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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 XIX-2021)

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***Prof. Dr. Azem Hajdari,** University of Pristina (Kosovo)*

TABLE OF CONTENTS

General International (Civil) Jurisdiction of Albanian Courts

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Abstract

Determining the general jurisdiction of Albanian courts in cases with foreign elements is an issue that is increasingly encountered in the Albanian judicial practice mainly due to the increased economic interaction with other countries in the region. Within the framework of the commitments and obligations of the Albanian state deriving from the Stabilization and Association Agreement between the Republic of Albania and the EU, a new Law "On Private International Law" (PIL) was approved in June 2011. This law, in its entirety, is aligned with the Regulation (EC) no. 593/2008 of the European Parliament and of the Council "On the law applicable to contractual obligations", as well as the Regulation (EC) no. 864/2007 of the European Parliament and of the Council "On the law applicable to non-contractual obligations". Its Chapter IX, entitled "The jurisdiction of Albanian courts in the adjudication of cases with foreign elements" is aligned with the Regulation (EC) no. 44/2001 of 22 December 2000 "On Jurisdiction and Recognition and Enforcement of Judgments in Civil and Commercial Matters" (Brussels I). Albanian courts, including the High Court, in cases relating to their international jurisdiction, expressly make reference to the Brussels I Regulation and the case law of the Court of Justice of the European Union (CJEU) as a guideline in the interpretation of the PIL norms regarding jurisdiction. However, the interpretation of the new PIL concepts in the spirit of the acquis communautaire and the jurisprudence of the CJEU remains a challenge for Albanian courts, since in specific cases, it requires an extended interpretation of legal norms. This paper addresses such challenges and provides guidance as to the interpretation of the PIL provisions concerning the general international jurisdiction of Albanian courts.

Keywords: General international jurisdiction – connecting factor – *lis pendens* – habitual residence – counterclaim.

1. Introduction

The international jurisdiction of Albanian courts means their rights and duties to adjudicate civil-legal disputes with foreign elements. Determining the general jurisdiction of Albanian courts in cases with foreign elements is an issue that is increasingly encountered in the Albanian judicial practice due to increased economic interactions with other countries in the region, but not only. Within the framework of the commitments and obligations of the Albanian state deriving from the Stabilization and Association Agreement between the Republic of Albania and the EU,[1] a new Law "On Private International Law" (hereinafter, 'PIL') was approved in June 2011. This law, in its entirety is aligned with the Regulation (EC) no. 593/2008 of the European Parliament and of the Council "On the law applicable to contractual obligations",

[1] The obligation to approximate the Albanian legislation to the European Union law derives from Articles 6 and 70 of the Stabilization and Association Agreement. All stages of the legislative process, starting from policy formulation and the definition of the regulatory instrument (law) to drafting the text of the act and its adoption in the Assembly, are part of the process of addressing the *acquis communautaire* requirements in the Albanian legislation.

as well as the Regulation (EC) no. 864/2007 of the European Parliament and of the Council "On the law applicable to non-contractual obligations".[2] Its Chapter IX entitled "The jurisdiction of Albanian courts in the adjudication of cases with foreign elements" is aligned with the Council Regulation 44/2001 of 22 December 2000 "On Jurisdiction and Recognition and Enforcement of judgments in civil and commercial matters" (hereinafter, 'Brussels I Regulation').

The general rule of the Albanian legislation regarding international jurisdiction is sanctioned in Article 71 of the PIL. According to this norm, Albanian courts have jurisdiction in resolving civil-legal disputes with foreign elements, if the defendant party has its habitual residence in the Republic of Albania, unless otherwise provided. The rule that sets this norm, in the legal doctrine is known as general jurisdiction and has its genesis in the principle of Roman law *actor sequitur forum rei*. General jurisdiction differs from special jurisdiction because the first is based on the relationship between the court and the defendant regardless of the type of lawsuit, while the second is based on the relationship between the court and the facts of the case (Kruger, 2008, p. 60).

Albanian courts, including the High Court, in cases relating to their international jurisdiction, expressly refer to the Brussels I Regulation and to the practice of the Court of Justice of the European Union (hereinafter, 'CJEU') as a guideline in the interpretation of the PIL norms regarding jurisdiction (Albanian High Court Judgements No. 238, of 07 May 2015; No. 68, of 10 March 2016; No. 81, of 29 June 2017). However, the interpretation of the new PIL concepts in the spirit of the *acquis communautaire* and the jurisprudence of the CJEU remains a challenge for Albanian courts, since in specific cases it requires an extended interpretation of legal norms. This article addresses such challenges and provides guide to the interpretation of the PIL provisions on the general international jurisdiction of Albanian courts.

2. Criteria that Give the Albanian Courts General International Jurisdiction

Pursuant to Article 71 of the PIL, Albanian courts have general jurisdiction to resolve disputes when three criteria are met cumulatively: *First*, there must be a civil legal dispute; *Secondly*, the dispute must have foreign elements, and *thirdly*, the defendant's habitual residence must be in the Republic of Albania. If these three conditions are met cumulatively and there are no other legal exceptions, then the Albanian courts have general jurisdiction to adjudicate the dispute.

Regarding the first criterion, it can be said that a civil legal agreement is a patrimonial or personal non-patrimonial relationship that is established between persons and is regulated by the norms of civil law (Nuni, 2009, p. 76). Civil legal relations arise from contracts or law. (Art. 419 Civil Code (hereinafter 'CC')) The regulation of a certain relationship by the civil legal norms makes this relation acquire a civil legal character (Kalia, 1997, p. 54). Any dispute arising from such legal relationship meets the first criterion for the general jurisdiction of the Albanian courts.

Pursuant to this provision (Art. 71 of the PIL), as a second criterion, the civil legal relationship must have foreign elements and to be considered as such, it is enough that only one of the elements of the legal relationship is foreign (Kalia, 1997, p. 54). The civil legal relationship has three elements: subjects, content, and the object.

[2] Table of compatibility, as an integral part of the Law "On private International Law".

The meaning of 'foreign element' in a civil legal relationship, for the purposes of implementing the PIL, is provided in its Article 1 (2), according to which: "'*Foreign element' means any legal circumstance related to the subject, the content or object of a civil legal relationship that becomes the cause of connection of this relationship with a certain legal system*" (Judgement of the Civil College of the High Court ('JCCHC') no. 56, of 20 February 2014; JCCHC no. 255, of 14 May 2015).
The third criterion that must be met for the application of the norm, otherwise called the 'connecting factor' is the habitual residence of the defendant.

3. The Habitual Residence of the Defendant as a Connecting Factor

The fact that the PIL provides as a connecting factor for determining the general jurisdiction of the Albanian courts the habitual residence of the defendant is entirely in the spirit of contemporary procedural law, Brussels Regulation I (1215/2012), and is based on the principle of presumption of an unfounded claim, guaranteeing the defendant the comfort of the defense (*Antonio Marinari v Lloyds Bank pic and Zubaidi Trading Company,* 1995). General jurisdiction reflects this general principle of jurisdictional rules, confirmed in a number of CJEU decisions (Kruger, 2008, p. 62). According to the CJEU jurisprudence, the general principle is that the courts of the Member State in which the defendant is domiciled are those which have jurisdiction, and only in exceptional cases does the Convention provide for an exhaustive list of cases in which a claim may be brought before the court of another Member State (*Francesco Benincasa v. Dentalkit Srl*., 1997). Various private international law authors and CJEU jurisprudence justify the connection of general jurisdiction with the domicile of the defendant with reasons such as: the assets of the defendant are usually in the domicile of the defendant, therefore it makes the execution of the decision easier (Stone, 2014, p. 53), since the plaintiff has the right to initiate legal proceedings in court, he may abuse this right, therefore the defendant should be protected (*AS-Autoteile Service GmbH v. Pierre Malhé*, 1985);[3] theoretically, the defendant is more protected when sued in "his" courts (*of the country where he is located*), because he is presumed to know the law of that country (*Jakob Handte & Co. GmbH and Traitements Mécano-chimiques des Surfaces SA (TMCS)*, 1992),[4] etc.
For the purpose of implementing the PIL, the concept of habitual residence of a natural person is provided in its Article 12. According to this article, (for the purposes of this law) 'habitual residence of a natural person' means the place in which he has decided to stay most of the time, even in the absence of registration and regardless of permission or authorization to stay. In determining this place, the court shall take into account the circumstances of a personal or professional nature, which indicate a stable connection with this place, or the intention of the person to establish such connections. For the purposes of this law, the closest link is determined by the court,

[3] The CJEU has stated that: "According to Article 2, persons residing in a Contracting State must be sued in the courts of that State. This provision is intended to protect the rights of the defendant and also serves as a counterweight to the facilities provided by the Convention for the recognition and enforcement of foreign judgments."
[4] The CJEU has stated that: "The rules on special and exclusive jurisdiction, as well as those relating to the conferral of jurisdiction, deviate from the general principle laid down in the first paragraph of Article 2 of the Convention, that the courts of the Contracting State in which the defendant party has its domicile shall have jurisdiction. This jurisdictional rule constitutes a general principle, because it makes it easier, in principle, for the defendant to defend himself."

according to the circumstances of the fact.
The concept of habitual residence of legal persons, associations and organizations without legal personality is provided in Article 17 thereof, according to which (*for the purposes of this law*), habitual residence of the legal person, of associations or organizations without legal personality is the place where the head office is located. Habitual residence of a natural person, carrying on business activities, is his main place of business. When the contract is concluded during the operations of a branch, agency, or other institution or, if according to the contract, the fulfillment is the responsibility of this branch, agency or institution, the place where the branch, agency or another institution is located is treated as the place of habitual residence.
The situation is more complex when it comes to the habitual residence of the child because the determination of this place of residence is a matter of fact and circumstances. *First*, *lex fori* contains neither a definition nor a specific regulation for the "habitual residence of the child". Analyzing Article 12 of the PIL, it seems that the legislator's aim was to provide the concept of a natural person and not of a child. The Albanian Civil Code provides for the domicile of the minor and is silent on the concept of the child's habitual of residence. According to its Article 13: "*The minor who has not reached the age of fourteen has as domicile, the domicile of his parents. When the parents have different domiciles, their child under the age of fourteen has as domicile, the domicile of the parent with whom he lives.*" *Secondly*, The Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation on Parental Responsibility and Child Protection Measures does not contain a definition of the concept of the "habitual residence of a child". Referring to the Convention commentary, this concept is a matter of fact and should be determined by the competent authorities in each case on the basis of factual elements (*Korkein hallinto-oikeus - Finland,* 2009). The concept of habitual residence is an autonomous concept and should be interpreted in the light of the objectives of the Convention and not in accordance with the limitations of domestic law (The Hague Conference on Private International Law, 2014; European Union Publications, 2014).
Thus, in the case *A (A*, 2009), the CJEU has stated that the 'habitual residence of a child' within the meaning of Article 8 (1) of the Brussels Regulation IIa should be determined/assessed on the basis of the specific circumstances of each individual case. In addition to the physical presence of the child in the Member State, other factors must be considered to prove that the presence is not temporary and sporadic and that the child's stay in that State reflects a degree of integration into the family and social environment. In particular, the duration, regularity, conditions, and reasons for staying in the territory of the Member State, the relocation of the family to that State, the nationality of the child, the place and conditions of schooling, language skills and family and social relations must be taken into account. In addition, as indicators of the transfer of the child's habitual residence should also be considered the intention of the parents to settle permanently with the child in a Member State, this purpose is manifested through some tangible action/step such as buying or renting an apartment in the host Member State or applying for a social housing in that Member State. The CJEU stressed that it is up to the national court to determine the habitual residence of the child, taking into account all the specific circumstances of each case individually. The same position has been taken by the CJEU in the *Mercredi* case *(Barbara Mercredi v. Richard Chaffe*, 2010).

In the Albanian case law, regarding the definition of general jurisdiction (*pursuant to Art. 71 of the PIL (but not only*), the concept of defendant's habitual residence often competes with that of domicile, when the defendant is an individual. According to Article 12 of the Albanian CC, "*domicile is the place where the person, due to work or permanent service, location of property or the realization of his interests, stays usually or most of the time ...*" and in practice the determination of domicile is mainly related to the determination in the civil status registers. In the case of *Toffanello v. Macerrata*, (JCCHC No. 67, of 10 March 2016; *Kalivac v. Intesa San Paolo*, JCCHC No. 238, of 07 May 1215) the defendant claimed that Macerrata has his domicile in the Republic of Albania, but not his habitual residence (and therefore the case does not fall within the jurisdiction of the Albanian courts). The High Court held that: "…based on the written acts of the file, the circumstances of a professional nature showing a stable relationship with Albania, as well as the fact that the defendant has decided to stay "most of the time" in Albania, are sufficient facts to give jurisdiction to the Albanian court" (JCCHC No. 67, of 10 March 2016).

Whereas, in another case (JCCHC no. 273, of 14 September 2016), where the defendant party had declared his habitual residence in Greece, (*and this fact had not been disputed by the plaintiff*) the Court of the Saranda Judicial District declared that it did not have jurisdiction on the grounds that the defendant has no habitual residence in Albania, but in Greece. However, the High Court overturned the decision of the Saranda Judicial District Court on the grounds that the defendant domiciles in the Republic of Albania (*because in the civil status offices his registered domicile was in the Republic of Albania*) and consequently the Court of the Saranda Judicial District has jurisdiction in adjudicating the case. By this reasoning, the Supreme Court seems to have incorporated the meaning of habitual residence into that of the person's domicile.

In relation to the above, since the Albanian law (Art. 71 of the PIL) explicitly provides for 'habitual residence' as a connecting factor, its determination requires special care by the court. Thus, when the defendant is an individual with a determined/known habitual residence in a country outside the Republic of Albania and also has a defined domicile (*e.g. is registered at a certain address in the civil status offices in the Republic of Albania*), pursuant to Articles 12 and 71 of the PIL, the lawsuit should be filed with the courts of the country where the defendant has his habitual residence, (*even in the absence of registration and regardless of the permit or authorization to stay*) and not with the Albanian courts. In cases where, the domicile is defined (*e.g., the individual has an apartment and is registered in the civil registry offices in the Republic of Albania*), the court cannot ascertain its jurisdiction based on this fact but must analyze the specific circumstances the case and whether they meet the criteria to consider this residence as his habitual residence, within the meaning of Article 12 of the PIL.

4. **Time of Determining the Connecting Factor**

An important aspect in determining the general international jurisdiction of the Albanian courts is also the time of the defendant's habitual residence which must be taken into account by the court. In other words, at what point will the defendant's habitual residence be assessed for the determination of jurisdiction? In determining the time, we should not rely on Article 17 paragraph 3 of the PIL, which refers to the

moment of conclusion of the contract (*i.e. the temporal application of the substantive law*), nor the place of residence of the parties at the time of signing the contract, whether these (e.g. addresses) are also part of the contract (JCCHC no. 67, of 10 March 2016). The rules that govern jurisdiction are procedural rules and in terms of their temporal application, the general principle applies that various judicial actions are regulated by the legal rules of the time and place where they take place. The time and place in which the substantive right arose does not matter as to the procedural rule to be applied, as it cannot be other than the time at which protection and/or reinstatement of this right is sought in trial (Lamani, 1962, p. 10; JCCHC No. 235, of 14 September 2016).

