the amount of 435,400 Euros that went on behalf of the suspects was not the subject of the investigation, which raises reasonable suspicions that other physical and legal persons are also involved in this activity. On the other hand, this citizen helped S.C and CGroup LTD in the years 2014-2017, giving them significant sums of 130,000 Euros and then in other years

[8] High Court of Albania Decision 143/2016.

100,000 and 600,000 Euros to launder other money.
Referring to this case in High Court of Albania, there is evidence that the citizen X.T has directly being involved in the activity of money laundering in favor of the citizens S.C and V.C that came from the criminal offense "Exploitation of prostitution", provided by Article 114 of the Criminal Code, but also the way of the action of this citizen, through the recognition of state mechanisms and the way of banking, informal and formal economy. In the period of the commission of these criminal acts, but also later, the informal currency exchange market has been widespread and continues to be committed by many citizens. Their deposits in the bank are declared to come as a result of this activity, but without appearing as a subject registered for carrying out such an activity in the tax authorities. This is one of the ways by which the undeclared money of people with criminal records can be cleaned[9].

Case No 3

The court proved during the judicial investigation that the Italian citizen A.D became a client of the "I S" bank in Tirana, where he declared that he is employed as a commercial agent. This citizen, deposited in the bank three checks for 45 days clearing, with a total value of 115,000 Euros, issued by Bank "AC" in San Marino in the name of A.D. These checks, after the end of the 45-day period and the verification process with the issuing bank AC, became valid in the personal account of A.D. Later this citizen deposited 11 other 45-day clearing checks, with a total value of 524,000 Euros, to make them valid in the account. After verification with the issuing bank AC. On 16.10.2015, citizen A.D withdrew 50,000 Euros for business. On 22.10.2015, citizen A.D has 65,000 Euros (cash) and 524,000 Euros worth of checks converted on 04.12.2015 at the IS bank.
To prove the source of the funds described above, the citizen A.D has deposited in the bank deposit contract as well as a personal account statement with the AC bank in San Marino, according to which he had a balance of 729,846 Euros, but that the source of that fund is not understood. In the same way, this citizen has declared in the bank that his company has business relations in Albania (it supplies dental clinics with equipment), among others, and the ZK Clinic, and that his goal was to move part of his activity to Albania, but had not yet made an investment.
In the court session, in front of the Tirana Apeal District Court, the person under investigation, A.D, in the presence of the translator, stated that he has an inherited family business, but unspecified and did not launder money. He claimed that he graduated in San Marino and, being very close to where he lives, he made a bank transaction and neither he nor his father, who is a doctor in Albania, committed a crime, but he came for investments and the money is in the bank. Meanwhile, what is proven as the true purpose of the citizen A.D was that the money he had deposited in Bank I.S would be used to purchase real estate in Tirana and Durres in the name of his father, solidifying the illegal source of these funds into legitimate assets.
Based on the above court decision[10] the court comes to the conclusion that the money laundering mechanism in the case was planned through money transfers in the form of checks in scattered amounts. This money was initially deposited in San Marino without declaring a prior source. While in Albania they are justified for the continuation of the business, while they are planned to be used to strengthen them by

[9] High Court of Albania Decision 1113/2017.
[10] Appeal Court of Albania Decision 1213/2018.

investing in real estate. Illegal and undeclared source of income, fraud with business activity and purchase of assets under cover fully prove the true criminal purpose of money laundering.

Case No 4

Based on the verification carried out, it was found that the citizen A.M and H.M submitted a request on the document for the construction permit. The request in question was recorded in the Vlora Local State Archive. With the letter the Vlora Local State Archive has responded to Mr. A.M. that the research carried out in the fund of the Executive Committee of the City of Vlora for the year 1989 has shown that there is no construction permit on behalf of A.M.

According to the court, the documents of the Vlora Local State Archive, attached in year 1989, used by the defendant A.M and H. M to ask permission for new constructions activity are forged documents as they contain false and untrue circumstances. This is because the verifications carried out in the Vlora Local State Archive do not result in the existence of a "Construction Permit". On the contrary, the residents were informed by the 2007 documents of the Vlora Local State Archive that there are no construction permits in their favor in this archive. Despite the above finding, it is proven that the request for the registration of two assets and the relevant documentation with forged documents, by both citizens, was filed, specifically after the negative response to the above letters. These documents are also materially falsified, since the 2014 technical-graphic expertise act showed that the signatures in the name of S.K. are forged by the imitation method and are not the signatures of this citizen.

According to the court, the citizens were aware of the falsity of these documents and despite this they used them on their interest, to gain the Certificate of Ownership for the above property. According the judicial investigations, it was found that citizens A.M and H.M concluded the business contract by notaries' deed with the entrepreneurial companies "MH" and "B". Based on this contract, citizens A.M and H.M presenting themselves as owners of real estate with of the respective cadastral area, have agreed on the construction of a 13-storey building on the above assets, which will be built at the expense of the construction companies of above

According to above court decision[11], judges concluded that the citizens in charge, through illegal forgery actions and in fraud with the law, have benefited from illegal properties in their favor. Through their assets, they have set up a money laundering scheme, benefiting from continuous income from rents and activities on these assets, as well as they have legally deposited in the bank the income from the sale of some of them. These revenues appear to have been later transferred to another business entity in the coastal area of Vlora for the purchase of two villa buildings owned by high-ranking citizens. This proved fully evidences the scheme and the true purpose of the destination of the money obtained by illegally activity, incorporating money into other legal assets to lose the traces of origin.

Conclusions

The money laundering schemes mentioned above in the decisions of the High and Appeal Courts are criminal activities that find new ways to hide their true origin.

[11] High Court of Albania Decision 1112/2019.

The challenge of law enforcement institutions is to understand the complexity of the purposes of the actions and the complexity of the actions to clarify the criminal role of each person in money laundering.
According to the aforementioned money schemes, it is the duty of the state institutions to create a stronger cooperation between them to effectively detect this type of criminal activity.
Detecting these types of money laundering requires experts in various fields, including real estate experts, financial experts, accountants, and market analysts.
Referring to the above money laundering schemes, it is necessary to follow up all cases and to unify the practices of administrative actions in the future, in order to reduce the possibility that persons with criminal intentions take advantage of the lack of vigilance of our regulatory systems.
Legal and by-law initiatives need to be taken to improve those aspects of business activity in order to increase their transparency and reduce tendencies to launder money in forms not yet recognized by Albanian legislation.
Law enforcement bodies and academic research institutions must cooperate to collect and exchange information from investigations and trials of money laundering cases with the aim of designing new investigative and detection strategies for this criminal phenomenon.

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Parimi i mirëbesimit kontraktor sipas legjislacionit civil të Republikës Shqipërisë dhe të Republikës së Kosovës[1]

Prof. Assoc. Dr. Luan Hasneziri

Abstrakt

Mirëbesimi është nga parimet më të rëndësishme të së drejtës kontraktore. Për nga rëndësia që parqet ai ka vlerë pothuajse të njëjtë me parimin tjetër kontraktor, që është ai i lirisë kontraktore ose i autonomisë së vullnetit të palëve. Të dy këto parime përbëjnë ndër parimet më themelore të së drejtës kontraktore, pasi gjejnë zbatim jo vetëm në të gjitha kontratat e veçanta që palët mund të lidhin ndërmjet tyre, por edhe gjatë fazës së negociatave që zhvillohen për lidhjen e kontratës, si dhe gjatë fazës së ekzekutimit të tyre.

Ky punim do të trajtojë dy çështje kryesore. Në çështjen e parë do të bëhet një analizë teorike dhe praktike të parimit të mirëbesimit kontraktor sipas legjislacionit civil në Shqipëri. Në këtë çështje do të trajtohen në veçanti kuptimi dhe elementet përbërës mirëbesimit kontraktor, si një nga parimet kryesore të së drejtës kontraktore, fazat në të cilat ai është i zbatueshëm në rastet e kontratave të lidhura nga palët, si dhe problemet e dala nga praktika gjyqësore në lidhje me zbatimin e këtij parimi.

Në çështjen e dytë të këtij punimi do të analizohet kuptimi dhe veçoritë që paraqet ky parim sipas të drejtës civile kosovare, duke u ndaluar posaçërisht edhe me krahasimin e tij me legjilsacionin civil të Shqipërisë. Në trajtimin e kësaj çështje do të ndalemi në mënyrë të hollësishme edhe në analizën e një koncepti të veçantë që njihet nga teoria dhe praktika gjyqësore e shtetit të Kosovës që është i "detyrimit për përkujdesje", si edhe elementët që e përbëjnë një koncept të tillë.

Analizën e mirëbesimit kontraktor sipas këtyre dy legjilsacionve e çmojmë të rëndësishme, në mënyrë që të shikohet ndikimi që ka patur secili legjislacion tek njëri-tjetri, tek secili prej shteteve, të cilat i përkasin një kombi, por që siç do ta shikojmë kanë ndryshime jo të vogla në legjislacionet civile të tyre dhe jo vetëm. Në fund të punimit do të jepen edhe konkluzionet si dhe bibliografia ku ai është bazuar.

Fjalë kyqe: e drejta kontraktore, mirëbesimi kontraktor, detyrimi për përkujdesje, drejtësia dhe ndershmëria, liria kontraktore

1. Kuptimi dhe zbatimi i parimit të mirëbesimit sipas legjislacionit civil në Shqipëri

Pavarsisht nga rëndësia që paraqet kuptimi i parimit të mirëbesimit ai nuk është përkufizuar nga legjislacioni civil shqiptar, duke ia lënë këtë çështje për zgjidhje shkencës së të drejtës kontraktore. Nëse i referohemi Fjalorit të Gjuhës së Sotme Shqipe, rezulton që mirëbesimi nënkupton: "besim i plotë që dikush sillet ndaj nesh në mënyrë të ndershme e të çiltër, se vepron me qëllime të mira dhe nuk na mashtron"[2]. Autorë të ndryshëm të së drejtës kontraktore në Shqipëri e kanë përkufizuar konceptin e mirëbesimit, në mënyrë pak a shumë të ngjashme. Kështu nëse i referohemi një grupi të njohur autorësh, sipas tyre mirëbesimi nënkupton korrektesën dhe ndershmërinë që kërkohet në marrëdhëniet juridiko-civile[3].

[1] Ky punim paraqitet nga Prof. Assoc. Dr. Luan Hasneziri, pedagog në Fakultetin e Drejtësisë në Universitetin e Tiranë dhe në Universitetin jo Publik Albanian University, Tiranë.

[2] Shih për më tepër: Fjalorin e Gjuhës së Sotme Shqipe, botim i Akademisë së Shkencave të Shqipërisë, Instituti i Historisë, Tiranë 2006, faqe 354.

[3] Shih për më tepër: Nuni, A; Mustafaj, I; Vokshi, A; *"E drejta e detyrimeve, Pjesa e përgjithshme"*,

Një autore tjetër e njohur e kësaj fushe e përkufizon mirëbesimin si një gjendje mendore dhe shpirtërore me cilësi abstrakte, të pamatshme teknikisht apo ligjërisht që lidhet me ndërshmërinë në qëllime dhe në sjellje, me qenien besnik dhe i drejtë, me mungesën e keqdashjes, të mashtrimit apo të kërkimit të një avantazhi të vetdijshëm apo të pavetëdijshëm ndaj një personi tjetër. Mirëbesimi në veprimet kontraktore është ndershmëria në sjellje dhe në veprimet civile dhe tregtare që manifestohet në plotësimin me korrektesë dhe bensikëri të standarteve të arsyeshme tregtare[4].
Duke iu referuar kuptimit që i jep doktrina e të drejtës kontraktore, por edhe praktika gjyqësore mund të themi që koncepti i mirëbesimit përbëhet nga disa elementë që janë:
a) Mirëbesimi nënkupton në çdo rast një sjellje korrekte të personit. Për këtë element të konceptit ligjor të mirëbesimit pyetja që shtrohet është çfarë duhet të kuptojmë me "sjellje korrekte"? Përgjigjen për këtë pyetje nuk mund ta gjejmë duke iu referuar dispozitave të Kodit Civil, i cili e ka të pamundur objektivisht që të parashikojë përkufizimin e çdo termi ligjor, sepse në të kundërt nga një tërësi normash juridike abstrakte dhe të fomuluara në mënyrë preçize, do të shndërrohej në një komentar të të drejtës civile.
Prandaj për t'iu përgjigjur kësaj pyetjeje do të duhet t'i referohemi doktrinës dhe jurisprudencës që trajton këtë çështje që ka të bëjnë me marrëdhëniet kontraktore ndërmjet palëve. Sipas mendimit juridik më të pranuar, *me sjellje korrekte do të kuptojmë veprimet që janë në përputhje me normat dhe rregullat e vendosura nga shoqëria dhe morali që tregojnë se personi është i rregullt dhe i përpiktë në marrëdhënie më të tretët dhe që zbaton rregullisht detyrimet që merr përsipër ose premtimet që bën.*
b) Mirëbesimi nënkupton një sjellje të paanshme të personit ndaj palës tjetër kontraktore. Koncepti i sjelljes së paanshme është më i thjeshtë për t'u kuptuar, sesa ai i sjelljes korrekte, ku me sjellje të paanshme kuptohet sjellja e drejtë e personit që nuk ndikohet nga ndonjë paragjykim apo paramendim. Sjellja e paanshme dhe koncepti i paanësisë është trajtuar nga Gjykata Kushtetuese e Republikës së Shqipërisë, si dhe nga Gjykata e Strasburgut, në shumë vendime të saj, *në rastet e ushtrimit të detyrave nga funksionarët publikë, veçanërisht nga gjyqtarët*, në zbatim të pikës 1 të nenit 6 të Konventës Evropiane për të Drejtat e Njeriut.
Sipas praktikës së konsiliduar të Gjykatës Kushtetuese të vendit tonë dhe të Gjykatës së Strasburgut për të përcaktuar nëse një sjellje është e paanshme, ajo duhet t'i nënshtrohet dy testeve: (i) testit subjektiv, ku duhet marrë parasysh çdo bindje personale dhe sjellje e një gjyqtari të caktuar, domethënë, kur një gjyqtar ka patur ndonjë paragjykim ose anshmëri personale, ndaj një çështje të caktuar; dhe (ii) testit objektiv, domethënë, duke u siguruar nëse gjykata vetë dhe mes aspekteve të tjera, përbërja e saj, ofronin garanci të mjaftueshme për të përjashtuar çdo dyshim në lidhje me paanshmërinë e saj[5].
c) Mirëbesimi nënkupton sjelljen e personit sipas kërkesave të arsyes. Për këtë element kontraktor çështja që shtrohet është se kur do të konsiderohet që sjellja e palës është e arsyeshme. Për këtë çështje mund të themi se *do të konsiderohet që pala sillet në mënyrë të arsyeshme kur ajo gjykon dhe vepron drejt dhe në mënyrë të logjikshme.*
Për realizimin e interesave të tyre kontraktore, secila prej palëve, sigurisht që do të veprojë që të nxjerrë sa më shumë përfitime materiale ose jo materiale, por veprimet e saj, në çdo rast duhet të jenë të drejta dhe brenda kufijve të logjikës. Këto veprime që

Tiranë 2008, faqe 12.

[4] Tutulani-Semini, M; *"E drejta e detyrimeve dhe e kontratave, Pjesa e përgjithshme dhe e posaçme"*, shtypur në shtypshkronjën *"Real-Stamp"*, Tiranë 2016, faqe 57.

[5] Shih për më tepër: Vendimet e Gjykatës Evropiane të të Drejtave të Njeriut, të datës 24.2.1993, në çështjen Fey kundër Austrisë dhe të datës 19.1.2013, në çështjen Volkov kundër Ukrainës.

të konsiderohen të arsyeshme duhet të jenë të tilla që jo vetëm të mos dëmtojnë palën tjetër, por edhe të bëjnë të mundur realizimin e qëllimit të palëve, i cili mund të jetë respektivisht lidhja e kontratës ose ekzekutimi i saj, në
dhe garantimi i sigurisë juridike të palëve kontraktore dhe të shoqërisë në tërësi.
d) Mirëbesimi nënkupton sjelljen e ndershme të personit në marrëdhëniet kontraktore.
Koncepti i ndershmërisë duket që është një term i diskutueshëm nëse ai gjen zbatim në të drejtën kontraktore, në kushtet kur palët hyjnë në një marrëdhënie, ku secila prej tyre të nxjerrë sa më shumë përfitime materiale ose jo materiale, ndaj palës tjetër. Ky koncept bëhet akoma më i diskutueshëm në rastet e marrëdhënieve tregtare ose kontratave tregtare, ky qëllimi kryesor i palëve është nxjerrja e fitimit nga marrëdhënia e krijuar me palën tjetër.
Autorë të ndryshëm të së drejtës kontraktore pranojnë që veçanërisht në kontratat tregtare një lloj sjellje e "pandershme ose e pamoralshme" është e pranueshme, përderisa palët kanë hyrë në treg me qëllimin për të fituar. Kështu këto autorë arsyetojnë që në fushën e tregtisë mashtrimi "i mirë" i palës tjetër, siç mund të jetë mburrja e mallit që pala do të shesë, ose reklamimi i tepërt i cilësive të sendit, etj, janë të pranueshme, e rëndësishme që sjellja të mos jetë me qëllim të keq, për t'i shkaktuar dëm palës tjetër[6].
Mirëbesimi kontraktor si një nga parimet e të drejtës së kontratave duhet të dallohet nga koncepti i mirëbesimit që zbatohet në të drejtën e pronësisë, siç është për shembull posedimi me mirëbesim. *Në rastin e fundit mirëbesimi nënkupton një gjendje subjektive që ka të bëjë me padijeninë e personit për cenimin e të drejtave të personave të tretë.* Në të drejtën kontraktore mirëbesimi përfaqësohet nga një detyrim dhe shprehet me veprime aktive të personit për të vepruar në mënyrë korrekte, të paanshme, të ndershme dhe sipas kërkesave të arsyes[7].
Parimi i mirëbesimit është parashikuar në disa dispozita të Kodit Civil, në fuqi. Përsa i përket pjesës së përgjithshme të këtij Kodi, mund të themi që dispozita që bën rregullimin e përgjithshëm të parimit të mirëbesimit është neni 422 i tij, i titulluar: "Korrektesa e pjesëmarrësve në detyrim". Sipas kësaj dispozite *kreditori dhe debitori duhet të sillet ndaj njëri-tjetrit me korrektesë, me paanësi dhe sipas kërkesave të arsyes.*
Nga përmbajtja e kësaj dispozite, rezulton që ajo jep edhe disa nga elementet më të rëndësishëm të konceptit ligjor të mirëbesimit, siç janë korrektesa, paanësia dhe sjellja sipas kërkesave të arsyes. Këto elementë janë mbajtur parasysh nga ana jonë kur është trajtuar më sipër koncepti i mirëbesimit kontraktor, ku përveç këtyre tre elementeve janë trajtuar edhe elementë të tjerë që e përcaktojnë mirëbesimin një akt ose veprim aktiv, të kryer me qëllim ose paramendim, si dhe elementi i ndershmërisë, të cilët nuk përmenden në këtë dispozitë[8].
Sipas kësaj dispozite gjatë zhvillimit të bisedimeve paraprake ose të negociatave për lidhjen e kontratës, palët duhet të sillen me mirëbesim ndaj njëra tjetrës. Termi mirëbesim në këtë rast nënkupton ekzsitencën e të gjitha elementeve të tij që janë trajtuar më sipër, të cilët secila prej palëve është e detyruar që t'i zbatojë, pasi në rast se nuk i zbaton dhe për shkak të sjelljes së saj personi tjetër pëson një dëm, personi që nuk ka zbatuar parimin e mirëbesimit është i detyruar që të shpërblejë dëmin e shkaktuar[9].