In the present case, reading Article 71 of the PIL in conjunction with Article 82 (1) of the PIL, which provides that: "*The adjudication of court cases with foreign elements before the Albanian courts is done according to the Albanian procedural law*", the court in determining the (time of) defendant's habitual residence should refer to the Albanian procedural law. Referring to the principle of "*perpetuatio juridictionis*" sanctioned in Article 36 (5) of the Code of Civil Procedure (hereinafter, "CPC")[5], as well as Article 154 (a) of the CPC[6] it can be said that the time of the defendant's habitual residence that the court should consider, should be that of filing the lawsuit in court. This moment also procedurally marks the beginning of the court process and the interruption of the limitation periods. This is the position of the Albanian judicial practice, which in a series of decisions states that the 'connecting factor' is assessed according to Albanian law (*lex fori*) and according to the principle '*perpetuatio jurisdictionis'*. Its existence is determined taking into account the moment of filing the lawsuit and any subsequent factual change that would make the jurisdiction absent does not matter (JCCHC no. 67, of 10 March 2016)

In the European jurisprudence, in relation to the application of Brussels I Regulation on the determination of jurisdiction, there has been a debate as to whether the time of determination of domicile of the party will be the time of filing the lawsuit in court or the time of receiving of the claim by the defendant (*Canada Trust Co v. Stolzenberg and Gambazzi Etc.*, 2000). According to Peter Stone although the Brussels I Regulation does not explicitly provide for the time of determination of domicile, clearly in relation to the time of determination of domicile the Regulation refers to the date of filing the lawsuit and not the date on which the claim is notified to the defendant (Stone, 2014, p. 53).

5. International Jurisdiction of Albanian Courts to Adjudicate Counterclaims

Given that the determination of general jurisdiction does not consider the habitual residence of the plaintiff, but only that of the defendant, there may be a situation where the defendant is a person with habitual residence in the Republic of Albania, while the plaintiff has no habitual residence in the Republic of Albania. The question

[5] Art. 36 para. 5 of the CPC: "Jurisdiction is determined at the time of filing a lawsuit in court, regardless of subsequent changes of fact or law."

[6] Art. 154 /a/i of the CPC: "1. The claim is submitted to the court by the plaintiff or his representative .... 2. When the lawsuit does not meet the conditions mentioned in this chapter, the single judge returns it to the plaintiff at the time of its filing or he is notified in writing of the completion of the deficiencies and, after the filing date is indicated in the lawsuit, a deadline is set for completion of flaws ..... 5. When the defects of the claim are completed within the set deadline, it is considered registered from the day it is registered in court."

arises: If the defendant files a counterclaim against the plaintiff (plaintiff/counter-defendant), who does not have a habitual residence in the Republic of Albania, does the Albanian court have jurisdiction to adjudicate the counterclaim?

Based on Article 82 (1) of the PIL, the adjudication of court cases with foreign elements before the Albanian courts is done according to the Albanian procedural law. Article 55 of the CPC provides that: "*The court adjudicating the main claim is competent to review the ancillary claims, the counterclaim or the principal intervention. In this case, the court decides to join them in a single case*." This rule makes the Albanian court have (*territorial*) competence to adjudicate the counterclaim or the request for intervention of a third person, although the court would not have (*territorial*) competence if the counterclaim or the claim of the third person had been filed as a lawsuit on its own.

In the application of Article 55 of the CPC, Albanian courts consider the Unifying Judgment of the High Court ('UJHC') no. 3, dated 28 April 2014, according to which this article cannot be applied when the court does not have substantive competence to adjudicate the dispute. (UJHC no. 3, of 28.04.2014).[7] In fact, Article 55 of the CPC explicitly refers to the (*territorial*) competence and not jurisdiction. However, given that the distinction between competence and jurisdiction is quantitative rather than qualitative (Kola Tafaj and Vokshi, 2018, p. 335), in the extended interpretation of Article 55 of the CPC in relation to international jurisdiction (*and not competence*), as well as in the spirit of the Brussels I Regulation and the jurisprudence of the CJEU, it can be said that Albanian courts also have jurisdiction over the counterclaim. As it will be seen below, this is supported by the Albanian doctrine (Mandro-Balili, Walker, and Kalia, 2005, p. 84), as well as from case law (JCCHC no. 235, of 14 September 2016).

Brussels I Regulation (1215/2012) expressly provides for the jurisdiction of the courts of the Member States to adjudicate the counterclaim as a separate jurisdiction. In Article 8 para. 3, it provides that: *"A person domiciled in a Member State may also be sued on a counter-claim arising from the same contract or facts on which the original claim was based, in the court in which the original claim is pending."* According to European legal doctrine and jurisprudence, the jurisdiction of the court for the counterclaim is a special and not a general jurisdiction, and as such, in its application the basic principles of the special jurisdiction must be taken into account. These principles are clearly stated in paragraphs 15 and 16 of the Preamble to Brussels I Regulation (1215/2012), according to which jurisdiction is generally based on the defendant's domicile except for some clearly defined situations, in which the subject-matter of the dispute or the autonomy of the parties warrants a different connecting factor. In addition to the defendant's domicile, there should be alternative grounds of jurisdiction that rely on a close link between the court and the lawsuit or with the aim of facilitating the proper administration of justice. The existence of a close connection should ensure legal certainty and avoid the possibility of the defendant being sued in a court of a Member State which he could not reasonably have foreseen.

In the spirit of the jurisprudence of the CJEU, the Albanian courts should be careful in considering the factors that legitimize the filing of a counterclaim to avoid possible

[7] "*Article 55 of the Code of Civil Procedure applies only to counterclaims which have the same substantive competence as the lawsuit. Thus, the civil court will accept to adjudicate only counterclaims that are of a civil nature, and also the administrative court can accept to adjudicate only counterclaims of an administrative nature. Only after the verification of their subject matter competence, the courts will consider the other criteria of admissibility of the lawsuit, provided for in article 55 of the Code of Civil Procedure.*"

abuse in the exercise of this right. It should also be borne in mind that this form of special jurisdiction (*in relation to the counterclaim*) does not entitle the defendant party to file a counterclaim against a subsidiary company of the plaintiff, but only against the plaintiff itself. Also, the defendant cannot add a new counter-defendant to the counterclaim (Stone, 2014, p. 123).

In the case of the international jurisdiction of the Albanian courts over diplomatic and consular missions, the Vienna Convention on Diplomatic Relations of 18.04.1961, approved by the Law no. 7164 dated 10 October 1987 expressly provides for the possibility of extending the international jurisdiction of the Albanian courts over the counterclaim. Article 32 of the Convention in question provides for the possibility of indirect waiver of immunity from Albanian judicial jurisdiction for diplomatic agents or members of his family (*who are not nationals of the host country*), through the filing of a lawsuit in the Albanian court. In this case, the diplomatic agents cannot claim immunity from the judicial jurisdiction in relation to the counterclaim that is directly related to the lawsuit. In other words, even if they could enjoy immunity from the Albanian judicial jurisdiction for this type of claim (*already filed in the form of a counterclaim*) they cannot claim it, if they are sued by way of a counterclaim in a process initiated by a lawsuit filed by the diplomatic agent himself or members of the diplomatic agent's family who are not nationals of the receiving State.

In the Albanian case law, the case of *Turk Telekom International BG EOOD v. FBD LLC* is of interest regarding the special jurisdiction of the Albanian court over a counterclaim. According to the circumstances of the case reflected in the decision of the Civil Chamber of the High Court (JCCHC no. 235, of 14 September 2016), the parties had a contractual relationship for IP transit service. According to a memorandum of understanding, they had agreed on the settlement of arrears that FBD LLC had to the plaintiff, in the amount of X Euro. Clause 17.3 of the agreement between them also stipulated that the disputes will be resolved before the Vienna Court of Arbitration.

Despite this arbitration clause, the plaintiff alleging that the defendant has not fulfilled a part of his obligation, filed a lawsuit in the Tirana Judicial District Court, requesting the defendant to pay the plaintiff the amount of X euros. The defendant did not challenge the jurisdiction of the court, but in the same trial, having claims against the plaintiff regarding the quality of service, filed a counterclaim, seeking the obligation of the plaintiff/counter-defendant to compensate the damage caused by non-enforcement of contractual obligations assumed in the IP transit service contract. The plaintiff/counter-defendant requested the court to declare that is does not have jurisdiction over the counterclaim and to continue only with the adjudication of his lawsuit. According to the plaintiff, pursuant to point 17.3 of the agreement, any dispute between the parties shall be resolved before the Vienna Court of Arbitration, therefore the Albanian court has no jurisdiction to review the counterclaim.

The Tirana Judicial District Court, with its decision no. 2166, dated 16 May 2016, decided to reject the plaintiff/counter-defendant claim about the lack of jurisdiction. This decision was upheld by the Civil Chamber of the High Court, reasoning, *inter alia*, that:

"... in the conditions where the plaintiff has clearly accepted the jurisdiction of the Albanian courts to resolve the contractual dispute, and on the other hand the defendant did not object to this jurisdiction, but instead requested the continuation of the trial and even filed a counterclaim (related to the lawsuit), then the court

finds that both parties have derogated from Articles 17.2 and 17.3 of the principal agreement, agreeing to be tried before the Albanian courts and under Albanian law (see legal basis where the lawsuit and counterclaim refer). Pursuant to Articles 71, 73, 80 (b) (c), 82 of Law No. 10428, dated 2.6. 2011 "On Private International Law", the court considers that the parties with their requests, claims and actions manifested in written acts addressed to the court (lawsuit and counterclaim), have accepted the jurisdiction of the Albanian court (*forum prorogatum)* and the Albanian law for the settlement of their contractual disputes, waiving the application of articles 17.2 and 17.3 of the principal contract ... The plaintiff cannot request that the means of protection of the defendant (counterclaim) be violated, as long as he himself seeks to be defended with a lawsuit before the Albanian courts. In doing so, the plaintiff has waived the arbitration jurisdiction, in favor of the jurisdiction of the Albanian court." The above decision of the Civil Chamber of the High Court on the extension of its jurisdiction over the counterclaim, is in the spirit of the implementation of the Albanian procedural law and Brussels I Regulation (1215/2012). However, in relation to the reasoning of this decision, attention should be paid to several aspects.

First, by recognizing that "*the plaintiff cannot request that the means of protection of the defendant (the counterclaim) be violated, as long as he himself seeks to defend himself with a lawsuit before the Albanian courts*", the Civil Chamber has indirectly applied the Estoppel doctrine (*deprivation of the right*), according to which, a party is prohibited from denying or affirming a certain fact, which he has denied or affirmed through his previous conduct (Kola Tafaj and Çinari, 2015, p.161). This is a principle prevalent mainly in *common law* countries and not so well known and applicable in *civil law* countries, such as Albania. Moreover, this doctrine does not find expression (*provision*) in any legal rule of the Albanian legislation.

Secondly, by filing a lawsuit in the Tirana Judicial District Court, the plaintiff has expressed his willingness to waive from the arbitration agreement for the resolution of the specific dispute that has arisen between him and the defendant. This does not mean that the plaintiff has waived the arbitration clause for any kind of dispute falling within the subject-matter of the arbitration clause. The fact that the defendant did not object to the lack of jurisdiction of the court, pursuant to Article 73 (3) of the PIL means that the Albanian court has international jurisdiction to adjudicate this dispute. On the other hand, the non-objection of the jurisdiction of the Albanian court by the defendant also does not mean that he has waived the right to address the arbitration jurisdiction for the settlement of other disputes that may arise between them (*plaintiff and defendant*) out of the same contract containing the arbitration clause in question. Through the appearance of the parties before the court, they have waived their right to arbitrate the specific dispute presented through the lawsuit. As long as the parties have not expressed that they waive from the arbitration agreement for all disputes that may arise between them, the arbitration agreement becomes ineffective only for the specific dispute filed before the court through the lawsuit (Cars, 2001, p. 61, 64; Olson and Kyart, 2000). Consequently, if the counterclaim filed in the same process were to be filed in the form of a new lawsuit, the Albanian court would not be able to declare international jurisdiction due to the non-existence of the arbitration agreement (*as waived by the parties due to adjudication of the previous lawsuit by the court*). On the contrary, the dispute in question would *a priori* belong to the arbitration jurisdiction and not to the court.

Third, if the defendant makes a new claim through the counterclaim, the Albanian court in determining its international jurisdiction must analyze its relation to the lawsuit in order to avoid abusive lawsuits. The legal basis for extending the jurisdiction of the court to the counterclaim may be the extended interpretation of Article 55 of the CPC, according to the analysis made above and in the spirit of Brussels I Regulation (1215/2012). The court also should consider that the international jurisdiction of the Albanian court in relation to the lawsuit cannot absorb the exclusive jurisdiction of a foreign state court in relation to the counterclaim.

6. **International *Lis Pendens* in Albanian Courts**

Another issue related to the general international jurisdiction of the Albanian courts is the case when the Albanian court declares its jurisdiction for the adjudication of a certain lawsuit and meanwhile one of the parties notifies the court that another court of a foreign state has declared before jurisdiction over the matter. This state of international *lis pendens* is not regulated by the PIL but is expressly provided for in Article 38 of the CPC. According to this provision:

"*1. When the same lawsuit, between the same parties, with the same cause and object of lawsuit is being adjudicated simultaneously by a court of a foreign state and the Albanian court, the latter may suspend the trial of this dispute when: a) the lawsuit has been filed previously in the court of the foreign state; b) the decision of the court of the foreign state is possible to be recognized and/or executed in the Republic of Albania; c) the Albanian court is convinced that the suspension is necessary for the proper administration of justice….*"

This is a new rule in the Albanian Code of Civil Procedure[8] and has regulated for the first time the international (*conditional*) *lis pendens*, in the spirit of the Brussels I Regulation and specifically of Article 33 thereof[9] and aims to avoid the possibility of giving conflicting decisions on the same issue.

In examining the criterion of the proper administration of justice, the court assesses the links between the facts of the case, the parties and the State involved, the stage at which proceedings have advanced in the other state at the time the proceedings began in the Albanian court, and whether the court of the other state is expected to decide on the case within a reasonable time. The Albanian court, which has suspended the proceedings pursuant to Article 38 (1) of the CPC, may resume the proceedings at any time if: a) the possibility of having two incompatible decisions disappears; b) the trial in the court of the foreign state has been suspended or terminated; c) the

[8] Art. 38 of the CPC was amended by the law 38/2017, which entered into force on 5 November 2017.