[6] Shih për më tepër: Benussi, B; *"Obligimet dhe kontratat përgjithsisht"*, botimi i Ministrisë së Drejtësisë, Tiranë 1931, faqe 75.
[7] Shih për më tepër: Galgano, F; Galgano; *"E drejta private"*, botim i tretë, përkthyer nga Alban Brati, botim i Universitetit Luarasi, Tiranë 2006, faqe 404.
[8] Neni 422 i Kodit Civil të Republikës së Shqipërisë parashikon:
"Kreditori dhe debitori duhet të sillen ndaj njëri-tjetrit me korrektesë, me paanësi dhe sipas kërkesave të arsyes".
[9] Paragrafi i parë i neni 674 i Kodit Civil të Republikës së Shqipërisë parashikon:

Në fazën e negociatave për lidhjen e kontratës, para se ajo të lidhet zbatimi i parimit të mirëbesimit, nënkupton që palët duhet t'i japin njëra-tjetrës çdo informacion të mundshëm që ato janë në dijeni dhe që është i nevojshëm për lidhjen e kontratës. Në praktikën e përditshme tregtare, sidomos në rastet e kontratave konsumatore kur njëra palë është tregtari ose shoqëria tregtare dhe pala tjetër është konsumatori, në fazën e negociatave për lidhjen e kontratës, pala tregtare për shkak të aktivitetit që kryen, zakonisht disponon informacion profesional, duke i krijuar palës tjetër një besim të plotë për aftësitë profesionale që ka pala e parë, si dhe për informacionin që ajo disponon. Në këto raste ligji civil parashikon që *pala që zotëron një informacion të tillë është i detyruar që t'i japë palës tjetër me mirëbesim informata dhe udhëzime me qëllim lidhjen e kontratës*[10].
Parimi i mirëbesimit shtrihet edhe në rastet kur palët pas kalimit të fazës së negociatave, kanë arritur që të lidhin një kontratë, por që ajo është shpallur e pavlefshme, ndërkohë që njëra prej palëve e ka ditur shkakun e pavlefshmërisë që në fazën e negociatave, por në shkelje të këtij parimi nuk ia ka treguar atë palës tjetër. Pala që e ka ditur ose nga tërësia e rrethanave të faktit duhej të dinte shkakun e pavlefshmërisë para lidhjes së kontratës, por që nuk ia ka bërë me dije palës tjetër, është e detyruar që të shpërblejë dëmin e shkaktuar palës, e cila pa fajin e saj besoi që kontrata e lidhur ishte e vlefshme, ndërkohë që në fakt ajo nuk ishte e tillë[11].
Parimi i mirëbesimit gjen zbatim edhe gjatë fazës së interpretimit të kontratës. *Ky parim kërkon që kontratës t'i jepet ai kuptim që i japin asaj palët kontraktore që janë korrekte, të paanëshme dhe që sillen sipas rregullave të arsyes, pavarisht nga fakti që të dy palët ose njëra prej tyre, nuk dëshiron që t'i japë një kuptim të tillë.*
Zbatimi i parimit të mirëbesimit gjatë interpretimit të kontratës mundet që t'i japë asaj një kuptim të ndryshëm nga ai që rezulton nga kuptimi gramatikor i fjalëve, në qoftë se ky kuptim është i ndryshëm nga kuptimi që i jep kontratës një person që vepron në mënyrë korrekte dhe të paanshme. Në pjesën më të madhe të rasteve ky parim në interpretimin e kontratës përdoret si mjet për të mos konsideruar si të vlefshme sjelljen e rreme që njëra palë thotë që ka kryer, ndërkohë që në të vertetë ajo ka kryer një sjellje tjetër.
Përsa i përket fazës pasi është lidhur kontrata dhe ajo është në ekzekutim nga palët, përveç nenin 422 të Kodit Civil, i cili parashikon parimin e përgjithshëm të mirëbesimit kontraktor që gjen zbatim në të gjitha fazat e lidhjes dhe ekzsitencës së kontratës, në këtë Kod gjendet edhe një dispozitë tjetër e cila merret në mënyrë specifike me ekzekutimin e detyrimeve nga palët dhe në të cilën parashikohet në mënyrë të shprehur parimi i mirëbesimit. Sipas saj *debitori dhe kreditori duhet të tregojnë kujdesin e duhur dhe të jenë të përpiktë në përmbushjen e detyrimit sipas përmbajtjes së tij.*
Kjo dispozitë ligjore duke patur karakter specifik gjen zbatim vetëm pasi kontrata është lidhur ndërmjet palëve dhe ndodhet në fazën e ekzekutimit dhe nuk mund të zbatohet për rastet kur palët ndodhen në fazën e negociatave për lidhjen e kontratës dhe as në rastet kur kontrata është zgjidhur dhe palët duan të rregullojnë pasojat e zgjidhjes së saj. Po ashtu, duke qenë se dispozita e mësipërme, përmend në mënyrë të shprehur debitorin dhe kreditorin si palë të marrëdhënies kontraktore, kjo nënkupton që ajo zbatohet vetëm kur palët kanë lidhur një kontratë të dyanshme, në bazë të të cilës kanë të drejta dhe detyrime reciproke dhe nuk mund të zbatohet në rastet e

"Palët gjatë zhvillimit të bisedimeve për lidhjen e kontratës, duhet të sillen me mirëbesim ndaj njëra-tjetrës".

[10] Neni 675 i Kodit Civil të Republikës së Shqipërisë parashikon:
"Në rast se një palë kontraktuese disponon njohori profesionale dhe pala tjetër i ngjall asaj besim të plotë, e para ka detyrim t'i japë asaj me mirëbesim, informata e udhëzime".

[11] Paragrafi i dytë i neni 674 i Kodit Civil të Republikës së Shqipërisë parashikon:
"Pala që ka ditur, ose që duhet të dinte shkakun e pavlefshmërisë së kontratës dhe nuk ia ka bërë të ditur atë palës tjetër, detyrohet që të shpërblejë dëmin që kjo e fundit ka pësuar, për shkak se besoi pa fajin e vet në vlefshmërinë e kontratës".

kontratave të njëanshme[12].
Mirëbesimi kontraktor është mëshiruar edhe në disa vendime të praktikës gjyqësore në Shqipëri, si një nga parimet bazë të të drejtës kontraktore, ku mozbatimi i tij nga pala ka sjellë si pasojë zgjidhjen e kontratës dhe kur ka qenë rasti edhe shpërblimin e dëmit të shkaktuar. Kështu në një rast të praktikës gjyqësore për një mosmarrëveshje të lindur ndërmjet shoqërisë "AGE", shpk dhe shoqërisë "Alb", me person të tretë Bankën X dhe me objekt zgjidhje të kontratës, *Gjykata e Rrethit Gjyqësor, Tiranë, në vendimin e saj nr. 19, datë 11.01.2001,* ndër të tjera shprehej:
"...nuk do të ishte keqbesimi triumfi real i palëve në këtë kontratë, por mirëbesimi i prezumuar në praktikat e njohura të veprimtarisë së tyre ekonomiko-financiare. Mirëbesimi dhe mashtrimi përjashtojnë njëri-tjetrin dhe pozita e dyshimtë e të paditurit nga kalimi i nxituar i shumës së sigurimit të padisë nga banka për llogari të tij, nuk qartëson hapësirën e duhur nënkontraktore. ...[13]".
Në një rast tjetër të praktikës gjyqësore që ka të bëjë me një mosmarrëveshje ndërmjet Bashkisë Tiranë, e cila ishte në rolin e palës porositëse dhe një shoqërie private që kishte marrë përsipër pastrimin e qytetit të Tiranës nga mbetjet, *Gjykata e Rrethit Gjyqësor, Tiranë, në vendimin e saj nr. 2201, datë 07.03.2012,* ndër të tjera arsyetonte:
"...Gjykata çmon se është e nevojshme të ndalet edhe në përcaktimin që bën Kodi Civil për kontratat. Sipas nenit 674 të këtij Kodi: "Palët gjatë zhvillimit të bisedimeve për lidhjen e kontratës, duhet të sillen me mirëbesim ndaj njëra-tjetrës. Vertetë kontrata është lidhur sipas procedurave të prokurimit publik, në mbështetje të ligjit nr. 7971, datë 26.07.1995, por pala e paditur Bashkia Tiranë, duhej të mbante parasysh edhe interesat e palës tjetër.
Kjo edhe në mbështetje të nenit 681 të Kodit Civil ku parashikohet: "Kur interpretohet një kontratë, duhet të sqqarohet se cili ka qenë qëllimi i vertetë dhe i përbashkët i palëve, pa u ndalur në kuptimin letrar të fjalëve, si dhe duke vlerësuar sjelljen e tyre në tërësi, para e pas përfundimit të kontratës". Në kontratën e lidhur midis palëve në nenin 13.2 të kontratës është parashikuar se: "Nevoja për kryerjen e volumeve shtesë do të përcaktohet nga Bashkia e Tiranës, me kërkesë të Drejtorisë së Punëve Publike..." dhe në nenin 13.3 të kontratës parashikohet se: "Pas ndjekjes së procedurës përkatëse ligjore dhe asaj të parashtruar në kontratë, mbi nevojën për punime për volumet shtesë dhe përballimit financiar, mes Bashkisë së Tiranës dhe sipërmarrësit do të lidhet akt marrëveshje për kryerjen e punimeve". ...[14]".
Parimi i mirëbesimit kontraktor është trajtuar edhe në një rast tjetër të praktikës gjyqësore që ka të bëjë me një mosmarrëveshje të shoqërisë 2K Group shpk, kundër Agjensisë Kombëtare të Privatizimit dega Tiranë, me objekt kthim shume në favor të paditësit që rrjedh si pagim i padetyruar i bërë nga ana e tij. Në vendimin e saj nr. 602, datë 22.02.2001, Gjykata e Rrethit Gjyqësor Tiranë, në këtë çështje, ndër të tjera arsyeton:
"...Subjekti paditës rezulton fitues i ankandit të organizuar nga AKP, dega Tiranë në lidhje me shitjen me rezervë të objektit Kovaçanë e re. Nga procesverbali i mbajtur rezulton mosdorëzimi i objektit nga ana e të paditurit. Për efekt të ankandit shoqëria 2K Group shpk ka depozituar garancinë bankare. Paditësi ka pretenduar shkelje të klauzolave mbi shitjen me rezervë të pronës, pa lidhje të kontratës. Në këto kushte shkaku i detyrimit nuk konsiderohet i lidhur me kontratën, por me detyrimin i cili në rastin konkret është pasojë e një shkaku të gabuar.

[12] Neni 455 i Kodit Civil të Republikës së Shqipërisë parashikon:
"Debitori dhe kreditori duhet të tregojnë kujdesin e duhur e të jenë të përpiktë në përmbushjen e detyrimit sipas përmbajtjes së tij".
[13] Shih për më tepër: Vendimin nr. 19, datë 11.01.2001 të Gjykatës së Rrethit Gjyqësor, Tiranë.
[14] Shih për më tepër: Vendimin nr. 2201, datë 07.03.2012 të Gjykatës së Rrethit Gjyqësor, Tiranë.

Në këtë mënyrë shoqëria 2K Group shpk është me mirëbesim në destiancionin motivues të pagesës. Akti i garancisë bankare verteton shkakun e detyrimit nga paditësi, por nuk përbën sigurim të kontratës. Pagimi i vlerës 10% nga paditësi për shitjen me rezervë të pronës, është motiv determinant lidhur me natyrën e detyrimit, por jo me sigurimin e një kontrate të palidhur, sipas të cilës paditësi ka bërë depozitimin përkatës, ndërkohë që moskontraktimi nga i padituri përbën abuzim të së drejtës pasi krijon shpresën për lidhjen e kontratës. ...[15]".
Përveçse nga praktika gjyqësore e gjykatave të zakonshme, parimi i mirëbesimit kontraktor është trajtuar edhe nga *Kolegjet e Bashkuar të Gjykatës së Lartë në Vendimin e saj Unifikues nr. 13, datë 09.03.2006,* ku në këtë Vendim, ata ndër të tjera shprehen që:
"...ligjvënësi duke ditur situatat që ishin krijuar, faktin që ligji kishte sjellë pasoja që sindikatat kanë vepruar në mirëbesim, ka dashur të rregullojë pasojat me ligjin nr. 8340/1. Para rregullimit që ky ligj u bën pasojave kemi ligjin "Për kthimin dhe Kompensimin e Pronave ish Pronarëve" që sikurse u tha, shfuqizon të gjitha aktet që vijnë në kundërshtim me të, përfshirë këtu edhe dekretin nr. 204, si dhe çdo akt tjetër ku ka interesa të ishpronarëve. Ligji nr. 8340/1 nuk ka të bëjë me të drejtat e fituara nga ish pronarët, por rregullon ato raste kur prona nuk ka qenë ndonjëherë e ish pronarit. ...[16]".

2. Mirëbesimi kontraktor sipas legjislacionit civil të Republikës së Kosovës

Parimi i mirëbesimit është trajtuar edhe nga e drejta civile kosovare dhe legjislacioni civil i këtij i këtij shteti. Në rregullimin e këtij parimi ligji i Kosovës ka ndjekur shembullin e Kodeve Civile italiane dhe franceze, duke e parashikuar atë, kryesisht tek pjesa e Detyrimeve dhe jo tek pjesa e kontratave, gjë që vlerësojmë se është një zgjedhje e drejtë, sepse dispozitat e kësaj pjesë kanë karakter të përgjithshëm dhe gjejnë zbatim në të gjitha dispozitat e Kodit Civil të Republikës së Kosovës.
Në ndryshim nga Kodi ynë Civil në fuqi, ai i Kosovës e përkufizon, në mënyrë të shprehur konceptin e mirëbesimit kontraktor. Sipas këtij legjislacionit civil kosovar *mirëbesimi përbën një standart sjelljeje që karakterizohet nga ndershmëria, çilrësia dhe marrja parasysh e interesave të palës tjetër.*
Nga mënyra sesi e përkufizon Kodi Civil kosovar mirëbesimin kontraktor, mund të themi se ai paraqet disa elementë, ku një nga kryesorët është se ai përbën *një standart sjelljeje të caktuar.* Kjo elemet nënkupton, në radhë të parë që *mirëbesimi përfaqësohet në çdo rast nga një akt ose veprim konkret i personit.* Pavarsisht se termi sjellje e personit nënkupton, në përgjithësi si veprimet aktive, ashtu edhe mosveprimet e tij, në rastin e mirëbesimit kjo sjellje e personit shfaqet vetëm në formën e veprimeve aktive.
Mirëbesimi, po ashtu nënkupton një veprim të qëllimshëm të personit të kryer prej tij me dashje të drejpërdrejtë, në funksion të realizimit prej tij të interesave konktraktore. Në qoftë personi ka vepruar nga pakujdesia, pavarsisht nga forma e saj, si dhe kur ai ka vepruar me dashje të tërhortë, nuk mund të bëhet fjalë për ekzistencën e mirbesimit kontraktor.
Një pjesë e rëndësishme e këtij elementi të mirëbesimit, është se ai i referohet një standarti sjelljeje konkrete. *Standarti i sjelljes që duhet të mbahet parasysh në këtë rast, zakonisht është ai i një njeriu të arsyeshëm dhe me nivel mesatar.* Pyetja që mund të shtrohet në këtë rast është: Mbi çfarë kriteresh do të vlerësohet ky standart sjelljeje?
Për këtë pyetje përgjigja e dhënë nga doktrina dhe praktika gjyqësore në Kosovë është që standarti i sjelljes në veprimtarinë kontraktore të palëve, vlerësohet mbi bazën e kritereve objektive dhe jo mbi bazën e kritereve subjektive. Si rregull, për të drejtën

[15] Shih për më tepër: Vendimin nr. 606, datë 22.02.2001 të Gjykatës së Rrethit Gjyqësor, Tiranë.
[16] Shih për më tepër: Vendimin Unifikues të Kolegjeve të Bashkuara të Gjykatës së Lartë, nr. 13, datë 09.03.2006.

nuk paraqet rëndësi vlerësimi subjektiv i brendshëm që personi ka mbi sjelljen e tij, e rëndësishme është se si vlerësohet kjo sjellje, në botën e jashtëme, nga një njeri me cilësi mesatare.
Një element jetër i rëndësishëm i mirëbesimit sipas të drejtës kontraktore kosovare është se ai përbën një sjellje që karakterizohet nga ndershmëria. Koncepti i ndershmërisë nënkupton që personi sillet me drejtësi dhe me ndërgjegje, si dhe në përputhje me moralin e shoqërisë.
Në marrëdhëniet kontraktore sjellja e ndershme nënkupton që palët duhet të sillen ndaj njëra-tjetrës sipas rregullave morale që janë të pranueshme nga shoqëria, në tërësi ose të paktën nga shumica dërrmuese e saj. Po ashtu, sjellja e ndershme në marrëdhëniet kontraktore do të thotë që palët sillen ndaj njëra-tjetrës me drejtësi, pa paragjykuar interesat e njëra-tjetrës dhe me qëllim realizimin e përfitimeve të ligjshme.
Pjesë e rëndësishme e sjelljes së ndershme është se ajo është një sjellje e ndërgjegjshme. Nëse i referohemi sjelljes së ndërgjegjshme, si e tillë është ajo sjellje ku personi ka ndjenjën vetjake të përgjegjësisë morale për sjelljen dhe veprimet e tij përpara shoqërisë. Ajo përfshin, gjithashtu vlerësimin e brendshëm që vetë personi i bën sjelljes dhe veprimeve të tij, në raport me kërkesat e shoqërisë.
Një tjetër elememt i rëndësishëm i mirëbesimit kontraktor është që sjellja e palëve duhet të jetë e çiltër. Personi do të konsiderohet se sillet në mënyrë të çiltër kur ai i shfaq ndjenjat dhe mendimet e veta, në mënyrë të drejtpërdrejtë dhe të hapur, që vepron pa u shtirë dhe në mënyrë të sinqertë. Sjellja është e çiltër ose e sinqertë kur ajo shfaqet ashtu siç ndihet dhe mendohet, që nuk është false, por që është e vertetë.
Çiltësia e palës në marrëdhëniet kontraktore i referohet vetëm rrethanave dhe kushteve që kanë të bëjnë me realizimin e kësaj marrëdhënieje dhe kufizohet brenda realizimit të interesave të palëve, duke mos përfshirë raportet morale dhe etike që personi mund të ketë me persona të tretë. Sjellja e palës do të vlerësohet se është e çiltër, nëse ajo sillet në mënyrë të hapur dhe ashtu si mendon në marrëdhënien kontraktore, pavarsisht nga fakti se ky person në raport me persona të tretë që nuk kanë lidhje me kontratën, mund të ketë sjellje false dhe jo të verteta.
Elementi i fundit i rëndësishëm që i mirëbesimit sipas të drejtës kontraktore kosovare, është që *sjellja e personit duhet të marrë në konsideratë interesat e palës tjetër kontraktore.* Marrja në konsideratë e interesave të palës tjetër nënkupton që kur një palë hyn në një marrëdhënie kontraktore duhet të vlerësojë edhe interesat që pala tjetër kërkon që të realizojë në këtë marrëdhënie.
Kur një palë hyn në një marrëdhënie kontraktore, veçanërisht kur ajo është me natyrë tregtare, ashtu siç janë edhe pjesa më e madhe e marrëdhënieve kontraktore, në një ekonomi tregu, sigurisht ajo do të shikojë dhe vlerësojë, në radhë të parë interesat e saj. Por, kjo nuk do të thotë që në një marrëdhënie kontraktore që do të krijohet apo që është krijuar dhe është në ekzekutim, palët të mbajnë parasysh vetëm interesat e tyre dhe të mos vlerësojnë interesat e palës tjetër dhe aq më tepër t'i neglizhojnë ato dhe të mos pyesin se çfarë ndodh me to.
Elementet e mësipërm të mirbesimit kontraktor; sjellja e palës sipas një standarti të një njeriu me cilësi mesatare; sjellja e palës me ndershmëri dhe çiltërsi, si dhe sjellja e palës duke marrë në konsideratë edhe interesat e palës tjetër kontraktore, *janë elemente që parashikohen nga legjislacioni civil kosovar në mënyrë komulative.* Kjo nënkupton se, *që të konkludojmë se një palë është sjellë me mirëbesim, ajo duhet të plotësojë, në të njëjtën kohë të gjithë këto elementë* dhe mungesa e qoftë dhe njërit prej tyre, bën që sjellja e palës të vlerësohet se nuk është kryer me mirëbesim[17].