[9] Art. 33 of the Brussels Regulation 1215/2012: "1. Where jurisdiction is based on Article 4 or on Articles 7, 8 or 9 and proceedings are pending before a court of a third State at the time when a court in a Member State is seised of an action involving the same cause of action and between the same parties as the proceedings in the court of the third State, the court of the Member State may stay the proceedings if: (a) it is expected that the court of the third State will give a judgment capable of recognition and, where applicable, of enforcement in that Member State; and (b) the court of the Member State is satisfied that a stay is necessary for the proper administration of justice. 2. The court of the Member State may continue the proceedings at any time if: (a) the proceedings in the court of the third State are themselves stayed or discontinued; (b) it appears to the court of the Member State that the proceedings in the court of the third State are unlikely to be concluded within a reasonable time; or (c) the continuation of the proceedings is required for the proper administration of justice. 3. The court of the Member State shall dismiss the proceedings if the proceedings in the court of the third State are concluded and have resulted in a judgment capable of recognition and, where applicable, of enforcement in that Member State. 4. The court of the Member State shall apply this Article on the application of one of the parties or, where possible under national law, of its own motion".

Albanian court is convinced that the process in the court of the foreign state will not be completed within a reasonable time; or c) the continuation of the trial is required for a better administration of justice (Kola Tafaj, 2017).

7. **Conclusions**

Albanian courts have general international jurisdiction for resolving disputes when three conditions are cumulatively met: *First*, the dispute is of a civil legal nature; *Secondly*, the dispute has foreign elements (parties, subject or content), and *thirdly*, the habitual residence of the defendant is in the Republic of Albania.

In the Albanian case law regarding the determination of the habitual residence, the concept of the defendant's habitual residence often competes with that of domicile, when the defendant is an individual. The Albanian courts do not have a unified position on the applicable concept, providing different solutions on a case-by-case basis. Also, Albanian law does not regulate the "habitual residence of the child". In relation to the latter, the jurisprudence of the CJEU should be of guidance.

The Albanian procedural law, unlike the Brussels I Regulation, does not provide for the jurisdiction of the Albanian courts over the counterclaim. Meanwhile, the (*very few*) case law are in favor of extending the international jurisdiction of the Albanian courts over the counterclaim, even though the plaintiff has no habitual residence in the Republic of Albania. Such case law is entirely in accordance with the *acquis communautaire.*

Until 2017, Albanian procedural law did not regulate the international *lis pendens* between Albanian and foreign courts, leaving room for two identical proceedings taking place in parallel. With the amendments made to the Civil Procedure Code by the law no. 38/2017, the international *lis pendens* (*conditional*) was provided for the first time, in a similar way to the provision of Article 33 of Brussels I Regulation. Such a provision has not yet been made for related claims (*as provided for in Art. 34 of Brussels I Regulation),* but only for the same claims (same *petitum*, *causa petendi* and parties).

References

Books/Chapters/Articles

Cars. (2001). *Lagen om skiljeförfarande*, cited at "W*aiving the right to arbitrate by initiating court proceedings*" note 2 available at https://sccinstitute.com/media/37111/article_waiving-the-right-to-arbitrate-by-initiating-court-proceedings_nilsson_johnsson.pdf

European Union Publications. (2014). *Practice guide of the Brussels IIa Regulation*. Belgium. doi: 10.2838 / 28781 http://ec.europa.eu/justice/civil/files/brussels_ii_practice_guide_en.pdf.

Kalia, A. (1997). *Private International Law*. Tirana.

Kola Tafaj, F. (2017). International *Lis pendens* in Albanian judicial jurisdiction as a novelty in the Albanian procedural law, *"Jeta Juridike" Journal 3.*

Kola Tafaj, F. and Çinari, S. (2015). *Alternative Dispute Resolution.* Tirana: Albas.

Kola Tafaj, F. and Vokshi, A. (2018). *Civil Procedure, Part I*. Tirana: Albas.

Kruger, Th. (2008). *Civil Jurisdiction Rules of the EU and Their Impact on Third States*. Oxford: Oxford University Press.

Lamani, A. (1962). *Civil Procedure of the People's Republic of Albania*. Tirana.

Mandro-Balili, A. Walker, G. and Kalia, A. (2005). *Private international law.* Tirana: Publication of the School of Magistrates.

Nuni, A. (2009). *Civil Law. General Part*. Tirana.

Olsson, and Kvart. (2000). *Lagen om skiljeförfarande, s. 59*. Cf. Section 3 of the Arbitration Act of 1929 (Sw: lag (1929:145) om skiljemän) ("tvistens prövning"), cited at "W*aiving the right to arbitrate by initiating court proceedings*" note 2 available at https://sccinstitute.com/media/37111/article_waiving-the-right-to-arbitrate-by-initiating-court-proceedings_nilsson_johnsson.pdf
Stone, P. (2014). *EU Private International Law*. Cheltenham: Edward Elgar Publishing.
The Hague Conference on Private International Law. (2014). *Practical Handbook on the Operation of the Hague Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children*. The Hague.

Legal Instruments

Law No.10 428, dated 2.6.2011"On private International Law"
Vienna Convention on Diplomatic Relations, Vienna, 18.04.1961, approved with the Law no. 7164 dated 10 October 1987 "On the ratification of the Vienna Convention on Diplomatic Relations".
Regulation (EC) no. 593/2008 of the European Parliament and of the Council "On the law applicable to contractual obligations"
Regulation (EC) no. 864/2007 of the European Parliament and of the Council "On the law applicable to non-contractual obligations".
Regulation (EC) no. 44/2001 of 22 December 2000 "On Jurisdiction and Recognition and Enforcement of judgments in civil and commercial matters"

Albanian Case Law

Judgement of the Civil College of the High Court ('JCCHC') No. 81, dated 29 June 2017
JCCHC no. 273, dated 14 September 2016
JCCHC no. 235, dated 14 September 2016
JCCHC No. 68, dated 10 March 2016
JCCHC No. 67, dated 10 March 2016
JCCHC no. 255, dated 14 May 2015
JCCHC No. 238, dated 07 May 2015
Unifying Judgment of the High Court no. 3, dated 28 April 2014
JCCHC no. 56, dated 20 February2014

International Case Law

Canada Trust Co v. Stolzenberg and Gambazzi Etc. (House of Lords), 12 October 2000.
ECJ, C-364/93, *Antonio Marinari and Lloyds Bank pic and Zubaidi Trading Company* (1995), EU:C:1995:289, para. 13.
ECJ, C-269/95, *Francesco Benincasa v. Dentalkit Srl*. (1997), EU:C:1997:337, para. 13.
ECJ, C-220/84, *AS-Autoteile Service GmbH v. Pierre Malhé* (1985), EU:C:1985:302, para. 15.
ECJ, C-26/91, *Jakob Handte & Co. GmbH and Traitements Mécano-chimiques des Surfaces SA (TMCS)* (1992), EU:C:1992:268, para.14.
ECJ, C-523/07, *Korkein hallinto-oikeus - Finland, (*2009), EU:C:2009:225, para. A. 44.
ECJ, C-523-07, *A* (2009) EU:C:2009:225, para. 30-44.
ECJ, C-497/10, *Barbara Mercredi v. Richard Chaffe* **(2010),** EU:C:2010:829, para. 42-57.

Basis for the legal registration of non-traditional Trademarks in North Macedonia

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Abstract

Trademark law is one of the most interesting legal disciplines, not only in the field of intellectual property rights but generally within the general development of modern law. The essential function of a trademark is to distinguish goods and services offered by one undertaking from other undertakings. Therefore, trademarks can be considered as a tool for companies to communicate with consumers through various goods and services. With the registration of a mark, a trademark owner receives a right to prevent unauthorized use of a mark and a right to use a trademark to distinguish goods and services from competitors. In North Macedonia, most of the trademarks registered consist of 'traditional' marks (such as words, letters, pictures, numerals, etc.) With time passing, many companies in different countries but also in North Macedonia started to seek trademark protection of colours, the shape of products, sounds, holograms, etc. known as non-traditional trademarks. The efficient protection of such signs for public and business benefit is an important part of contemporary international and national legislation. This paper will provide how North Macedonian Industrial Property Law treats such trademarks, and by examining the law and the practice of the National Office for Industrial Property of North Macedonia will be concluded whether such non-traditional trademarks are registrable in North Macedonia. Moreover, this paper will also comment on the possibilities to have changes in the National Law for Industrial Property of North Macedonia in order to aallow a more flexible approach towards the registration of non-traditional trademarks.

Keywords: Basis, legal registration, non-traditional Trademarks, North Macedonia.

Introduction

The protection of a trademark is generally regulated on international level. The determination of what exactly is capable of being described as a trademark is still left mainly to the national authorities. Traditionally trademark protection includes words, letters, numerals, picture, drawings and a combination of all mentioned. In the modern business world, companies have to be more creative than their competitors and started to seek the protection of different types of trademarks such as colours marks, the shape of a product, sounds, smell, holograms, multimedia etc. known as non-traditional trademarks. However, companies need to be careful, as educating consumers to associate non-traditional trademarks with a trade origin demand huge investment in marketing and communication, where "cleverness alone does not

ensure legal protection".[1]

The legislation of North Macedonia concerning the protection of non-traditional trademarks is quite conservative. Only 'words, letters, numerals, pictures, drawings, a combination of colours, three-dimensional forms, including shapes of goods or their packaging, as well as a combination of all mentioned signs' can be registered as trademarks.[2] Also, non-traditional marks can hardly have the function of a trademark as they are not recognizable or more precisely cannot be "graphically represented", a condition that is mentioned in the National IP Law, Article 175 (1) provides that 'a trademark shall protect a sign which may be represented graphically and which is capable for distinguishing goods or services of one undertaking from those of other undertakings'.[3]

In the following sections, this paper will examine the two most common types of non-traditional trademarks applications at the State Office of Industrial Property of North Macedonia, in particular single colour marks and the shape of products, and how the proposal changes in the National IP Law can possible attract companies to apply for the protection of other types of non-traditional trademarks in North Macedonia.

Definition of trademark on International level

With the protection of non-traditional trademarks among different jurisdiction, a question has raised whether non-traditional trademarks can constitute a trademark from an international perspective. During the establishing of the Paris Convention, member states could not reach an agreement on the definition of a trademark. The issue on definition of a trademark under Paris Convention still remains even after the general definition of the trademark was discussed on the Agenda of Vienna Meeting in 1952 and Brussel Meeting in 1954. Furthermore, the Convention does not answer to the protection process of trademark, leaving the answers to member states in their national laws.[4]

The scope of trademark protection also is not specified in the Madrid Agreement concerning the International registration of marks nor in the Madrid Protocol Relating to the Madrid Agreement concerning the International Registration of Marks. However, the Madrid System includes non-traditional trademark types such as shape or sound marks with clear graphical representation.[5]

Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs) in Article 15 provide a non-exhaustive and broad list of signs that can constitute a trademark.[6] From the TRIPs definition of the trademark can be concluded that TRIPs

[1] Anne Gilson LaLonde and Jerome Gilson INTA, *Getting real with nontraditional trademarks: what's next after red oven knobs, the sound of burning methamphetamine, and goats on a grass roof?* p. 187.

[2] Law on Industrial Property of North Macedonia No. 07-1006/1, 12 February 2009, Article 175 (2) (hereinafter National IP Law).

[3] Ibid, Article 175 (1).

[4] Paris Convention for the protection of Industrial Property of 20 March, 1883 as revised at Brussels on 14 December 1900, at Washington 2 June 1911, at The Hague on 6 November 1925, at London on 2 June 1934, at Lisbon on 31 October 1958 and at Stockholm on 14 July 1967, amended on 28 September 1979 (hereinafter Paris Convention) see Article 6.

[5] WIPO, *Guide to the International registration of Marks under the Madrid Agreement and the Madrid Protocol* 2019, p. 14. Madrid Agreement concerning the International registration of marks, April 14, 1891, amended on September on September 28, 1979. Madrid Protocol relating to the Madrid Agreement concerning the International registration of Marks adopted at Madrid 27 June, 1989.

[6] Agreement on Trade-Related Aspects of Intellectual Property Rights, 15 April 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1C, Legal Instruments – Results of the Uruguay Round, 33 I.L.M 1125, 1197 (1994) (hereinafter TRIPs Agreement) see Article 15.

does not exclude non-traditional trademarks from its definition. Also, in Article 15 TRIPs agreement leaves member states to decide whether to limit the scope of protection only on marks that are visually perceptible, meaning that member states are free to decide protection of non-visual trademarks. Considering the definition for a trademark in TRIPs agreement, non-traditional marks can be protected as long as they are capable to distinguish goods and services. The Singapore Treaty on the Law of Trademarks focuses more on the administrative procedural trademark registration rather than substantive law.[7] Article 2 of the Singapore Treaty provides protection of non-traditional trademarks such as sound, holograms, smell and others. However, member states are not obliged to protect such marks under said Article 2.

As can be seen, International agreements are not prescriptive in the definition and scope of trademarks and it is up to the member states on how to implement the definition of a trademark. North Macedonia is a member state in all above-mentioned International agreements.

Common types of non-traditional trademarks applications in North Macedonia

I. Colour marks

Before starting answering, if colours have a place in the National Law of North Macedonia, we should question ourselves if colours convey a message? Obviously, a colour sends a message to the consumers.[8] Colour psychology is a research area that examines how colour affects our behaviour and decision making, meaning that colour can be crucial to how consumers perceive a trademark.[9] Below are some examples of how different colours affect us in everyday life and above all in how consumers perceive trademark colours.

You may have heard that the green colour associate to a feeling such as relaxation, calmness and nature.[10] The colour is also very effective in raising awareness about environmental issues. A clear example of this is when *McDonald's* chooses to change the colour of the mark from red and yellow to green colour in Europe with the purpose to appear more environmentally conscious for an environmentally conscious target group of consumers.[11] The yellow colour is often associate with optimism and happiness. Using yellow colour in marketing can give a trademark a sense of playfulness and liveliness.[12] However, companies should be aware of using the right shade and tone of yellow because otherwise, it can be associated with aggression or danger.[13] Orange colour same as yellow is considered warm and joyful. It is eye-catching and therefore works perfectly as a primary colour. Orange is also a colour most people associate with "low cost", which can be effective or risky depending on the companies' approach in the market.[14] Red is a powerful and strong colour that triggers strong emotions, both positive and negative. It is a stimulating colour, which it is believed the reason why so many fast-food restaurants use the red colour,

[7] Singapore Treaty adopted in Singapore 27 March 2006 entered in force on 16 March 2006 intend to simplify and harmonize the trademark registration procedures of national trademark offices.

[8] J Suresh Kumar' *The Psychology of Colour influences Consumer's Buying Behavior – A Diagnostic Study* p.6

[9] Ibid page p.7-8.

[10] Ibid page p.8.

[11] Karen Haller *Branding-Why red and yellow is used by the fast food industry* 30 March 2011.

[12] J Suresh Kumar' *The Psychology of Colour influences Consumer's Buying Behavior – A Diagnostic Study p.6.*

[13] Drew Coffin *Colour Psychology and Ecommerce* 6 February 2013.