[17] Paragrafi i dytë i nenit 3 të *"Librit Dy Detyrimet"* i Kodit Civil të Republikës së Kosovës parashikon:

Parimi i mirëbesimit sipas legjislacionit civil të Republikës së Kosovës gjen zbatim edhe kur pala ushtron të drejtën për të zgjidhur kontratën ose për të ndërprerë një detyrim. Në një nga çështjet e trajtuar më sipër në këtë tekst është folur edhe për të drejtën e palëve për të zgjidhur kontratën. Në atë çështje është përmendur që kontrata mund të zgjidhet me vullnetin e palëve ose në rastet e parashikuara, shprehimisht në ligj, ku nga ana jonë janë dhënë disa raste konkrete kur ligji parashikon zgjidhjen e kontratës.
Duke qenë se jemi para zgjidhjes së kontratës dhe me zgjidhjen e saj palët shkëpusin çdo lidhje juridike ndërmjet tyre, mund të mendohet që mirëbesimi nuk mund të gjejë zbatim në këtë fazë të fundit të marrëdhënieve kontraktore, pasi këto marrëdhënie, tashmë kanë marrë fund. Një qëndrim i tillë është i gabuar dhe i pabazuar në ligj, pasi ekziston mundësia praktike që edhe gjatë fazës së zgjidhjes së kontratës, palët ta ushtrojnë këtë të drejtë jo në përputhje me ligjin, duke i shkaktuar dëm palës tjetër, prandaj nga ana e ligjit është parashikuar, shprehimisht që ky parim gjen zbatim edhe në këtë fazë të fundit të marrëdhënieve juridike që zhvillohen ndërmjet palëve[18].
Përveç rasteve të trajtuara më sipër, *mirëbesimi kontraktor gjen zbatim edhe para lidhjes së kontratës, konkretisht kur palët ndodhen në fazën e negociateve për lidhjen e saj.* Një gjë e tillë nuk është parashikuar, në mënyrë të shprehur në Kodin Civl të Kosovës, por rezulton nga interpretimi që i bëhet nenit 12 të tij, i cili rregullon fazën e negociatave të palëve në funksion të lidhjes së kontratës.
Kjo dispozitë ligjore parashikon, ndër të tjera që *pala që ka negociuar për lidhjen e kontratës, pa patur qëllim të vertetë për lidhjen e saj, është e detyruar që të shpërblejë dëmin e shkaktuar palës tjetër.* Një parashikim i tillë ligjor, nuk është gjë tjetër veçse shprehja me fjalë të tjera, të parimit të mirëbesimit i cili duhet të zbatohet nga palët gjatë fazës së negociatave për lidhjen e kontratës.
Për këtë arsye, *ligji parashikon në mënyrë të shprehur që kjo palë është e detyruar që të shpërblejë çdo lloj dëmi që i ka shkaktuar palës tjetër gjatë negociatave,* kuptohet nëse kjo e fundit arrin të provojë që si rrezultat i mosrespektimit të këtij parimi asaj i është shkaktuar një dëm i caktuar material ose jo material[19].
Një aspekt i veçantë i parimit të mirëbesimit kontraktor sipas legjislacionit civil kosovar është i ashtëqujtuari "Detyrimi për përkujdesje". Sipas këtij detyrimi *secila nga palët duhet të veprojë me kujdesin e duhur në realizimin e interesave të saj të ligjshme përballë palës tjetër.* Ky detyrim për përkujdesje gjen zbatim që në fazën e zhvillimit të negociatave ndërmjet palëve, gjatë fazës së lidhjes së kontratës, gjatë fazës së ekzekutimit të saj dhe deri në fazën e zgjidhjes apo përfundimit të kontratës me vullnetin e palëve ose për shkaqe të parashikuara nga ligji.
Pyetja që mund të lindë në këtë rast është: Cili do të jetë standarti i detyrimit për përkujdesje që duhet të tregojë pala përballë palës tjetër. Për këtë pyetje, përgjigja do të ishte që, *si rregull kërkohet standarti i një njeriu normal dhe me cilësi mesatare.* Në bazë të këtij standarti, do të vlerësohet që pala e ka përmbushur detyrimin e saj për përkujdesje, nëse ajo është sjellë kundrejt palës tjetër, ashtu siç do të sillej një njeri normal dhe me cilësi mesatare.
Përdorimi i standartit të njeriut mesatar për përcaktimin e detyrimit për përkujdesje,

"Mirëbesimi i referohet një standarti të sjelljes që karakterizohet nga ndershmëria, çiltërsia dhe konsiderata për interesat e palës tjetër në një detyrim".

[18] Paragrafi i parë i nenit 3 të *"Librit Dy Detyrimet"* i Kodit Civil të Republikës së Kosovës parashikon:
"1. Gjatë kryerjes së detyrimeve të tyre, gjatë kërkimit të mjetit juridik për mosrealizim, ose duke ushtruar të drejtën për ta ndërprerë një detyrim, palët duhet të respektojnë parimin e mirëbesimit".

[19] Paragrafi i dytë i nenit 12 të *"Librit Dy Detyrimet"* i Kodit Civil të Republikës së Kosovës parashikon:
"2. Pala që ka negociar pa qëllim të vertetë të arritjes së marrëveshjes me palën tjetër, është përgjegjëse për çdo lloji dëmi të shkaktuar gjatë negociatave".

mund të nxjerrë probleme praktike, pasi ky standart mund të konsiderohet si evaziv dhe jo shumë i qartë. Për të shmngur një problem të tillë ligji civil i Kosovës ka parashikuar që detyrimi për përkujdesje, përcaktohet përveçse duke iu referuar cilësive të personit mesatar dhe duke iu referuar edhe dy kritereve të tjera. *Njëri prej këtyre kritereve ka të bëjë me natyrën e detyrimeve që palët kanë marrë përsipër.* Zbatimi i këtij kriteri që përcakton detyrimin për përkujdesje është i thjeshtë për t'u kuptuar.
Kriteri i dytë që përdor ligji civil kosovar për detyrimin për përkujdesje të palës përballë palës tjetër, i referohet rrethanave konkrete të çështjes. Çdo negociatë që zhvillohet nga palët për lidhjen e kontratës zhvillohet në rrethana që janë specifike vetëm për atë kontratë, ku në një rast palët mund të jenë të pranishme dhe negociatat të bëhen aty për aty dhe në mënyrë verbale dhe që zgjasin vetëm disa sekonda ose minuta, ndërsa në një rast tjetër negociatat mund të zhvillohen ndërmjet palëve jo të pranishme, ato komunikojnë me shkrim me njëra-tjetrën dhe negociatat mund zgjasin disa muaj derisa të konkludohet në lidhjen e kontratës.
Për këtë arsye, detyrimi për përkujdesje gjatë negociatave do të përcaktohet në varësi të rrethanave konkrete të çdo çështje, detyrimi pritet në mënyrë të arsyeshme që të përmbushet nga pala duke iu referuar këtyre rrethanave. Të njëjtën gjë mund të themi për përmbushjen e detyrimit për përkujdesje të një pale ndaj palës tjetër edhe kur palët ndodhen në fazën e ekzekutimit të kontratës ose në fazën e zgjidhjes së saj. Edhe në këto raste për të përcaktuar nëse është përmbushur apo jo një detyrim i tillë përdoren të njëjtat kritere; cilësitë e njëriut mesatar, natyra e kontratës dhe rrethanat konkrete të çështjes[20].
Kriteret e mësipërme që shërbejnë për të përcaktuar nëse pala ka përmbushur detyrimin për përkujdesje, zbatohen në rastet kur palët kontraktore ose të paktën njëra prej tyre lidh një kontratë me natyrë civile dhe që lidhjen e kontratave nuk e ka si profesion, ku si të tilla konsiderohen kontratat me natyrë tregtare. *Në rastet kur një nga palët ose të dy palët lidhin një kontratë tregtare, përcaktimi i faktit nëse pala ka përmbushur detyrimin për përkujdesje bëhet mbi bazën e një standarti më të lartë sesa në rastet kur palët janë qytetar të zakonshëm dhe lidhin një kontratë me natyrë civile.*
Në rastet e kontratave tregtare ose nëse përdorim termat ligjit civil kosovar, *gjatë përmbushjes së detyrimeve që rrjedhin nga veprimtaria e tyre profesionale,* standarti që kërkohet për përmbushjen e detyrimit për përkujdesje, është ai i njeriut me cilësi të larta profesionale dhe jo ai i cilësive të një njeriu mesatar. Për palët që ushtrojnë një veprimtari profesionale ose tregtare, standarti më i lartë për kujdesin në përmbushjen e detyrimeve, zakonisht përcaktohet nga ligji. Por, nëse palët e mësipërme janë anëtarë të një shoqate profesionistësh, e cila ka përcaktuar standarte të caktuar të kujdesit për ushtrimin e veprimtarisë profesionale, ato duhet të ushtrojnë kujdesin e duhur në përputhje me standartet e përcaktuara nga vetë shoqata profesionale, ku këto palë bëjnë pjesë ose standartet e përcaktuara nga një autoritet ligjor përkatës[21].
Një aspekt tjetër i mirëbesimit kontraktor sipas Kodit Civil të Republikës së Kosovës është detyrimi i palëve për bashkëpunim. Duke qenë se kontrata është një marrëdhënie juridiko-civile e cila ka dy palë, të cilat hyjnë në kontratë me qëllim që secila prej

[20] Paragrafi i parë i nenit 6 të *"Librit Dy Detyrimet"* i Kodit Civil të Republikës së Kosovës parashikon:
"1. Palët në një detyrim duhet të veprojnë me kujdesin që kërkohet nga natyra e detyrimeve të tyre dhe të cilat në mënyrë të arsyeshme mund të priten në përputhje me rrethanat".

[21] Paragrafi i dytë i nenit 6 të *"Librit Dy Detyrimet"* i Kodit Civil të Republikës së Kosovës parashikon:
"Gjatë përmbushjes së detyrimeve që rrjedhin nga veprimtaria e tyre profesionale, palët duhet të ushtrojnë detyrën më të lartë të kujdesit të kërkuar nga ligji. Nëse ata janë anëtarë të një grupi profesionistësh, standartet për të janë përcaktuar nga një autoritet përkatës, ose nga vetë grupi, ato duhet të tregojnë kujdesin e shprehur në këto standarte".

tyre të realizojë interesat e tyre të ligjshme, realizimi i këtyre interesave nuk mund të bëhet pa bashkëpunimin e tyre në këtë marrëdhënie.
Koncepti i bashkëpunimit nënkupton veprimtarinë e përbashkët të dy ose më shumë personave për të kryer një punë ose vepër të caktuar. *Në rastin e të drejtës kontraktore bashkëpunimi i referohet veprimtarisë së përbashkët të palëve, debitorit dhe kreditorit në funksion të realizimit të interesave të tyre*, e cila shprehet në përmbushjen e të drejtave dhe detyrimeve respektive, në përputhje me përmbajtjen e kontratës së lidhur ose sipas parashikimeve të bëra nga ligji.
Detyrimi i palëve për bashkëpunim fillon që në fazën e zhvillimit të negociatave për lidhjen e kontratës edhe pse rezultati i tyre mund të jetë lidhja ose jo e kontratës. Që në këtë fazë palët janë të detyruara që të komunikojnë dhe të bashkëpunojnë me njëra-tjetrën, duke dhënë çdo informacion që është i nevojshëm për lidhjen e kontratës.

Konkluzione

Mirëbesimi kontraktor përbën një nga parimet themelore të të drejtës kontraktore të të gjitha sistemeve ligjore bashkëkohore, e cila synon zbatimin e parimit moral të lirisë kontraktore sipas të cilit aty ku ka një kontratë ka drejtësi. Legjislacioni civil në Shqipëri, pavarsisht nga rëndësia që paraqet ky parim nuk e jep, në mënyrë të shprehur kuptimin dhe përmbajtjen e tij, por në disa dispozita parashikon elementët përbërës të këtij parimi.
Teoria dhe praktika gjyqësore ka përcaktuar që mirëbesimi kontraktor përbëhet nga disa elementë, në themel të të cilëve qëndron detyrimi i palëve që të sillen ndaj njëra-tjetrës dhe ndershmëri dhe drejtësi. Edhe pse në pamje të parë duket sikur parimi i mirëbesimit kontraktor bie në kundërshtim me parimin e lirisë kontraktore, pasi e kufizon këtë të fundit, kjo nuk është e vertetë. Kjo pasi të dy parimet kanë një qëllim të përbashkët sigurimin e një qarkullimi sa më të shpejtë të mallrav, shërbimeve dhe kapitaleve në një ekonomi tregu, por duke marrë në konsideratë edhe kërkesat e drejtësisë dhe të sigurisë juridikë, të cilat mbrohen, pikërisht nga parimi i mirëbesimit. Ky parim gjen zbatim që në fazën e negociatave ose të bisedimeve paraprake, ku palët duhet t'i japin njëra-tjetrës informacionin që është i nevojshëm për lidhjen e kontratës. Edhe pse në këtë fazë palët akoma nuk kanë vendosur të drejta dhe detyrime ndaj njëra-tjetrës, përsëri ato duhet të sillen me mirëbesim, pasi pala që vepron me qëllimin e vetëm për të dëmtuar palën tjetër ose që nuk synon lidhjen e kontratës, por krijon bindjen me anë të mashtrimit se e dëshiron një gjë të tillë, detyrohet që të shpërblejë dëmin e shkaktuar.
Mirëbesimi kontraktor gjen zbatimin e tij të plotë gjatë fazës së ekzekutimit të kontratës. Sipas legjislacionit civil në Shqipëri, debitori dhe kreditori duhet të sillen me mirëbesim ndaj njëri-tjetrit, gjatë përmbushjes së detyrimeve, duke vepruar sipas kërkesave të drejtësisë dhe arsyes.
Legjislacioni civil i Republikës së Kosovës, në ndryshim nga ai i Shqipërisë e përkufizon, shprehimisht parimin e mirëbesimit kontraktor, duke e përcaktuar atë si një standart sjelljeje që nga karakterizohet nga ndershmëria, çiltërsia dhe konsiderata për interesat e palës tjetër. Sipas këtij legjislacioni ky parim gjen zbatim si në fazën e bisedimeve paraprake, ashtu edhe gjatë lidhjes së kontratës, si dhe gjatë përmbushjes së detyrimeve.
Një vëmendje të veçantë ky legjislacion i kushton detyrimit për përkujdesje, sipas të cilit secila nga palët duhet të veprojë me kujdesin e duhur në realizimin e interesave të saj të ligjshme përballë palës tjetër. Ky detyrim për përkujdesje përcaktohet në bazë të standartit të "njeriut mesatar" në rastet e kontratave me natyrë juridiko-civile, dhe sipas standarteve të "personit të aftë profesionalisht" për kontratat tregtare.

Nisur nga rregullimi që legjislacioni civil kosovar i bën mirëbesimit kontraktor, nëse e krahasojmë me rregullimin ligjor që i bën ligji civil, në Shqipëri, kemi mendimin që rregullimi që i bën ligji kosovar është më i plotë dhe i saktë. Kështu, ligji civil kosovar, në ndryshim nga ai në Shqipëri, përveçse bën përkufizimin e parimit të mirëbesimit, parashikon edhe disa aspekte të veçanta të tij që nuk parashikohen nga ligji ynë civil, siç janë detyrimi i palëve për përkujdesje, detyrimi i palëve për bashkëpunim dhe ndalimi i tyre për të mos abuzuar me të drejtën. Jemi të mendimit që Kodi ynë Civil, në fuqi, duhet të ndjekë shembullin e Kodit Civil të Republikës së Kosovës në lidhje me rregullimin e mirëbesimit kontraktor, si një nga parimet bazë të së drejtës kontraktore, duke bërë përkufizimin e këtij parimi, si dhe duke parashikuar edhe aspektet e veçanta të tij, ashtu siç bën Kodi Civil i Kosovës.

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Principles of Tax Burden Distribution

Dr. Anisa Angjeli

Abstract

In an attempt to analyze aspects related to the distribution of the tax burden among different operators operating in a specific market, it is necessary to first define the specific subjects subject to taxation and the *criteria* based on which the distribution is made. The problem of **fair distribution of the tax burden** has always interested researchers.
Thus, some fundamental criteria have been established which every tax system must adhere to. Through this work, an analysis of the criteria of the tax system and the distribution of the tax burden will be carried out.

Keywords: Tax burden, tax principles, direct and indirect taxes, tax pressure.

Introduction

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The problem of fair distribution of the tax burden has always interested researchers. Thus, several fundamental criteria that every tax system should adhere to were established (Cosciani).[1]

- *The principle of certainty,* according to which every taxpayer should be aware of the tax burden theymust pay. This principle, besides responding to the most elementary concepts of justice, also allows for the reduction of various costs associated with the uncertainty of the fiscal consequences of citizens' economic choices;

- *The principle of neutrality,* according to which the imposition of taxation should minimally affect the freeplay of market forces. Interventions can only be justified for the purpose of achieving specific objectives;

- *Horizontal equality (*equal incomes should be taxed equally) and vertical equality (contributors with different payment capacities should be taxed differently).

Based on these general criteria, financial science has elaborated several distributive principles of the tax burden, among which the principle of quid pro quo (utility) or the principle of contributory capacity are the most important.[2]

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[1] Finch, E., & Fafinski, S. (2017). Legal Skills. Oxford University Press.

[2] Finch, E., & Fafinski, S. (2017). Legal Skills. Oxford University Press.

A) **The principle of utility**

This principle assumes that taxes should be distributed equally so that, for each individual taxpayer, there should be equality between the payment of taxes and the benefits from public services (e.g., benefits derived from university lectures). In this case, a tax rate should be set that the taxpayer can afford; thus, to obtain a result with higher utility from the public service than the cost of taxation – otherwise, the citizen willnot demand this service at all.[3]

The principle in question is ranked based on a contractual assumption, according to which the taxpayer voluntarily relinquishes a part of their state rights in exchange for such an activity that they themselves wouldnot be able to develop, because a super-individual structure would be necessary for its execution. (SOBBRIO).

The principle of utility does not take into account the distribution of wealth, nor does it consider that itshould intervene to equalize this distribution. On the other hand, like all voluntarism theories, it seems that this principle is unable to understand the nature of public goods: if free riders cannot be excluded from benefiting from a good, the state must use its coercive power.

B) **Ability-to-pay Principle**

If it is not possible for each individual to derive exactly the same benefit from public services as the costs incurred, we must compare the utility that public services provide to citizens with the contributive capacity ofthe latter. Until the first half of the 19th century, the concept was affirmed and dominated by the idea that the contributive capacity should be proportional to the tax burden. In the second half of the 1800s, this ideology disappeared to make room for an interpretation according to which the contributive capacity increases more

CambridgeUniversity Press.than proportionally with income growth. Based on this premise, criteria were formulated, as principles of sacrifice, in three different configurations: equal, proportional, and minimal sacrifice.[4]

a) Principle of equal sacrifice

Principle of equal sacrifice, the first elaboration of which was made by J. S. Mill, envisages that equality should be understood in such a way that taxation brings each taxpayer an equal amount of benefit. As a conclusion, this principle can be satisfied by both a progressive tax and a proportional tax, as well as by a regressive tax.[5]

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[3] Lee, E., & Soo, L. (2018). The Rule of Law in Monetary Affairs: World Trade Forum.

[4] Davies, P. L. (2014). Gower's Principles of Modern Company Law (10th ed.). Sweet & Maxwell.

[5] Armstrong, D., Avgouleas, E., & Goodhart, C. A. E. (2016). Financial Regulation: Why, How, and WhereNow? Routledge.