[14] David Roberge *What does your package colour means to consumers?* 27 March 2019.

is that it triggers a feeling of hunger.[15] Also, red is an effective colour in marketing for immediate sale or call to actions message. Blue gives a sense of security and can stimulate productivity. The colour is widely used in health, finance and technology, it is by far the most used colour in the business world because it symbolizes trust, calm and knowledge.[16]However, colours maybe will not be perceived with the same message depending on the consumer side. Perception of colours depends on 'personality, gender and cultural background of consumers'.[17] For example, red colour in India is associated with fear and fire, in China with good luck, celebration while in Thailand red colour symbolize Sunday.[18]

From the above analyses can be said that colours convey a message. The question is whether the colour conveys a trademark message? Another question that arises even if colours convey a trademark message can colour works as a trademark and what actually single colour protection with a trademark means?

Protection of single colour *per se* as a trademark means that the colour as such without contour i.e., without connection to a shape, letter, design, etc., would be protected in favour of the trademark owner. Colours, as mentioned earlier are an important element of a trademark and is therefore suitable for imitation by competitors. By protecting a single colour with a trademark, that means that competitors would be excluded from using that particular colour at all since possible variations of use will be covered by the registration of trademark owner.

Earlier was mentioned in the introduction that the National Law of Industrial Property of North Macedonia provides the following trademark definition: 'Trademark shall protect signs capable for distinguishing, in particular: words, letters, numerals, pictures, drawings, **a combination of colours…**',.[19] Conditions that a trademark must fulfil in order to obtain protection in North Macedonia are found in Article 175 (1) by national IP law[20], and namely they are split in three parts, marks must be a: a sign, have graphical representation and distinguish the goods and services.

State Office of Industrial Property of North Macedonia when examining the suitability of single colour marks for its graphical display, the Office determined whether the colour that is graphically displayed is identical with the colour listed in the application form, whereby from the applicant is not required to precise the shade of the colour by international colour code.[21] Protection can be sought for colour mark separately, as a specific or an abstract colour mark. A specific colour means that the colour is limited to a certain shape, for example, protection can be sought for a specific colour that is applied to a specific product. An abstract colour mark means that it is the colour itself that is protected, and it does not have to be linked to a specific shape or product. As can be seen from the definition of trademark in the National IP Law, protection can be given to combination of colours, but obtaining registration for a single colour mark has proved difficulties in practice.

Example that can mention from the State Office for Industrial Property of North

[15] Taylor Rock *The reason most fast-food restaurants are red* 7 October 2019.

[16] J Suresh Kumar' *The Psychology of Colour influences Consumer's Buying Behavior – A Diagnostic Study* p.6.

[17] Ibid p. 9.

[18] Ibid p.11.

[19] National IP Law see Article 175 (2).

[20] National IP Law see Article 175 (1).

[21] WIPO - *New Types of Marks Law on Industrial property of the Republic of Macedonia* p..2 https://www.wipo.int/export/sites/www/sct/en/comments/pdf/sct17/mk_1.pdf Last visit: 14/12/2021.

Macedonia practice with single colour marks is *Cadbury* violet colour in respect for Class 30 of *Nice Classification*: cocoa, chocolate, chocolate- based beverages.[22] The application was refused on absolute grounds for refusal because the sign is eligible to distinguish the goods in the market. The applicant indicated that the mark has been used for a long time, having already registration in several countries. The Office responded to the claims of the applicant that the protection in certain countries it is irrelevant in this case for the reason that the gained protection is under their legislation. The fact does not have any legal consequences in the Republic of North Macedonia, where it is relevant only to the National Law on Industrial Property rights. The Office accepted that a different conclusion could have been reached if there was evidence of acquired distinctiveness for the colour in North Macedonia with the meaning of Article 177 (2) of national IP Law.[23]

To prove acquired distinctiveness, the applicant must provide evidence like price lists, invoices, statements from trade associations or consumer associations, surveys, newspaper articles, brochures or advertising materials. Eventually, the most adequate and precise method is to conduct a consumer survey,[24] whose outcomes a link in the consumer's spirit between the trademark and the producer. For example, magenta colour of *Deutsche Telekom*[25] demonstrated acquired distinctiveness by using the same colour in its get up and marketing campaign for nearly a decade in North Macedonia. The main point of the trademark protection is to guarantee that it operates as an indication of origin, which in case of a single colour mark is difficult to attain. The test of distinctiveness will always be more difficult for colour mark than other traditional marks, due to the limited number of colours. In North Macedonia legislation eligibility for trademark protection hinges upon whether the colour has acquired secondary meaning. One question that arises when examining whether single colour marks has acquired secondary meaning is that does the same criteria applies when it comes to the protection of colour of well-known trademarks and the colour of less known trademarks?

When registering a single colour marks, another questions arise about its impact on free competition as to the holder of a colour mark is given exclusive rights to the colour. If protection is provided for single colour marks, the competition will be hampered as a few companies will gain a monopoly on the market, which means that other companies cannot use that particular colour. Therefore, there is a general interest in not allowing a few companies to restrict the availability of colours to other competitors in the market. How this interest should be taken into account, there is no clear answer to in practice.

II. Shape marks

Many companies today have the interest to protect the shape of their goods or their packaging not only by design protection but also by trademarks. Protecting the shape

[22] WIPO, *Standing Committe on the law of trademarks, industrial designs and geographical indication – Grounds for Refusal of all types of marks*, February 2010 p.5. International Classification of Goods and Services also known as the Nice Classification was established by Nice Agreement (1957) is a system of classifying goods and services for the purpose of registering trademarks.

[23] National IP Law see Article 177 (2).

[24] The Qualitex Quandary, *Was trademark protection for colour per se clearly resolved* (1996).

[25] North Macedonia IP Trademark Database (Application number 2000/361) Source: TM View https://www.tmdn.org/tmview/#/tmview/detail/MK500000200000361 Last visit: 16/12/2021.

of the goods with a trademark can provide a monopoly and a huge competitive advantage in the market.[26] That is why, for the owners' trademark protection is preferable, providing an unlimited time scale in comparison to design, which gives protection of 25 years.[27]

In the National Industrial Property Law of North Macedonia shape of goods or their packaging are listed in Article 175 (2) 'Trademark shall protect signs capable for distinguishing, in particular: words, letters, numerals, pictures, drawings, a combination of colours, three-dimensional forms**, including shapes of the goods or their packaging….**'.[28] Based on the law, many companies have applied for the shape protection of a large variety of goods, in particular the shape of goods in Classes 3, 32, 30 and 33 of *Nice Classification*. Shape marks protection mainly include the shape of a product or packaging without containing any graphical, figure or word element. Compared with other non-traditional marks, shape marks can without problem satisfy the requirement on graphical representation by design or a photograph. However, demonstrating distinctiveness is particularly difficult for shape marks under North Macedonian law, especially for those shape marks without containing words or other graphical elements.

At State Office for Industrial Property, the trademark application for Oil Bottle was refused on lack of distinctiveness.[29] Although the three-dimensional sign filled combined with horizontal types of wave grooves and vertical ribs in the middle of the external shape of the bottle is not sufficient to give it a distinctive character. The shape helps to make the bottle more rigid and enable it to be compacted after use. Numerous bottles show such characteristics. The average consumer is used to seeing the goods in question in supermarket shelves packaged in bottles more or less the same as the bottle in question that the minor details presented by it individually wavy ribs spaced at a greater or lesser distance apart are not sufficient to enable him to identify it as originating from a specific company.[30]

The level of awareness of the consumer concern has been found to differ in connection with different types of goods or goods with a different price range. Consumers usually are more prone to notice a difference in the shape of more expensive goods.[31] For example, affordable bottle shape of such as washing liquids usually have low distinctive character, since different shapes are not perceived as identifying the brand, in compares to expensive perfumes bottles usually have a distinct shape that is important as a word or figurative element.[32]

In the National Law, shape marks are not only subject to an examination of distinctiveness like all other type of marks but also to a special test under national law Article 177 (6) 'which exclusively consists of shape defined by the kind of goods, shape of goods necessary to obtain a specific technical result or shape giving a substantial value to the goods'.[33]

These expectations or limits on the registration of shape are not applicable to other

[26] Fox Williams, *Shape trade marks: Are they shaping up?* July 4, 2017.
[27] Law on Industrial Property Right - North Macedonia Art 127 (1).
[28] National IP Law see Article 175 (2).
[29] North Macedonian IP Trademark Database (application number 2001/371) source TM View.
[30] North Macedonian National Office of Industrial Property right, Decision number 10-728/4.
[31] European Court of Justice 12 January 2006, Case-361/04 para 41-42.
[32] EUIPO Third Board of Appeal 7 August 2001, Case R 476/2001 para 23.
[33] National IP Law see Article 177 (6).

types of marks, meaning that is explicit only to three-dimensional marks. The presumed perception of the average consumer is not a decisive element when applying these grounds for refusal but may, at most, be a relevant criterion of assessment for the competent authority in identifying the essential features of that shape mark.[34] The purpose is to keep the shapes of the products freely available to all undertakings in the market.

The first special ground for refusal of shape marks excludes from registration are the shapes that follow from the nature of the goods. The purpose is to preclude from trademark protection ordinary and normal shapes of the goods. For example, it would not be possible to register the shape of a chocolate cake in a grid pattern because this shape has become generic and generally accepted for chocolate cakes. The ground of refusal for shapes that follow from the nature of the goods is not entirely clear and guiding practice in this matter is quite rare at the National Office. However, the purpose of preventing registration is uncomplicated. Normally, most shapes that only follow from the nature of the goods should also be denied registration due to the lack of distinctiveness.

Grounds of refusal for shapes necessary to achieve technical results are perhaps most important grounds. This ground for refusal draw the line with Patent Law, due to the economic interests that may be involved. It should not be possible to extend the protection afforded by the patent law with trademark law for the shape of the goods after the validity of the patent expired. The interest in technology that is no longer protected by patents can increase competition in the market and thereby put pressure on prices. Preventing these effects through trademark protection is of course not desirable on the part of the legislature.

The most common grounds for refusal of shape marks is the lack of distinctiveness and the ground for shapes necessary to achieve a technical result. However, there is an additional ground for refusal of shapes that give substantial value to the goods. In practice, the purpose has been specified to prevent trademark protection from being used to obtain an unfair competitive advantage in the market. Characteristics of a product that do not fulfil a technical function or a function of use, but significantly increase the product's attractiveness and have a significant influence on the consumer preferences, should not be monopolized through trademark protection.[35]

The trademark protection for shapes of goods and packaging is limited with a higher requirement for distinctiveness than other traditional marks and with the additional three absolute grounds for refusal that are explicit only to shape marks. The reason is mainly to the fact that consumers are not used to perceive the shape of a good as an indication of origin. Therefore, there is a requirement that the shape of the goods distinct significantly from the norm or what is customary in the industry for original distinctiveness to exist. Grounds for refusal of shape which result from the nature of the goods, shape which is necessary to obtain technical result and shape which give substantial value to the goods aims to preclude such shapes from trademark protection because all participant in the market must have the opportunity to use them. For that reason, acquired distinctiveness will not overcome these grounds for refusal.

Shapes that are precluded from trademark protection can still be protected with other intellectual property rights by design, patent or copyright. The shape of a product can

[34] European Court of Justice 18 September, Case C-205/13 para 34.

[35] Opinion on Advocate General Szpunar, 14 May 2014 on the C-205/13 para 79-80.

be protected by design law if the shape has a new design not identical with previous design available to the public and if the shape has an individual character.[36]Secondly, the technical function of the shape can be protected with a patent if the technical function has a novelty.[37]. Also, the shape can be protected with copyright if it shows originality as an artistic work. [38] However, trademark protection offers one thing that other intellectual property rights cannot, an exclusive right with unlimited time.

Issues surrounding the protection of other non-traditional trademarks in North Macedonia

While in European Union and other developed countries the number of applications for the registration of sound, hologram, multimedia marks are rising, at the North Macedonian IP Office there are almost no cases where the holders seek their protection. The main reasons behind the lack of interest for their protection are the graphical requirement, and also the legal definition in the National Law does not provide the protection of sound, hologram or multimedia marks. Although the Guideline for trademark protection in North Macedonia provides that sound marks can be protected if they are represented graphically by musical notations, in practice, this has shown difficulties for the trademark examiners when examining whether the mark is distinctive enough to have protection. Also, another issue for the protection of sound, hologram or multimedia marks is the administrative system used by the IP National Office that does not support their filing by MP3/ MP4 format, audio-visual file, video file or graphic/photographic reproduction.[39]

There is no doubt that the popularity for trademark protection of sound and multimedia marks is increasing worldwide. This has been shown also in the EUIPO statistic document for the European Union type of application in the last three years.[40] North Macedonia should follow the changes made by the new European Trademark Directive[41] by removing the condition for graphical representation in the National Industrial Property Law and by providing protection of sound, multimedia, holograms etc. in the legal trademark definition. Also, the State Office for Industrial Property of North Macedonia should implement an administrative system that can support their filing in other formats. With these changes in the Law and in the practice of the National IP Office it is believed that North Macedonia will attract holders to file more applications for non-traditional types of trademarks. This will be beneficial for the growth of foreign investments in North Macedonia and also for the National IP Office.

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[36] Law on Industrial Property Right - North Macedonia Art 127 (1).

[37] Law on Industrial Property Right - North Macedonia Art 25 (1).

[38] Law on Industrial Property Right- North Macedonia for industrial design provide protection for 25 years see Art 172 (2), for patents 20 years see Art 74, Law on Copyright and Related Rights-North Macedonia provide protection for 70 years after the death of the author see Art 55 (1).

[39] European Union Office for Intellectual Property (EUIPO) in their guidelines provide that sound mark can be filed in audio file, multimedia marks in audio visual file, hologram in video file or graphic/photographic reproduction *EUIPO Guideline* p.104-115.

[40] *European Statics for European Union Trademarks* https://euipo.europa.eu/tunnel-web/secure/webdav/guest/document_library/contentPdfs/about_euipo/the_office/statistics-of-european-union-trade-marks_en.pdf Last visit: 21/12/2021.

[41] Directive (EU) 2015/2346 of the European Parliament and of the Council of 16 December 2015 to approximate the laws of the Member States relating to trade marks (hereinafter EUTMD).

Conclusion and recommendations

From the analysis of this paper, it can be concluded that colours and shape marks have a place in the area of trademark law in North Macedonia. However, in practice the test of distinctiveness is a tremendous barrier for their protection in comparison with other traditional marks.

North Macedonia as a potential candidate to join European Union should comply with the changes made by the new European Trademark Directive by removing the condition for graphical representation in the National Industrial Property law and include protection of non-traditional marks like sounds, holograms, multimedia marks etc. in the trademark legal definition. These possible changes in future will allow a more flexible approach of North Macedonia towards sound, holograms, multimedia and other of non-traditional trademarks.

References

Anne Gilson LaLonde and Jerome Gilson INTA, *Getting real with nontraditional trademarks: what's next after red oven knobs, the sound of burning methamphetamine, and goats on a grass roof?*

WIPO - *New Types of Marks Law on Industrial property of the Republic of Macedonia*

WIPO, *Standing Committe on the law of trademarks, industrial designs and geographical indication – Grounds for Refusal of all types of marks*, February 2010.

The Qualitex Quandary, *Was trademark protection for colour per se clearly resolved*

Fox Williams, *Shape trade marks: Are they shaping up?* July 4, 2017.

J Suresh Kumar' *The Psychology of Colour influences Consumer's Buying Behavior – A Diagnostic Study*, October 2017.

Karen Haller *Branding-Why red and yellow is used by the fast food industry* 30 March 2011.

Drew Coffin *Colour Psychology and Ecommerce* 6 February 2013.

David Roberge *What does your package colour means to consumers?* 27 March 2019.

Taylor Rock *The reason most fast-food restuarants are red* 7 October 2019.

EUIPO Third Board of Appeal 7 August 2001, Case R 476

Opinion on Advocate General Szpunar, 14 May 2014 on the C-205/13 para 79-80

Law on Industrial Property of North Macedonia No. 07-1006/1, 12 February 2009

Directive (EU) 2015/2346 of the European Parliament and of the Council of 16 December 2015 to approximate the laws of the Member States relating to trade marks

Agreement on Trade-Related Aspects of Intellectual Property Rights, 15 April 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1C, Legal Instruments – Results of the Uruguay Round, 33 I.L.M 1125, 1197 (1994).

Paris Convention for the protection of Industrial Property of 20 March, 1883 as revised at Brussels on 14 December 1900, at Washington 2 June 1911, at The Hague on 6 November 1925, at London on 2 June 1934, at Lisbon on 31 October 1958 and at Stockholm on 14 July 1967, amended on 28 September 1979.

Singapore Treaty adopted in Singapore 27 March 2006 entered in force on 16 March 2006 intend to simplify and harmonize the trademark registration procedures of national trademark offices.

EUIPO Guidelines for Trademark examination.

North Macedonia Trademark database.

WIPO, Guide to the International registration of Marks under the Madrid Agreement and the Madrid Protocol 2019.

The Role of the International Community in Resolving the Kosovo Issue (1998-1999)

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Abstract

The 1998-1999 war in Kosovo between the forces of the Kosovo Liberation Army and those of the Serbian-Yugoslavs, is one of Kosovo's most important historical events during the twentieth century. It was a symbiosis of the constant dissatisfaction of the Albanian people against the invasive Serbian-Yugoslav regime. The Belgrade government countered Albanians' legitimate demands for freedom, independence and democracy through a comprehensive anti-Albanian strategy. Terrorist counter measures against Albanians by the Yugoslav Federation were done to allegedly "take measures" to protect themselves against the irredentist Albanians. In the name of "preventing" these "anti-Yugoslav" actions, and in the name of "protecting Serbs and Montenegrins" from Albanians, the Belgrade government used state security mechanisms (police, army, and other forces) to commit crimes of genocide, war crimes and crimes against humanity in Kosovo, which were in violation of international conventions, such as the Convention on the Prevention and Punishment of the Crime of Genocide (December 9th, 1948), etc. The international community could not remain indifferent after seeing that these types of crimes were being committed in Kosovo by the Yugoslav state. This paper aims to present and address the key elements of the measures taken by the international community, its involvement in stopping war crimes in Kosovo and its role and contribution in resolving the Kosovo issue.

Keywords: Kosovo, Albanians, international community, Serbian-Yugoslav state, Serbian-Yugoslav security forces.

Introduction

The battle of the Albanian people under the leadership of the Kosovo Liberation Army (1998-1999) is a centuries-old crowning of the efforts of the people of Kosovo for freedom in their lands. It put an end to the harassment, persecution, rape, imprisonment, murder, and genocide of the Serbian occupying forces against the Albanian people in Kosovo. The victory of the Kosovo Liberation Army is a historic success, which was achieved through the battles throughout Kosovo, and above all through the diplomatic and military support of the international community.
To date, in regards to the international community, its role and commitment in the issue of Kosovo, there are publications by authors in various fields, both local and foreign; with political, military, historical, geopolitical and, geostrategic character, as well as for international relations. The studies so far bring their results mainly to two contradictory conclusions: the international community with its political and military intervention violated the sovereignty and territorial integrity of an independent and sovereign state such as the Yugoslav Federation (Serbia-Montenegro) and the other

conclusion brings the argument in favor of political and military intervention in the case of Kosovo, arguing the intervention of the international community in line with International Humanitarian Law.
The primary purpose and goal of this paper is to chronologically address and present the main engagement of the international community, the measures it has taken, how it was involved in the prevention of war crimes in Kosovo and its role and necessary contribution in resolving the Kosovo issue.
The importance of the study is to shed light on the ongoing efforts and role of the international community in resolving the Kosovo issue, especially during the 1998-1999 Liberation War.
During the preparation of this paper, historiographical and international relations literature were used, from Albanian and foreign authors; Albanian press published inside and outside Kosovo (newspapers, magazines), reports of international organizations for and about Kosovo during the years 1990-1999, etc.
Regarding the scientific methodology, I have mainly practiced the analytical and inductive method. Thus, the authentic source material as well as the historiographical one has been studied and decomposed to come to the historical truth, which enables the reconstruction of the current subject, in this case that of the international community.
The analysis of all the material was done with the following research questions in mind: 1. Why the issue of Kosovo by the international community continued to be considered a minority issue and a matter of human rights violations, and not as an unresolved political issue of the Albanian people?; 2. Why the Albanian people in Kosovo did not have and should not have had the right to self-determination from the International Community, a right which belongs to them on the basis of the UN Charter? 3. Why is the international community accepting the constitutional position of Kosovo, forcibly degraded by Serbia, as the starting position in the process of resolving the Kosovo issue? ; 4. Why does the international community not respect the political will of the Albanian people of Kosovo according to the resolution of October 18th, 1991?; and 5. On what principles did the international community intervene militarily against the Yugoslav Federation?
The study is divided as such: title page, abstract, main body (introduction, Reconquest of Kosovo - July 5th, 1990, Kosovo 1998-1999, Political failure of the international community - military intervention), conclusion and references.

Reconquest of Kosovo - July 5th, 1990

Since the occupation of Kosovo by the Kingdom of Serbia and the Kingdom of Montenegro in 1912, and the recognition and annexation of this occupation by the Great Powers in the Conference of Ambassadors in London in 1913, Albanians have been subjected to continuous persecution, denial and abuse of their basic human and national rights. From that time, continuously and in various forms, the Albanian people of Kosovo expressed their dissatisfaction with the occupation and annexation within Serbia-Yugoslavia.
Serbia continuously qualified this dissent as illegal and used this dissent from the Albanian people in Kosovo for its own interests. By naming these activities as acts towards overthrowing Yugoslavia, there was an intention to use a "protective" role

to secure itself a hegemonic position and role within the Yugoslav Federation. In 1986, on the basis of this strategy, the Academy of Sciences and Arts of Serbia (ASAS) drafted the Memorandum of Understanding, driven by the official policy, on the pretext that Serbia's borders are not in line with ethnic composition and, as such, they should be corrected, because the 1974 Constitution had harmed Serbia because of the creation of the autonomous provinces of Vojvodina and Kosovo, and because it created "artificial" administrative borders, which did not reflect a "real" picture. The memorandum is a strategic document of the Serbian intelligence, which determined the direction of the "solution" of the Serbian issue within the Socialist Federal Republic of Yugoslavia (SFRY) (Beka, 2014). In essence, the Memorandum contained the "ideology of the Greater Serbia" in the late twentieth century and was a chauvinist platform on Kosovo ("Memorandum o Aktuelnim Društvenim Pitanjima u Jugoslaviji," 1986).

The official policy of Serbia, based on the Memorandum of ASAS, from the end of 1987 until 1989 organized debates for the beginning of constitutional changes, which provided for the reduction of the rights of the two Autonomous Provinces within Serbia - the Federation of Yugoslavia, respectively the Socialist Autonomous Province of Kosovo (SAPK) and that of Vojvodina. ("Sërish gjendje e jashtëzakonshme në Kosovë," 1987; "Vendosja e pushtetit policor në Kosovë nuk e tremb dhe nuk e mposhtë popullin tonë," 1987) .

Following the approval by the Assembly of Kosovo on March 23, 1989, of the draft amendments proposed by Serbia, on March 28, 1989 in Belgrade, the Federal Assembly of Yugoslavia, in an extraordinary and solemn session, approved the draft amendments, where the 47th amendment abolished the autonomy of Kosovo, which was provided by the 1974 Constitution.

The 1974 Constitution undoubtedly marked the highest degree of Kosovo's independence, despite its hybrid position, because Kosovo, in addition to being "within Yugoslavia", was also "within a federal unit", but not "an integral part of it" (Stavileci, 2012).

The constitutional changes were unacceptable to the Kosovo Albanian people, who in such a situation showed general intellectual and national maturity. The engagement and involvement of intellectuals in articulating political and state demands was an indication that in the future the broad masses of the people and students will not be the sole bearers of economic, cultural and national demands. Albanians in these invading circumstances reacted in different and in the possible ways for the time. Initially, the deputies of the Provincial Assembly of Kosovo, although hindered by the Yugoslav regime, through the Constitutional Declaration, on July 2nd, 1990, declared Kosovo an independent subject and equal to the other constituent units of Yugoslavia ("Kosova u shpall subjekt i pavarur dhe i barabartë në Jugosllavi," 1990) . This Declaration was followed by opposition and punitive measures by the Yugoslav Serb police and military forces. On this pretext, the Assembly of Serbia, by a special law, on July 5th dissolved the Assembly of SAPK, the Executive Council of SAPK and decided the violent occupation of Kosovo ("Shpërndahet Kuvendi dhe Këshilli Ekzekutiv i Kosovës," 1990).

The period of Milosevic's rule, or Kosovo under Serbian occupation 1990-1998, is a connection between Serbian governments, where the redesign of anti-Albanian programs, plans, projects, decrees and laws began, through which the Serbian

government struck in all areas, such as: political, economic, cultural, educational, health, judicial, informational, employment, urbanism, demographic development, etc., (Koliqi, 1995).

Albanian politicians were to conduct further actions in regards to the resolution of the Kosovo issue, through peaceful means and on two fronts: the establishment of state institutions according to the Constitutional Declaration of July 2nd and raising awareness of the Kosovo issue in the international arena.

The path of formation of state institutions according to the Constitutional Declaration of July 2nd, 1990, goes through several stages: On September 7th, 1990, the Assembly of the Republic of Kosovo held its meeting in Kaçanik, where it proclaimed the Constitution of the Republic of Kosovo; in July 1991, the political parties formed the Coordinating Council of Political Parties and elected Dr. Ibrahim Rugova ("Kujtesë-24 Maji 1992, Dita e zgjedhjeve të para të Kosovës Republikë," 2020). The Coordinating Council, from the 26th to the 30th of September 1991, organized the all-popular Referendum on the Independence of Kosovo and, on October 18th, issued the Resolution on Kosovo as a sovereign and independent state ("Rezoluta mbi Kosovën shtet sovran dhe i pavarur," 1991). Moreover, on October 19th, 1991, the Coordinating Council of Political Parties formed the Provisional Coalition Government, headed by Dr. Bujar Bukoshi and the first general elections were organized for the Parliament of the Republic of Kosovo, which were held on May 24th, 1992, where the members of the Parliament and the President of the state, Dr. Ibrahim Rugova, were chosen.

Therefore, in the context of raising awareness of the Kosovo issue in the international arena, political personalities, representatives of all institutions and President Rugova, made various visits to many countries around the world. They were mainly affirmative of the situation in Kosovo and were a call to the international community to increase its presence and role in resolving the Kosovo issue. According to the data of the time, the results from these meetings were verbal and thankful, for maintaining calm and not escalating the situation in that part of the Balkans. Consequently, the meetings in most cases ended with verbal promises.

With these political developments, the international community was in Kosovo, both inside and outside of Kosovo, independent of the treatment and statements made about resolving the issue. In this context, since the beginning of the reconquest of Kosovo from Serbia (July 5th, 1990), the invitation of US Secretary of State James Becker for peace and full respect for human rights is well known. In Brussels, during the meeting of the Ministers of Foreign Affairs of the "Group 24", Becker had proposed that the 24 western countries help resolve the crisis in Yugoslavia, where the situation in Kosovo was especially worrying. He also called for a joint appeal to "the *people and leadership of Yugoslavia and its republics to resolve their difficulties peacefully and with full respect for human rights*" ("Ftesë për paqe dhe respektimin e plotë të të drejtave të njeriut", 1990).

This call meant that the international community saw the solution of the situation in Kosovo within the state organization of Yugoslavia. This is also seen in the case when the European Union, with the aim of ending the conflict between Serbs and Croats and preventing its spread elsewhere in Yugoslavia, on August 27, 1991, respectively on September 3, 1991, established the Conference for Peace in Yugoslavia. The conference was attended by all the republics of Yugoslavia, but not the provinces, because, as Lord Carrington (chairman) said in an interview in August

1992, the Conference for Peace in Yugoslavia was obliged to find all solutions sought within the existing borders, and since Kosovo was part of the Republic of Serbia, its problem was viewed within these borders. The Conference for Peace in Yugoslavia established the Arbitration Commission composed of five lawyers, all presidents of the constitutional courts of EU countries. This commission, led by the French lawyer Robert Badinter, from November 29th, 1991 to August 13th, 1993, issued 15 opinions, which had an impact on the future of the SFRY (Hasani, Gashi, Bucaj, 2006) .

In the occupying circumstances and at a time when Albanian politics in Kosovo claimed to be finding support and backing on the peaceful path to Kosovo's independence, on May 3rd, 1995 at the Palace of Nations in Geneva, at a press conference, Lord Owen, accompanied by Geert-Hinrich Ahrens, was asked the following question: " *What do you think about the situation in the southern part of Yugoslavia, in the current circumstances, precisely in Kosovo and Macedonia?* ", he replied: "*The issue of Kosovo is a difficult problem*." He advised the Albanian side to give up the "secession" and, among other things, hinted that, without giving up the "secession", there can be no genuine dialogue with Belgrade. This statement was interpreted in different ways by political leaders in Kosovo ("Deklarata e Lordit Oven, 1995").

In Kosovo, the dilemma over the international community's approach to the Kosovo issue and its role was further exacerbated by Kosovo's non-involvement in international meetings, such as that for the ceasefire in Bosnia and Herzegovina, held in Dayton, known as the "Dayton Agreement", held from the 1st to the 21st of November, 1995 at Wright-Patterson Air Force Base in Ohio, USA, and at London Airfield on the 7th of December, continuing on to the 14th December in Paris (Zhitia, 2008).

In Geneva, before the meeting in London, in the phase of consultations with the international staff, the UN Secretary General, Boutros Boutros-Ghali, to the question of the journalist from the Albanian Radio Television (RTSH) regarding Kosovo, stated: " *The London Conference will to deal with only one problem, that of Bosnia. We also talked about Bosnia. We did not discuss other issues* " (Shala, 2003). This statement by the UN Secretary General proved that Kosovo was off the international agenda. In this context, international diplomacy had reduced the national rights of Albanians and placed the issue on the agenda of human rights talks. The dilemma about this support was also based on the fact that the Albanian people continued to be subjected to Serbian terror, where the occupier did not spare and did not choose methods and ways to extinguish any attempt of the Albanian people in Kosovo to achieve statehood. Therefore, this situation mobilized many different forces around a pragmatic approach to organizing the fight for freedom and independence of Kosovo. Among them, without a doubt, the Kosovo Liberation Army played the main role.