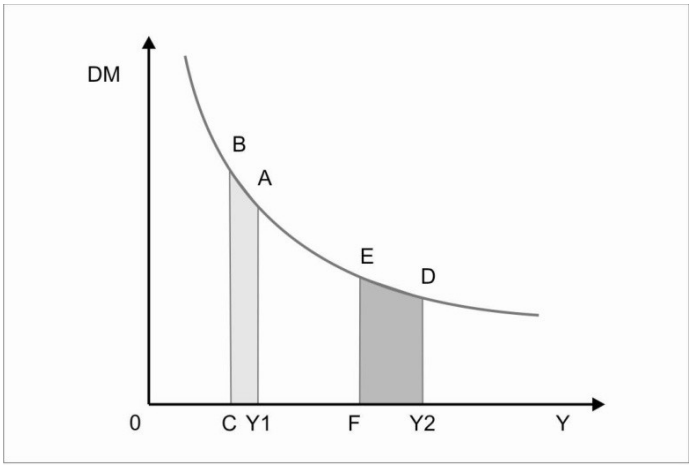

Fig. 1 – The Equal Sacrifice Principle
The level of income (Y) is shown on the horizontal axis, while on the vertical axis, the marginal utility of income is shown. Based on the principle of diminishing marginal utility, with the knowledge of the relationship between Y and Um on a certain income level (OY1), corresponds to the level of marginal utility (Y1A); at a higher income level (OY2), we will have the level Y2D for marginal utility and so on.
Suppose a fixed tax burden CY1 is imposed on each individual, as the total sacrificed utility is given by the area Y1CBA, its value must be the same for all individuals (the tax must induce equal sacrifices).
Once it is established that marginal utility is the same for everyone, we can compare the situation of one subject with an income volume OY1 to the situation of another subject with an income volume OY2 (twice OY1), we would have:

$$OY2 = 2OY1$$

Wanting to apply the condition of equal sacrifice, we must construct a segment (FY2) such that the area Y2FED is equal to that of Y1CBA. Consequently, OY2 has an income twice that of OY1, but pays the tax which in our case (given the steepness of the slope in the graph) is three times CY1 (double income corresponds to triple tax).

In conclusion, this principle can satisfy both a progressive, proportional, and regressive tax.

b) The Principle of Proportional Sacrifice

The theory of proportional sacrifice, unlike that of equal sacrifice, states that tax equality does not occur when equal sacrifices are induced (in terms of utility), but when sacrifices are proportional to the total utility for each contributor. Such a principle makes it simpler to choose a tax that ensures an equal distribution of the tax burden.[6]

Graphically, this principle can be explained as follows:

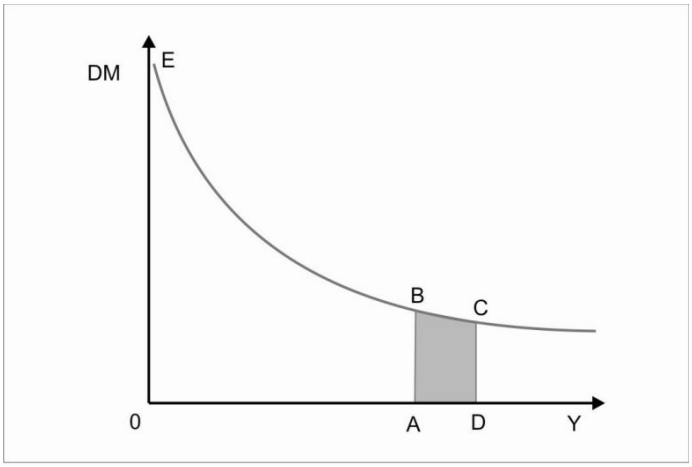

Fig. 2 – The Proportional Sacrifice Principle

As shown in the figure, meaning in this case should be the same for all individuals, and the ratio between the reduced utility is the total utility of income, thus between ABCD and ODCE.

The Principle of Proportional Sacrifice requires, in practice, that sacrifices made by different contributors should be proportional to the total utility of wealth that each one possesses (STEVE): thus, it is not necessary to make a comparison between the absolute values of utility sacrifices for different contributors. If the redistribution of the tax burden were based on the traditional (economic) hypothesis of individual hedonism, the application of the principle of proportional sacrifice would certainly be preferable.[7]

c) Minimum Collective Sacrifice Principle

Based on such a theory, the total sacrifice provoked by fiscal withdrawal should be minimal. This principle isestablished based on the utilitarian theory of J. Bentham. In order to achieve the minimum total sacrifice, taxes must be extracted from units of wealth that have less utility, so that the sum of utilities extracted from all contributors is minimal (STEVE).[8]

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[6] Hadfield, G. K., & Weingast, B. R. (2014). Law Without Nations? Why Constitutional GovernmentRequires Sovereign States. Yale University Press.

[7] Ferran, E., & Hill, J. (2016). Principles of Banking Law (3rd ed.). Oxford University Press.

[8] Duff, D. (2015). Criminal Law, Criminology, and Criminal Justice: A Casebook. Oxford University Press.

The figure clarifies further:

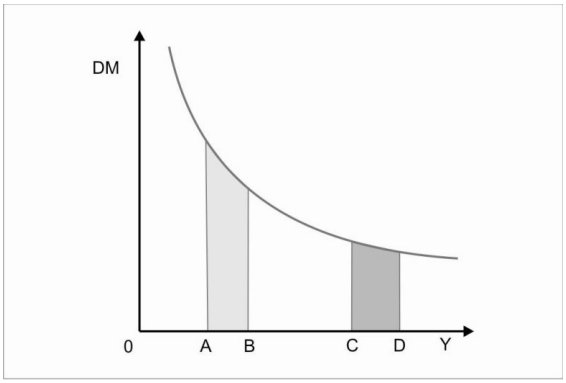

Figure 3 – The Collective Minimum Sacrifice Principle

Referring to the graph, it is observed that AB = CD, indicating that an equal extraction in terms of income will result in different levels of sacrifices in terms of utility. This sacrifice is greater the more it shifts from higher incomes to lower incomes. In these conditions, taxes should only be paid by wealthy individuals,while the poor should not pay at all. This theory is based on an inequality condition to achieve a state of equality; for this principle, it is often called the principle of **equi-marginal sacrifice**.[9]

Conclusion

In light of what we have just analyzed, it turns out that the theory of capacity to contribute is valid as a criterion for the distribution of the tax burden, only to the extent that it is limited, both for the exclusion of inequality in the distribution of taxes and for the assertion that the scaling of the tax burden should be the same for different economic conditions of the subjects.[10]

Among other things, the principle of capacity to contribute is limited by the fact that modern finance often assigns taxes tasks, more complex tasks that do not aim to distribute the tax burden according to the conditions of the subjects. Therefore, it is talked about fiscal purposes or extra-fiscal purposes of taxes because they may be required to achieve a certain direction of taxes or to develop protective, redistributive activities, etc. Often, taxation ends up as a means for redistributing (with criteria of a political nature) *the costs of activities carried out by public entities*, when they do not want to apply the principle of counter- services.[11]

[9] Zingales, L. (2015). Corporate Governance Matters: A Closer Look at Organizational Choices and TheirConsequences. Princeton University Press.

[10] Kershaw, D. (2018). Company Law in Context: Text and Materials (3rd ed.). Oxford University Press.

[11] Booth, R., Ferrarini, G., & Caffè, E. (2017). European Banking Union: The New Regime. Oxford University Press.R

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Public Finance and National Income

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Abstract

Neoclassical economic theories were inadequate during the period between the two World Wars and particularly in the aftermath of the economic crisis of 1929, when the presumed capacity of economic systems to rebalance themselves without the need for external interventions and to ensure full employment of production factors was called into question. It was then that Keynes' assertion was affirmed, which first attempted to explain the economic phenomenon of the Great Depression in 1929: the decline of the economy, lack of product sales, unemployment, stagnation (lack of investments), stock market crash, etc. Previous neoclassical theories offered no answers to these phenomena.
They predicted full employment and believed in the automation of the economic system to self-equilibrate. Keynes sought to construct an interpretive model starting from the hypothesis of full employment, from which stems the demand for an extensive and complete intervention of the state in the economic system.
This work, according to comparative methodology, emphasizes the importance of analyzing different theories to understand public finances and national income.

Keywords: automation of the economic system, public finances, national income, public administration, public spending.

Keynesian Assertion

The Keynesian revolution refers to the paradigm shift in economic thinking brought about by the seminal work of John Maynard Keynes, "The General Theory of Employment, Interest, and Money" (1936). Keynes challenged the classical economic orthodoxy by arguing that market economies can experience long periods of unemployment and underutilization of resources due to insufficient aggregate demand. He advocated for active government intervention through fiscal policy to stabilize the level of output and employment during economic downturns (Keynes, 1936).
Other functions of money in a capitalist system; abandoning Say's Law (supply creates demand); abandoning the neoclassical hypothesis of perfect wage flexibility. Let's analyze the three theories separately:

A) Money

For Keynes, the capitalist economy is a monetary economy. In it, money is not just (as for the neoclassicals) an intermediary function between exchanges and units of value. Instead, it also plays the role of a "store of value": in certain moments of cyclical uncertainty, operators may see it as more advantageous to hold liquid reserves rather than invest them. In a world like Keynes's, dominated by uncertainty about the future and where circumstances are unstable, the liquidity of money

at certain moments constitutes an invaluable value. Thus, it is possible that this accumulation, the accumulation of flowing monetary values, generates resources in the economic circle by hindering the equilibrium between supply and demand.

B) Abandonment of Say's Law

By accepting that the economic system never automatically re-equilibrates, Keynes can do nothing but reject one of neoclassicalism's theories: Say's Law.
According to the latter, every supply creates its own demand, so that, at the macroeconomic level, there cannot fail to be equilibrium between demand and supply (or more precisely between investments and savings). This equilibrium is ensured in neoclassical theory by the fact that both investments and savings are a function of their own variables, the interest rate.
For Keynes, on the contrary, savings are not understood as offers of capital but as unspent income; since consumption is a function of income, savings will depend on income: thus, investment-savings are put in equilibrium, which for the neoclassicals, was automatically realized in the capital market thanks to the interest rate.

C) Wage Rigidity

The instability of economic systems is further exacerbated by Keynes, by one final factor: wage rigidity. Neoclassicals, in fact, accept special situations of underemployment, situations where the economic system does not allow for the full employment of all factors of production. Such a situation is called a momentary one, as a perfectly competitive market would determine the optimal price of factors of production. In the labor market, such a price consists of wages.
Keynes, rejects such a thesis by sticking to the belief that in a modern economy, for various reasons (the presence of unions, the greater bargaining power of workers, and imperfect information), monetary wages are rigid at a lower level (thus, they cannot fall below a certain level). This brings about the impossibility of achieving an optimal equilibrium in the labor market.

The State's Duty According to Keynes

Keynes's assertion led to only one conclusion: *if the market showed inability to automatically achieve equilibrium, the state should play an active role in the economic life.*
Thus, a new aspect of finance matured: countercyclical finance aimed at developing compensatory activity in opposite phases, in the expansion or contraction of the economy. In this situation, Keynes and other researchers who followed him argued that *public finance* could:

- *Correct and balance the performance of economic cycles*;
- *Maintain full employment of the various factors of production*;
- *Stabilize or increase national income;*
- *Predict the demands of future generations*;
- Eliminate territorial and sectoral imbalances.