Rudolf Perrina, head of the US diplomatic mission in Belgrade and a participant in the Dayton Conference, also stayed in Kosovo during this time. In his meeting with the Presidency of the Democratic League of Kosovo, he was asked: "*Why is not our issue, the issue of Kosovo, opened in Dayton?"* Perrina replied concisely: "*Those who fought in Dayton have been invited. Dayton is a Peace Agreement reached between the parties of the wars in Croatia and Bosnia and Herzegovina* " (Shala, 2003).

On January 18th, 1996, German diplomat Geert-Hinrich Ahrens, leader of the Kosovo Conference Group on Yugoslavia, met with President Rugova and several other politicians during a visit to Pristina. He, presenting the views of the European

community, stated that in the possibilities for resolving the Kosovo issue, they had three options: 1. A third Republic in the Yugoslav Federation, 2. Kosovo under the 1974 Constitution and 3. Special Status for Kosovo. This message of Ahrens shows that the Albanians were faced with an unfavorable situation in relation to the international community, especially for the fact that all three options were contrary to the will and determination of the Albanian people ("Deklarata e Geert-Hinrich Ahrens," 1996).
During 1997, systematic terror of the occupier reigned in Kosovo, manifested through physical and psychological violence, ill-treatment, murder and expulsion of Albanians from ancestral homes. At the same time, on November 28th, 1997, the Kosovo Liberation Army (KLA) appeared on the public stage.

Kosovo 1998-1999

On January 22nd, 1998, the Serbian occupying forces attacked the Jashari family in Drenica, which had opposed the Serbian government since 1991, to show the readiness of the Albanian people in the fight for freedom or death. On March 5th, 1998, the Jashari family was the last to celebrate the start of the Kosovo Liberation War (Zhitia, 2008). Through this, the KLA's combat activity gave impetus to international diplomacy to put the issue of Kosovo on the agenda (Petrisch, Pihler, 2002); (Judah, 2002); (Shala, 2003a). The KLA subsequently became the bearer of the political and military processes in the international talks on Kosovo ("Rezoluta e Parlamentit Evropian, 14 Mars 1997," 1997).
On March 9th, 1998 in London, the Contact Group held its first meeting on the Kosovo issue. The meeting called for the withdrawal of Serbian special police units from Kosovo and the creation of conditions for talks between Kosovo and Serbia (Shala, 2003). In this meeting there was no movement from the previous position regarding the resolution of the Kosovo issue. The Contact Group was against the will of the Albanian people expressed on July 2nd, 1990, September 7th, 1990, with the popular referendum on the Independence of Kosovo, organized from the 26th to the 30th of September 1991, as well as with the Resolution on Kosovo as a sovereign and independent state which was issued on 18th October 1991. At this meeting, the Contact Group had authorized Felipe Gonzalez, the former Prime Minister of Spain, to be authorized by the Organization for Security and Co-operation in Europe (OSCE) and the European Union for the mediation of negotiations between Albanians and Serbs. However, no action was taken in this regard, because Milosevic did not accept the mediation of Felipe Gonzalez, and respectively that of the international community in the issue of Kosovo. During this time in Kosovo there were: Richard Miles, Head of the American Mission in Belgrade, Brian Donelly, Ambassador of Great Britain, Wilfried Gruber, Ambassador of Germany, Oleg Levitin, First Secretary of the Embassy of Russia and Gepard Fauveau, Political Adviser in The French Embassy.
At a time when the international community was moving towards the Kosovo issue, Robert Gelbard was strongly committed to building the Albanian delegation in the Kosovo-Serbia talks, and Milosevic came up with the idea and decision to hold a referendum on Serbia on April 23rd, 1998 on whether or not there should intervention and mediation from the international community due to the issue of Kosovo. Milosevic's move alarmed international diplomacy, including Russian diplomats, who warned Milosevic. Following the expected result of the April 23rd referendum,

Serbia declared that it would not allow the international community to be involved in the Kosovo issue. Therefore, on April 29th, 1998, while Serbia was carrying out ethnic cleansing in Kosovo, in Rome, Italy, the third meeting of the Contact Group was held. The meeting discussed the situation in Kosovo and the measures to be taken against Belgrade. The warring parties were urgently asked to stabilize the situation. Freezing measures were taken against Serbia outside its territory. At the meeting, among other things, the US representative demanded harsh measures against Serbia.

Milosevic's disregard for the international community, the dire situation in Kosovo and the lack of a solution for the Kosovo issue, prompted US diplomacy to intervene and take the lead in this process. After meeting with Milosevic on May 10th, 1998, the US delegation consisting of: Robert Gelbard, US Special Envoy for the former Yugoslavia, Richard Holbrooke, US Ambassador to the UN in New York, Christopher Hill , US Ambassador to Macedonia and Holbrooke's Chief Assistant to the Dayton Conference, Richard Miles, Head of the US Diplomatic Mission in Belgrade, and their Assistants arrived in Prishtina (Shala, 2003). At the G15 meeting, Holbrooke announced that he is authorized by President Clinton and Secretary Albright, that he does not represent the Contact Group here, but is the representative of the United States. Holbrooke also spoke of his interest in Kosovo since Dayton and the talks he had with Milosevic at the May 9th, 1998 meeting. The G15 reiterated its demands and announced the situation in Kosovo.

On May 28th, 1998, the Council of the North Atlantic Treaty Organization (NATO), in a meeting held in Luxembourg, assessed the situation in Kosovo as serious and warned of the stationing of troops on the Albanian-Kosovo border, as well as some military exercises. NATO, through the Secretary General, Javier Solana announced that it will not stand idly by in regards to the situation in Kosovo (Petrisch, Pihler, 2002). The Russian Federation, as it was before, was against the involvement of international forces.

While there was no understanding between international diplomacy, until a state of war reigned between the military forces on the ground and the Albanians faced an outburst of Serb nationalism, the international factor, especially the American one, would inevitably accelerate their engagement. In early June, US Ambassador to Macedonia, Christopher Hill, was appointed US and Western mediator for Kosovo.

On September 23rd, 1998, the UN Security Council adopted Resolution 1199, according to which, as a result of the repressive measures of the Serbian occupier on the Albanian population, killings, rapes, looting, deportations, etc., the situation in Kosovo was very heavy. It was requested that the fighting finally stop, for talks to begin and that police forces withdraw from Kosovo. The request for the necessary involvement of the international community in resolving the Kosovo issue was important. The Security Council decided that if the measures envisaged in this resolution were not implemented, then other measures to achieve peace and stability in Kosovo would be considered.

The next day, NATO, based on Chapter VII of the UN Charter, which enables military action if necessary, announced the so-called Activation Warning (ACTWARN). UN Resolution 1199 and the NATO decision were indicative of the unity of the international community in resolving the Kosovo issue, with the exception of the Russian Federation, which, as usual, was opposed to these NATO decisions. The decisions of the Security Council and NATO were followed by a political campaign of

the Contact Group, to stop the fighting in Kosovo. Ambassador Hill, who mediated the Contact Group, was also assisted by the Austrian Ambassador to Belgrade, Wolfgang Petrisch.
Holbrooke, during the round-the-clock meetings, in one of the meetings with Albanian politicians, emphasized: "*Milosevic is wrong if he thinks he can deceive us*" (Shala, 2003). Following the approval of the Allied air force plan OPLAN 10601 by the North Atlantic Council, on October 13th, following constant and threatening pressure, as a result of the Richard Holbrooke-Slobodan Milosevic meetings, an agreement was reached, according to which the Serbian police and army would return to pre-war levels (Judah, 2002). It was decided for about 2000 observers or verifiers, as they were called, to be brought to Kosovo under the name of the OSCE. It was decided that NATO would conduct surveillance flights over Kosovo to verify the implementation of the agreement. While Holbrooke was signing the agreement with Milosevic, the North Atlantic Council gave him support, adopting an Actord, according to which, if no agreement was reached, the bombing would begin within 96 hours (Judah, 2002); (Petrisch, Pihler, 2002). The American diplomat, William Walker, was appointed Chairman of the KVM (Kosovo Verification Mission).
The KLA war and its welcome into the international arena followed with the meetings of the Chief of Political Directorate, Hashim Thaçi, with representatives of international diplomacy, such as: the meeting with Christopher Hill, at the headquarters of the American Kosovo Diplomatic Observation Mission (KDOM) in Dragobil, on November 6th, 1998. The meeting discussed the project of C. Hill for Kosovo. The head of the American KDOM, Sean Burns was also present at the meeting (Krasniqi, 2006). Following this, a meeting with Wolfgang Petrisch, in mid-November 1998 in Malisheva. These meetings also showed that the international community respected and accepted the KLA as a decisive factor in the Kosovo issue.
The continuing crimes of Serbian forces throughout Kosovo, as in the Recak massacre on January 15th, 1999, are the driving factors of "shuttle diplomacy", that the issue of Kosovo had to be resolved with a general and strong intervention. On February 15th, 1999, Dr. Helena Ranta, director of the European Union forensic team in Kosovo, confirmed the crime of Serbian forces in Recak. In her report, she wrote: "*There was nothing to indicate that these people were anything other than unarmed civilians''* (Zhitia, 2008).

Political failure of the international community - military intervention

Preventing the chief prosecutor of the International Criminal Tribunal for the former Yugoslavia, Louise Arbor, from entering Kosovo was a driving force behind international diplomacy, beginning to build consensus that future diplomacy should be supported by threat and force (Judah, 2002). International diplomacy, in the circumstances, had decided to organize an international meeting for peace in Kosovo. The meeting for peace was held in a castle 45 km southeast of Paris, in Rambouillet. The talks were based on draft proposals for the future of Kosovo, drafted by Christopher Hill and Wolfgang Petrisch. The two would also be negotiators, along with Russian Boris Majorski, while Robin Cook and Hubert Vedrine would co-chair the talks.
The International Peace Conference for Kosovo began on February 6th, 1999,

after 18:00, under the supervision of more than 200 journalists, as well as dozens of television crews. The conference, in the presence of both delegations and other participants, was opened by the President of France, Jacques Chirac. In his welcoming speech, among other things, he stressed: "The *time has come for the parties to the conflict to finally sit down at the negotiating table and find a peaceful solution, so that hope is born for the people of Kosovo and the region of Southeast Europe for peace and prosperity in this part of Europe as well "* (Zhitia, 2008).

The Kosovo delegation in Rambouillet had shown high unity and cooperation during the conference and had drafted a joint political and military platform. In the following days they were faced with pressure from international diplomacy, especially from the American one, for the signing of the final document. The Kosovo delegation had expressed dissatisfaction and disagreement over the military issue, the future of the KLA and the political future, the holding of a referendum on Kosovo's independence after three years (Petrisch, Pihler 2002). At the last moment, the Kosovo delegation, through a declaration of full consensus, agreed in principle on the final document (Petrisch, Pihler 2002).

The Rambouillet meeting temporarily closed on February 23rd, 1999, to be resumed on March 15th, 1999, because the two parties at the talks did not sign the document provided by the international community (Zhitia, 2008).

After the resumption of talks, the Kosovo Delegation, which in Kosovo had held several consultative meetings, such as with the General Staff of the KLA, which in the first meeting spoke in favor of approving the entire draft agreement. On behalf of the delegation, Hashim Thaçi, through letters sent to Joschka Fischer (chair of the EU Council) and W. Petrisch (EU special envoy), affirmed the acceptance of the agreement and thanked the mediators for their efforts during the talks (Petrisch, Pihler 2002). The Serbian delegation, even after three days of talks, did not agree to sign the agreement, which was mainly opposed to political issues. The Kosovo delegation on the evening of March 18th signed the agreement document. The document was also signed by Wolfgang Petrisch and Christopher Hill as witnesses, while Boris Majorski, although present, did not sign it (Petrisch, Pihler, 2002). The failure to reach a political agreement resulted in the failure of the international community to resolve the Kosovo issue. For this reason, the international community was forced to take the necessary action to stop the crimes of Serbian forces; they were forced to decide on military intervention. On March 24th, 1999, following operational preparations and consultations between military and diplomatic circles, following the order of NATO Secretary General Javier Solana, Commander of NATO Allied Forces for Europe, Wesley Clark, at 20:00, ordered the launch of airstrikes against the Yugoslav Federation, bombings which were followed by attacks on Serbian targets, military bases, police and escort facilities (Clark, 2003).

On June 9th, 1999, at around 22:30, in the presence of more than 400 journalists and cameramen from various media from all continents, after talks at the "Haxhitepe'' Sports Airport in Kumanovo, Milosevic's generals signed a capitulation in Kosovo and signed a plan to withdraw Serbian troops from Kosovo, within a 7 day deadline. At the meeting in "Haxhitepe" of Kumanovo, the NATO delegation was led by General Michael Jackson. On his team were NATO generals Fritz Von Krof, Mauro Del Vecchio, Bill Rollo, Adrian Freer and John Craddock. The Belgrade government delegation was led by General Svetozar Marjanoviq, Deputy Chief of

Staff of the Yugoslav Army, and Generals Bllagoje Kovaceviq, Mlladen Karanoviq, Lubomir Draganjac, Branko Kërga, Milan Gjakoviq, all from the Ministry of Defense and general Obrad Stefanoviq and Sllobodan Miletiqi from Internal Affairs, as well as Nebojsha Vujoviqi, Assistant Minister in the FRY (Zhitia, 2008).
The Commander of NATO Allied Forces for Europe, Wesley Clark, at 15:36, suspended the air campaign. The "Allied Force" operation ended (Clark, 2003).

Conclusion

The international community was crucial in resolving many disagreements from war tendencies, but also the wars that degenerated into violations of basic, human and national rights, as well as any war tendencies with consequences that concern the instability and disruption of human society globally.
Often, however, in contemporary society, political and military intervention in resolving local problems and conflicts is difficult and limited by a number of obstacles arising from international law, among which from the San Francisco Charter of the United Nations remains the fundamental principle for the "non-interference in the internal affairs of sovereign states." In the face of such obstacles and challenges, the international community could not be indifferent, as it was to S. Milosevic who in Kosovo was pursuing a policy of genocide, war crimes and crimes against humanity. However, the international community, in no meeting, regardless of its political or military level, nor in Rambouillet, took into account and acknowledged that: 1. The issue of Kosovo was not a minority issue and a matter of human rights violations. It was denied that it was an unresolved political issue of the Albanian people in Kosovo. 2. The right to self-determination belongs to the Albanian people and should be accepted, a right which is based on the UN Charter. 3. The violently degraded constitutional position of Kosovo by Serbia could not be accepted as a starting position in the process of resolving the Kosovo issue. 4. Kosovo is an independent and sovereign ethnicity and the political will of its people is inviolable. 5. The recognition of the right of self-determination of Kosovo Albanians does not mean any change of borders and it does not contradict either the Helsinki Charter or the Paris Charter, because Kosovo was a federal unit similar to other republics, which, based on their status and according to this constitution today are recognized and sovereign states. 6. The cessation of Serbian colonization was one of the immediate objectives, and 7. An interim solution to the Kosovo issue would not be autonomy, but an international guardianship during which the process of realizing the political will of the people of Kosovo would take place without shock.
Despite this, the crimes during 1997-1999 committed by Serbian forces, such as the massacre in Likoshan, on February 28th, 1998, in Prekaz i Ulët, on March 5th to March 7th, 1998, in Lubeniq, Peja, on May 25th, 1998, in Rahovec, on February 19th, 1998, in Upper Obri, on September 26th, 1998, in Recak, on January 15th, 1999, etc., tens, hundreds and thousands of Albanian civilians were massacred, regardless of age or gender, showing the anti-Albanian policy of the Belgrade regime. All types of crimes were a last call for the international community to change its attitude towards the parties in the Kosovo war, so that the killer would not be equal with the victim. The convening of the Rambouillet conference was the last attempt from the international

community for a peaceful solution to the Kosovo issue. It was an indication of the Yugoslav Federation's denial and disparagement for any peace effort around Kosovo. The political failure of the international community to resolve the Kosovo issue through talks at the Peace Conference in Rambouillet, France, was the end of the story of the political and diplomatic power of the international factor. Therefore, in such circumstances, the international community through the argument of force decided to show the humane aspect for the establishment of freedom and democracy in Kosovo. The international community, before the newly created situation, based on International Humanitarian Law, respectively in the four Geneva Conventions of 1949, as well as the Additional Protocol to supplement the four Geneva Conventions, adopted in 1977, after operational preparations and consultations in military and diplomatic circles, ordered the launch of air strikes against the Yugoslav Federation.

The end of the NATO bombing and the entry of KFOR troops into Kosovo on June 12th, 1999 was a political, diplomatic and military victory for the progressive and democratic international forces. It was a victory of the KLA and the Albanian people in the fight for freedom, independence and democracy. The intervention of international forces and the end of the Kosovo liberation war, led by the KLA, opened the possibility to a final solution to the political and legal status of Kosovo. As such, the Kosovo liberation war, in the last decade of the twentieth century, is an important historical event not only for the Albanian people in Kosovo, but it is an event with an impact on Balkan, European and world relations.

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References

Beka, A. (2014, January). Memorandumi i Mirëkuptimit. *Ekspres.*

Clark, W. (2003). *Të bësh luftë moderne.* Zëri.

Deklarata e Lordit Oven. (1995, May 10th). *Zëri i Kosovës, XIII(10)*, 2.

Deklarata e Geert-Hinrich Ahrens (udhëheqës i Grupit për Kosovën në Konferencën për Jugosllavi. (1996, January 25th). *Zëri i Kosovës, XIV* (4), 6.

Ftesë për paqe dhe respektimin e plotë të të drejtave të njeriut. (1990, July 6). *Rilindja*, 3.

Hasani, E. Gashi, Sh. Bucaj, E. (2006). *Mendimet e Komisionit "Bandinter" për ish-Jugosllavi.* Rominor.

Judah, T. (2002). *Kosova luftë dhe hakmarrje* [E-book]. Koha & Shlk.

Koliqi, H. (1995). *Mbijetesa e Universitetit të Prishtinës 1991–1994* [E-book]. verana.

Kosova u shpall subjekt i pavarur dhe i barabartë në Jugosllavi. (1990). *Rilindja,* 1.

Krasniqi, J. (2006). *Kthesa e madhe-Ushtria Çlirimtare e Kosovës* [E-book]. Gjon Buzuku.

Kujtesë-24 maji 1992, dita e zgjedhjeve të para të Kosovës Republikë. (2020). *Sot Tetova.*

Memorandum o aktuelnim društvenim pitanjima u Jugoslaviji,. (1986, September 25). *'Vecernje Novosti.'*

Petrisch, W. Pihler, R. (2002*). Rruga e gjatë në luftë - Kosova dhe bashkësia ndërkombëtare 1989–1999* [E-book]. Koha.

Rezoluta e Parlamentit Evropian, 14 mars 1997. (1997, March 27th). *Zëri i Kosovës, XV(12),* 3.

Rezoluta mbi Kosovën shtet sovran dhe i pavarur. (1991, December 21at*). Bujku*, 3.

Serish gjendje e jashtëzakonshme në Kosovë. (1987). *Zëri i Kosovës, VI(10)*, 1–2.

Stavileci, E. (2012, September 13th). *Konferencë shkencore organizuar nga ASHAK* [Pavarësia e Shqipërisë dhe Kosova 100 vjet pas].

Shala, B. (2003). *Vitet e Kosovës 1998–1999* [E-book]. Zëri.

Shala, B. (2003a). *Lufta diplomatike për Kosovën. Dialog me ambasadorin Christopher Hill* [E-book]. Zëri.

Shpërndahet Kuvendi dhe Këshilli Ekyekutiv i Kosovës. (1990). *Rilindja*, 2
Vendosja e pushtetit policor në Kosovë nuk e tremb dhe nuk e mposhtë popullin tonë. (1987). *Zëri i Kosovës*, *VI*(11), 1–5.
Zhitia, S. (2008). *Ushtria Çlirimtare e Kosovës-Zona Operative e Llapit* [E-book]. Prograf.

The study of constructivist approach in teaching polygons in Albanian high schools and its effectiveness to students

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Abstract

Teaching geometry is a challenge not only for pre-service teachers but also for math teachers with a long background in high schools. This is reflected especially when new teaching methods have to be integrated during the lesson. Recently, simultaneously with the implamentation of new math curricula, the constrictuvist approach philosophy in teaching has been activated. This one has been on focus of many important research papers in which have been identified crucial results related to students and teachers. They emphasize that the learners are in the center of the lesson and they have to reach by themselves the objectives of topics. However, this new method related to the teaching and learning polygons has encountered its own difficulties in comfrontation to students and teachers. The goal of this paper is the study of the costructivist method in teaching and learning polygons. Furthermore, the identification of difficulties and benifits that math teachers and students are faced to this approach are pointed out.

Keywords: constrictuvist method, poligon, difficulty, teaching and learning.

1. Introduction

The theory of constructivism was initiated by Piaget in 1952 (Mayer (2009)). His idea concerned the evolution of children's thinking. He thought that every human had the capacity to reach the knowledge and conclusions by his own logical reason and experience. This approach encouraged many authors to create and study a new theory in Philosophy, Theory of Constructivism. It put the learner in the center of environment where he conscientiously interacts with the other participants to obtain crucial results. Although it began as an approach for children Thompson (2001) made an overview of Constructivism cited on many research papers and concluded that it is a very helpful theory for adults.

Inspired by this new theory many researchers thought to successfully apply Constructivism in learning science (Bruner (1996), Howard et al, 2000). Taber (2011) presented an evolution of constructivism in curriculum integration. He assured that although the student is in the center of the classroom, the role of the teacher is crucial, too. The student and the teacher must be active during the construction of the knowledge and the absorvation of the information. According to Thompson (2000) the teacher has to lead students to reach the knowledge in a uninhibited manner.

Simon in 1995 presented a mathematical model where the Constructivism Theory was applied. He created a scheme where he showed a strategy for teachers to follow in a lesson in order to the constructivsm idea would be effectively reached and he highlighted the role of the teacher in the lesson in two directions: the mathematical knowledge of the teacher and the hypotheses of the teacher on the mathematical information of the students. Many authors as Munter et.al (2015), Kameda (2017), Park (2021) etc. have worked on the Simon's idea in their papers. Due to its important role as instigator of high logic thinking at students, the constructivism method has found applications to mathematics curriculum in many countries.

In Albania education, the constructivism theory has applied recently in science, mathematics, history, geography etc. As a new approach in learning and teaching method, it is faced with the old one where the teacher is in the center of the lesson. As a result, it finds obstacles in its implementation to curriculum education. Motivated by results mentioned above, we study some issues on its application of constructivism method in teaching and learning of polygons in mathematics curriculum.

The questions that are raised in this study are:

a. Does the constructivist method lift the level of logic thinking in students in solving polygons' problems?
b. Do the teachers deal with constructivism in the chapter of polygons?

2. Theoretical framework

Polygons in Albanian education

The students encounter Geometry for the first time in Elementary School. An important part of Geometry is the chapter of Polygons. According to new mathematics curricula, the students meet polygons, on the first grade. They learn about the number of sides of square and rectangle. In the second grade, the student start to find out the geometric relationships in polygons. They are presented with regular pectagons and hexagons and with their properties through concrete illustrations. These concepts are extended on the third grade using various problems. On the fourth grade, the student can calculate the perimeter and syprine of square and rectangle. The student calculates the area of polygons by dividing them on simple and composite figures on the sixth grade of lower-secondary education. The chapter of polygons on the seventh grade includes the identification of the sides, angles, line of symmetry and their properties for parallelogram, rectangle, rhombus and square. On the eighth grade, the student knows the sum of interior angles for rectangular figures, and to draw a regular polygon when the side and the interior angle are given. The formula for finding the exterior angle of a regular polygon is proved on the ninth grade of the lower secondary education. The knowledge on polygons are completed on the tenth grade of upper secondary education. Polygons are treated in Chapter 3 "Angles and Polygons" of (Steve, 2021). The student has the capacity to find out properties and syprine of kite, regular and inregular polygons.

3. Methodology

In order to achieve the objectives of this paper we have used qualitative and quantitative methodology. We have tested 154 students (89 girls and 75 boys) of tenth grade from 7

different high school in Tirana, where the constructivism approach is used. Through it, we identify the most common mistakes and the difficulties that have students in defining polygons' concepts. We observe the level of logic reasoning of students in solving poligons' problems and if they can reach conclusions by themselves. The tests were planned for 45 minutes (the duration of an hour of mathematics lesson).
Furthermore, a survey form with five questions related to constructivism method in teaching polygons is done to 23 pre-service teachers and 16 teachers. Before the questionnaire, the teachers and students are known with the study and they accepted to be part of it voluntary. All participants, students and teachers are authorless with the intention to save their confidentiality.

4. A case of study

4.1 The results of test

In this section, we analyse the answers and the solutions given by students. We examine the mistakes done in this test.

Question 1. Describe the triangles that are formed by diagonals and sides of

a. The kite.
b. The rhombus.
c. The rectangle.
d. The square.

In this question, the student has to know the diagonals of several convex quadriteral shapes and their properties. He/she needs to be able to deduce by himself/herself on the types of triangles that are formed by diagonals and sides of the mentioned quadriterals. On the kite's case 22% of students answered correctly, 74% of students gave partial wrong answers and 4% of them did not answer. The results for the rhombus case are 78% of students gave correct answers, 20% of students answered wrongly and 2% did not answered. On the rectangle's case the answers of students are as follows 52% correctly answered, 46% wrongly answered and 2% no answered. For the last case, for the square 90% of students gave correct answers, 10% of them provide wrong answers. The results of the answers are shown in the Figure 1.

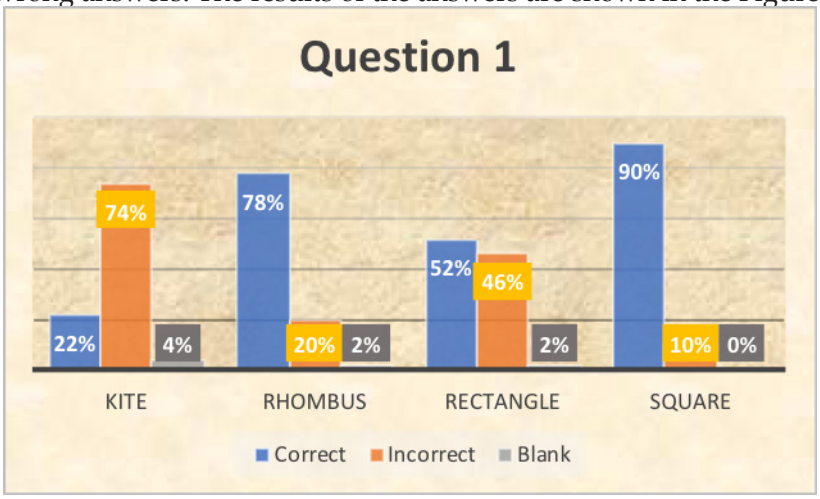

Fig.1

Question 2. The interior angle of a regular polygon is four times greater than its exterior angle.

a. Find the number of sides of polygon.
b. Label the polygon and draw it.

To solve this exercise the student must show the relationship between interior angles, exterior angles and the number of sides. For the first case 70% of students gave correct answers, 20% of them answered wrongly and 10% of students did not answer. In case b. the answers were 86% correct and 14% were wrong. The following figure illustrates the results.

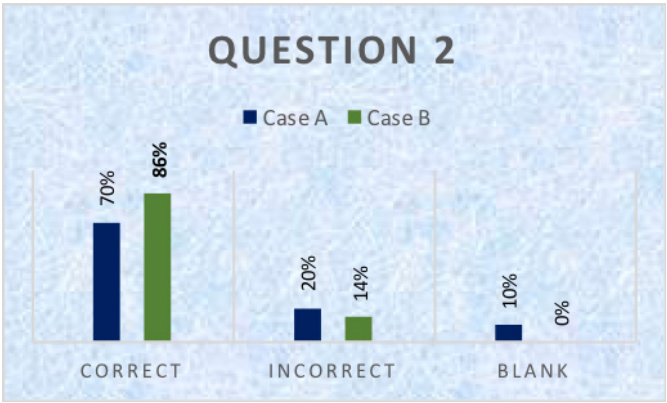

Fig. 2

Question 3.

a. Define a concave polygon.
b. In the figure 3 is given a concave hexagon. Find the sum of the interior angles of it.

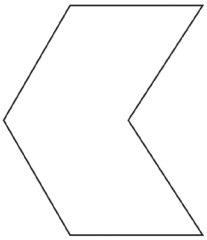

Fig. 3

Figure 4 shows the results of Question 3. In this question, the students have to use logic to obtain results in analogy with convex polygons which are treated in the lesson. In the case a. 58% of students answered correctly, 40% gave wrong answer and 2% of students did not answer. For the case b. 70% of students provide correct answers, 28% of them answered wrongly and 2% of students did not gave answers.

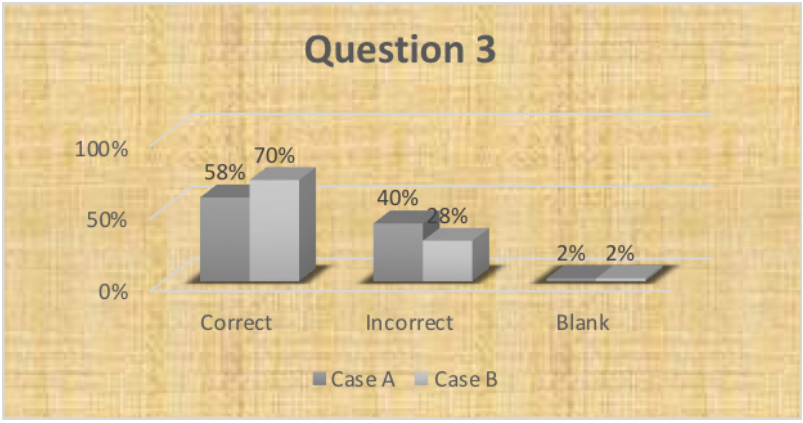

Fig. 4

Question 4.
The hexagons in the Figure 5 are similar. Find the side x and the syprine of the second hexagon.