In other terms, public finance should act on the national economic system and transform the collection of funds for public expenditure into an activity of directing

economic and social policy.
Thus, functional finance (LERNER) is discussed as a programming instrument for stability and development. The state in its economic activity should be understood as a direct enterprise to produce goods and services, but also as a key player in financial maneuvers in the economy as far as it is able to determine not only the distribution but also the volume of national income.
The main thesis of English economics is that a budget deficit necessarily brings expansive (expansionary) effects to the economic system even if it is financed through the public debt of the state (but without issuing additional currency because in this case there would be risks of dangerous inflationary situations).
According to the classical economics vision, budget policy was an extraordinary tool of public intervention only in special situations it was right to bring the state's accounts into deficit but, later achieving the initial balance as soon as the extraordinary situation passed (such as wars, etc.).
In Keynesian theory, on the contrary, this was a permanent instrument of the state's financial activity capable of continuously regulating the performance of economic cycles. The economic mechanism that should achieve this result is called the multiplier and stimulates economic systems in periods of crises and slows down economic boom phases.

Public administration activity and the multiplier

According to the Keynesian vision, the lack of private investment in periods of economic crises can be compensated by an increase in public spending which, through the multiplier effect, can stimulate economic growth.
In the Keynesian model, without public spending, national income is determined by the sum of three different components: essential consumption demand or subsistence consumption (Co), consumption linked to income (cY), and investments, which, being influenced by the interest rate (i) and entrepreneurs' expectations (a), are denoted by I(i, a).

Thus, national income can be expressed as:

$$Y = Co + cY + I(i, a)$$

If we replace the part of demand not linked to income, that is, Co and I(i, a), with A, we can rewrite the formula as:

Or, by rearranging the equation: Solving for Y, we get: $Y = cY + A$ $Y – cY = A$ $Y (1 – c) = A$
Which can be rewritten as: $Y = 1 \quad A$
Or, by rearranging the equation: Solving for Y, we get:
Which can be rewritten as: $1 – c$
With this formula 1/(1-c), the income multiplier is obtained, which indicates how much national income can increase following an initial increase in aggregate demand.
Public spending, which can be considered an exogenous variable since it responds to politically driven demands, is a component of aggregate demand. Consequently,

an increase in public spending through the multiplier will lead to income growth.

If the economic system is in underemployment equilibrium, an increase in deficit-financed public spending will determine an increase in aggregate demand until full employment equilibrium is reached. In the graph of effective incomes (BC), they reach the level of potential incomes (OB = BD) due to the additional spending.

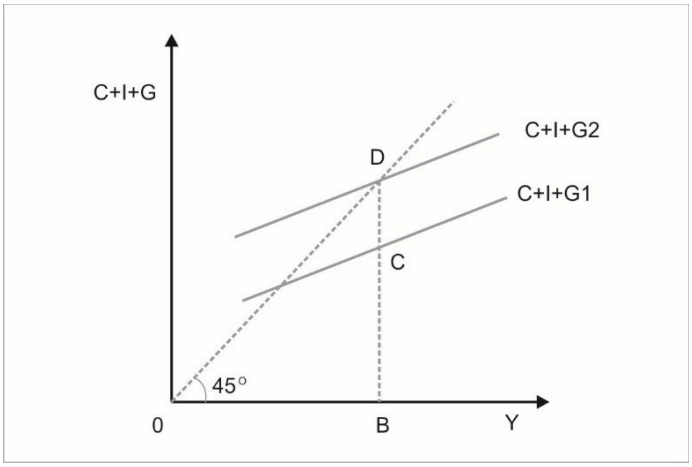

Fig. 1

1. Public Spending Financing through Taxes.

According to Keynesian guidelines, public spending should not be financed by issuing currency as this would lead to inflationary effects. Spending on public works financed by public loans (deficit spending) would have allowed income without depleting resources, simply by converting savings into investments. Alternatively, public spending can be financed by implementing the classical taxation system: a progressive tax on income could redistribute resources in favor of lower-income classes characterized by increased consumption. However, fiscal taxation reduces the expansive effects of the multiplier.[18]

If we consider the case of a proportional tax on income:

$$T = tY$$

(where t = rate) it is clear that consumption will no longer be a function of income but will depend on disposable income:

$$Yd = Y - T.$$

The consumption function will be:

$$C = Co + cYd = Co + (Y - T) = Co + c\,(Y - tY) = Co + cY\,(1 - t)$$

Or if all components of aggregate demand that do not depend on income (autonomous consumption Co, investments I, and public spending G) are denoted by A, national income can be expressed as:

[1] Bankruptcy Code, 11 U.S.C. § 101 et seq.

$$Y = A + cY (1 - t)$$Or by converting the terms of the equation:

$$Y - cY (1 - t) = A$$

Highlighting Y, we have:

$$Y [1 - c (1 - t)] = A$$

Which can be rewritten as:

$$Y = \frac{1}{1 - c (1 - t)} A$$

In the final formula: $\frac{1}{1 - c (1 - t)} A$

The income multiplier in the presence of a progressive tax on income is obtained: as seen, an initial increase in public demand (with the continuous increase in public spending) will have a smaller effect in this case since taxes reduce the portion of income that individuals can allocate to consumption.

Haavlemo´s Theorem

NA Norwegian economist, Trygve Haavelmo, has developed over the past century a theory **according to which an increase in public spending offset by an increase in fiscal revenues can produce expansive effects for the economic system**, albeit undoubtedly smaller than the effects produced by Keynes's hypothesis.[2] 9

According to this theorem (also called the balance theory), an economic policy aimed at, simultaneously, increasing public spending and fiscal reliefs (so that there is no improvement or deterioration in the state budget balance) can increase equilibrium income. In fact, the effects of additional public spending will be greater than the deflationary effects resulting from new taxes, as the latter will reduce disposable income. However, this reduction will restart between consumption and savings: precisely using savings to finance new taxes will partially balance inflation of fiscal origin.

In the formula:

$$\Delta Y = \Delta G. \frac{1}{1 - c} - \Delta T \frac{c}{1 - c}$$

Where $\Delta G = \Delta T$ (to maintain budget balance), thus, $\Delta Y > 0$ because:

$\frac{1}{1 - c} > \frac{c}{1 - c}$

(actually, $1 > c$).

It should be noted that $\frac{c}{1 - c}$ is the tax multiplier in fixed sums.

Haavelmo's theorem can be explained by taking an example. Suppose consumption is 0.80.

The multiplier of public spending will be:

$$\frac{1}{1 - c} = \frac{1}{0,2} = 5$$

[2] Haavelmo, T. (1944). The probability approach in econometrics. Econometrica: Journal of the Econometric Society, 12(1), 1-115.

While the tax multiplier will be:

$$\frac{c}{1 - c} = 4$$

Setting: $\Delta G = \Delta T = €10{,}000{,}000$, the formula becomes:

$$\Delta Y = 10.000.000 \times 5 - 10.000.000 \times 4 = 10.000.000$$

From the example, a general rule can be deduced: the budget balance multiplier is 1. The increase in taxes cancels out the effect of the multiplier of public spending, which, however, remains positive. Income increases only by 1 euro and not by 5 as would happen if taxes were not raised.

Policies of stabilization

It is clear that for Keynes, the role of the public sector should primarily be that of "stabilizing" the economic cycle. Such stabilization policies can be automatic and discrete (LECCISOTTI). With the latter, it means taking measures to change the components of the public budget, while with automatic stabilizers, it refers to those characteristics of the economic system that tend to dampen any possible expansionary movement without any discrete intervention of economic policy.[3]

Automatic stabilizers of income can be called:

- The mere existence of a full public sector: this is characterized by a lower flexibility in the decision- making process, so public spending may be somewhat rigid in the short term, thus mitigating the opportunities for cyclical changes in income;
- Even more defined is the existence of fiscal variables (revenues and public spending) that automatically dampen income fluctuations.

Imposing a proportional tax on income, for example, automatically reduces in times of economic downturn, thus contributing to the preservation of national output. Analogous functions are also developed by unemployment, the increase of which, understandably, occurs in periods of economic decline and decreases in expansion phases.[4]

Economic Programming

The ever-expanding dimensions of public finances and complex relationships with the activity of private economies have necessitated the need for adjusting public spending and programming capable of evaluating the achievements of public activity in production, income volume, their distribution, etc. Hence, the need for economic programming is explained, also understood as: comprehensive and detailed forecasting of productive activities and the financial economic policy strategy that the state must implement for a certain number of years. This overall state programming can also be defined as economic planning.

Necessary Conditions for Planning a National Economy:

[3] Brosio, A. (2020). Finance Law in Practice: A Comprehensive Guide. Oxford University Press.

[4] Saleilles, R., & Glanville, L. (2014). The Theory of Contracts in Islamic Law: A Comparative Analysis with Western Contract Law. Oxford University Press.

- Economic stability, thus, the existence of a concrete political will;
- An appropriate level of knowledge in economics, from the ruling class;
- The availability of administrative commitment capable of extending even to the periphery.

The planning theme is of a general nature because it encompasses all decisions regarding expenditures and revenues described so far. Planning is comprehensive and mandatory, although it leaves room for the initiatives of individual operators: if planning is not comprehensive, it can be seen as intervention rather than true programming.

The areas of programming left to private entrepreneurs are characterized by the inability of the capitalist economic system to detail every aspect of productive activity. The aim of planning in a liberal regime is not to control the entire economy of the country but to stabilize the system, also understood as dampening cyclical oscillations and internal tensions of the system.[5]

Supporters of unplanned market economies insist on the problem of the freedom of economic initiative. Planning, on the other hand, is usually promoted in the name of an ideal of justice and better utilization of productive resources available to the community. Planning itself cannot determine conditions particularly commendable for social justice and negotiate the use of resources, as this undoubtedly depends on the content of the planning schemes themselves.

Today, the limitations of planning are:

- *Careful study of the economic situation or obtaining appropriate statistics;*
- *Difficulty in keeping up with technological advances;*
- *Difficulty in determining investments and future demands;*
- *Difficulty in individualizing the political criteria* that will serve for planning.

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