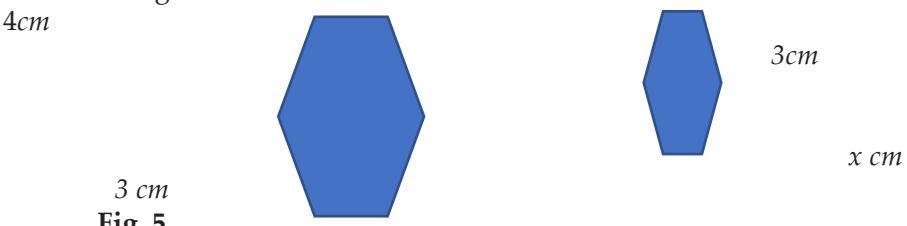

Fig. 5

In this question the student has to use the concept of similirarity of two shapes and its properties. 72% of students answered correctly, 26% of them gave wrong answer and 2% of students did not answer as it is shown in the following pie diagram

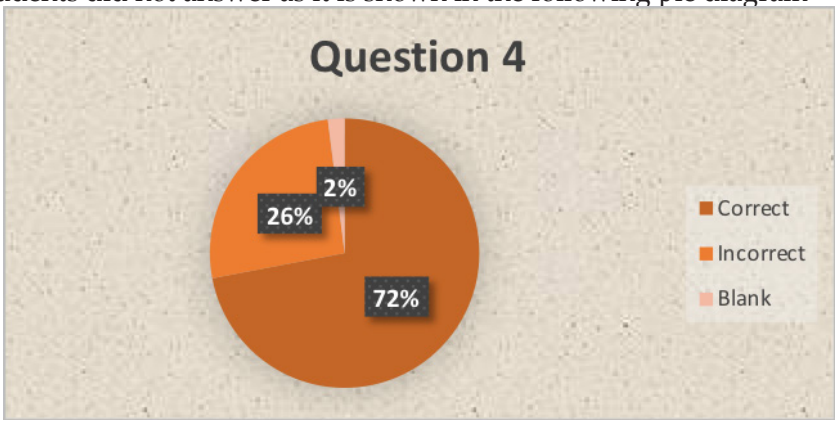

Fig. 6

Question 5. Describe the symmetry of a regular octagon.
The answers of this question are classified as follows: 56% of students answered correctely, 40% of them solved the exercise wrongly and 4% of students did not give answers.

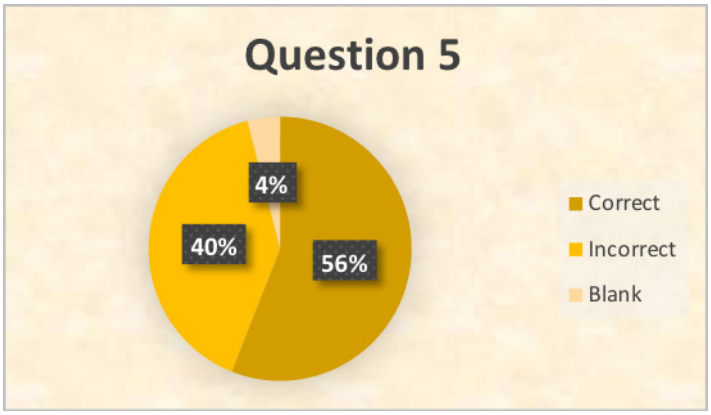

Fig. 7

4.2 Discussions on the test's results

In this section we have identified some of errors made by students.
It is noted that in Question 1, the most part of students have answered correctly. The other part misinterpreted the properties of the given shapes correctly in order to identify the triangles formed by their diagonals and sides.
In Question 2, the students misunderstood the relationship between interior angle, exterior angle and sides of a polygon. Furthermore, they reflected difficulties in finding the number of sides of a polygon from the exterior angle.
The results of answers to Question 3, reflect that students had difficulties to deduce a definition for concave 2D shapes. Some of them confounded it with the convex one and the others did not distinguish these types of 2D figures from each other.
The mistakes in Question 4 are related to coefficient of similiarity for two polygons. The students solved the exercise by taking the ratio of two syprines of two similar poligons equal to the ratio of their respective sides.
In Question 5, some students showed difficulties in drawing a regular octagon. The other did not have given all symmetries. They reflected that with the increasing of the number of sides of a polygon, the group of misconceptions related to its properties gets bigger.

4.3 The questionnaire with teachers

The results of questionnaire with pre-service teachers and teachers are obtained by the answers of 5 questions in the form of a discussion. Most of their answers have the same essential ideas.
Related to the first question ""Do you apply the constructivism theory in polygons' lesson?", 17 of pre-service teachers and 6 teachers said that they applied this approach to during the polygons chapter. The others knew this theory, but they claimed that it is too difficult for students to achieve the polygons properties on their owns and they get along with classical teaching with the teacher in center.
The second question "How do you carry out the lesson of polygons through constructivism theory?" had two groups of interpretations. The first group of teachers

divided the class in small groups with 4-5 students. After the teacher gave the question starting with quadrilaterls to polygons, the members of each group discussed the solution with each other. Afterwards, the leaders of the groups presented their results and compared them with the others. The other group of teachers gave the students to learn during the lesson and to find out the conclussions.

Concerning the third question "What obstacles do you come across when you act the lesson in accordance with constructivism theory?", they pretended to not have enough time to perform a successful lesson. Furthermore, they mentioned that the absence of the didactic tools in the classroom in order to help students to visualize the properties of the polygons.

For the fourth question "Is theory of constructivism applied to polygons chapter suitable for students?", the teachers had different point of views. Some of them thought that it helped the students to increase their logical reasoning. They were able to reach the properties of the polygons without difficulties. The other part of teachers assured that students controlled their answer, and they did not reflected certainty till the confirmation of the teacher.

In the fifth question "Which method do you prefer constructivism or classical one?", the most part of teachers replied that constructivism, although the conditions in the classroom restricted it.

5. Conclusions

In this study there are scrutinized the application of constructivism theory and its indication in the chapter of Polygons in high school of Albania. The students and teachers find its implementation crucial but difficult to reach it. It is very important for the new mathematics curricula because it encourages the logical reasoning of students. According to the results of tests and the interviews, they are stimulated to create the properties of convex and concave polygons with number of sides greater than four, knowning quadrilateral's features. However its benefits, the teachers pretend that in some cases the use of constructivism approach in the classroom is incovenient. They have emphasized that there is not enough time to apply successfully the lesson through the constructivism theory. The lack of various tools during the treatment of polygons create obstacles in using it.

6. Recommendations

Motivated by the given conclusions, in order to achieve a successful lesson for polyons, we suggest that constructivism theory should be applied in albanian classrooms. Furthermore, it will be very helpful the integration of constructivism approach with Van Hiele model (Alex et.al (2012)). The teachers should be trained with this new approach. In addition, it should be invested on creating conditions in classroom for an effective lesson through constructivism theory.

References

Mayer, R. E. (2009). Constructivism as a theory of learning versus constructivism as a prescription for instruction. In S. Tobias & T. M. Duffy (Eds.), *Constructivist instruction: Success*

or failure? (pp. 184–200). Routledge/Taylor & Francis Group.
Bruner, 1996 Bruner, J. (1996). The culture of education. Cambridge, MA: Harvard University Press.
Howard, B., McGee, S., Schwartz, N., and Purcell, S. (2000). The experience of constructivism: Transforming teacher epistemology. Journal of Research on Computing in Education, 32(4), 455-464.
Thompson, Kelvin. (2001). Constructivist Curriculum Design for Professional Development: A Review of the Literature. Australian Journal of Adult Learning.
Taber, Keith. (2011). Constructivism as educational theory: Contingency in learning, and optimally guided instruction. Educational Theory. 39-61.
Jan Terwel (1999) Constructivism and its implications for curriculum theory and practice, Journal of Curriculum Studies, 31:2, 195-199

Martin A. Simon, (1995) Reconstructing Mathematics Pedagogy from a Constructivist Perspective, Journal for Research in Mathematics Education, vol. 26, Pg.114-145.
Quincy Kameda (2017), A case study on effective approaches for implementing constructivist teaching strategies into a mathematics classroom, International Journal of Education Learning and Development Vol.5, No.11, pp.23-33.
Park, J., & Shin, J. (2021). Reflections on the application of progressivism and constructivism in mathematics education. *The Mathematical Education*, *60*(3), 387–407.
Munter, Charles, Mary Kay Stein, and Margaret S Smith. (2015). Dialogic and Direct Instruction: Two Distinct Models of Mathematics Instruction and the Debate(s) Surrounding Them." *Teachers College Record* 117 (11): 1–32.
Alex, J. K., & Mammen, K. J. (2012). A Survey of South African Grade 10 Learners' Geometric Thinking Levels in Terms of the van Hiele Theory. *Anthropologist*, *14*(2), 123-129.
Steve, F., June, H., & Lomax, S. (2017). Matematika 10-11 (Pjesa 1). Pegi.

The effect of VAT change on the income of the tourism sector

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Abstract

This paper aims to highlight the effect of changing VAT from 20 to 6 percent on fiscal revenues for the tourism sector as the most sought after and least invested industry. To see this effect ee have taken into analysis the number of businesses, the taxable base for VAT 20% and the taxable base for VAT 6% for the period 2017-2020, a period that includes the pandemic. Fiscal policy during the period 2017-2020 did not exclude the application and reduction of VAT from 20% to 6%, for the tourism sector that met the conditions for such a reduction of VAT, which began to be implemented from 1 June 2017. This change of VAT was intended for tourism structures to promote and future development of this sector, where most countries in the region and the EU use a reduced VAT rate for this sector.
From this fiscal policy on the one hand it was expected to have a negative effect on the state budget revenues, on the item "VAT revenues" for hotel-tourism, but also an increase in consumption.
The paper will finally come up with valid conclusions and recommendations for the period under review as well as for further studies.

Keywords: VAT, 6 %, revenues, tourism, the taxable base.

1. Project objective

The paper aims to study the impact of VAT reduction on the revenue structure in the tourism industry, as the most important and modern sector today.
The objectives of the study will be achieved through:
1. Literature review
2. Empirical calculation
3. Conclusions and recommendation

2. Introduction

Fiscal policy can be considered as one of the most significant mechanisms to support governments in optimizing economic growth and the need to respond to dynamic developments in the country. VAT as part of fiscal policies occupies the main part of tax revenues, as it affects the final consumer every day is considered as a basic pillar of the Albanian economy. [1](Demi, A., Xhaferri SH., Uku S., Shahini SH., Lushaj A.,

[1] (Demi,A.,Xhaferri Sh.,Uku S.,Shahini Sh.,Lushaj A. 2021) The impact of fiscal policies on albanian economic growth: the case of value added tax.

2021).
On April 5, 2017, the Council of Ministers issued a draft law proposing to reduce the VAT rate from 20% to 6% for hotels and other tourist accommodation facilities. According to the draft law, the reduced VAT rate applies to the provision of accommodation services in all accommodation facilities, as defined by the legislation in force for the tourism sector. These facilities include: Hotels, Motels, Reception Homes, Hostels, Campgrounds, Tourist Resorts, Curative Centers, Bed & Breakfast.
The conditions, criteria and procedures for the implementation of this paragraph in the Law "On Value Added Tax" will be determined by a decision of the Council of Ministers. [2]The Parliamentary Committee on Economy and Finance approved the reduction of VAT on accommodation units in the tourism sector from the current 20% to 6%, due to the fact that this sector in recent decades is one of the main supporters of the country's economy and promoting employment.

3. Methodology

To study the effect of reducing VAT from 20 to 6 percent in the tourism sector we will take as a basis the statistical data and empirical calculations of the authors for the taxable base, the number of businesses, the VAT rate 20% and the VAT rate 6% , for the period 2017-2020. Part of the change in fiscal policies during 2017 was the application of a reduced VAT rate from 20% to 6%, for accommodation structures, which has been implemented since June 1, 2017.
The purpose of reducing the rate of VAT on accommodation structures was the further development and promotion of the tourism sector, as most EU countries and our region use a reduced VAT rate for the tourism sector.
This policy was expected to have a negative effect on the state budget revenues, in the item "VAT revenues" for accommodation structures (hotels), but a positive effect and increase in revenues from the development of the tourism sector and growth of consumption. Because the tourism sector includes a range of services, in addition to hotel accommodation, for example restaurants or other entertainment services, the calculation of effects has been done more approximate. Revenues from tourism in 2016 according to the Central Bank of Albania reached a record value of € 1.5 billion, while according to the Institute of Statistics (INSTAT) during 2016, Albania was visited by 4.7 million travelers, with a growth trend of 15% compared from the previous period. From the calculations, the reduction of Value Added Tax (VAT) from 20 to 6% per cent affected the fiscal result of VAT revenues in 2018 by about 6 million euros (820 million ALL), according to official estimates of the Ministry of Finance. Taking into account the VAT collected by the tourism sector for 2016, the negative effect on the budget was expected to be approximately ALL 1.1 billion, but in reality this effect was ALL 820 million in 2018.
From the data obtained from INSTAT, it results that tourism has had a growth rate of 15.8% in 2018, much higher compared to 8.1% in 2017. The growth rate of tourism in 2015 and 2016 was respectively 12.5% and 14.6%

[2] [Draft Law "On an amendment of the Law No. 92/2014 "On value added tax", as amended", published on 5 April 2017 at www.parlament.al].

4. Literature review

In the reviewed literature regarding the projection and application of VAT, it has been analyzed by several authors and can mention a wide debate, some of them diametrically opposed. [3](Demi, A., Xhaferri SH., Uku S., Shahini SH., Lushaj A., 2021). We all agree that Tourism and Agriculture are two of the sectors that have had great development in recent years but also two of the sectors where foreigners and Albanians want to invest, due to the high potentials that these sectors have individually, and especially in the synergy that is created when the investment involves their combination in the creation of "Agrotourism".

High potentials come not only because of the low cost of labor, but also for reasons which are more than man-made are a divine gift, where we mention here the suitable climate, the diversity of the earth, the abundant water, and above all, almost 300 sunny days a year make Albania a paradise for anyone who wants to invest, where it seems as if because of these assets, we are one step ahead of the countries of the region.

Certainly there are seeming problems that complicate this process and have a direct impact on the development of these 2 sectors, where we can mention here: Unfavorable infrastructure, High Informality, problems with ownership, quality and standard of electricity, truncated subsidies, lack of a strategic planning, unfair taxation in relation to the needs of the sector, twice as high VAT, etc.

According to a recent study by the National Business Forum (NBF), the VAT of these 2 sectors is totally inadequate and is one of the key factors leading to informality and reduced competitiveness in relation to the region.

The government took a decision to reduce tourism VAT from 20% to 6%. With the measure taken by the government, this sector will be the only one that is taxed with a much lower VAT compared to other sectors, but which also has a competitive rate and with the region, which has a VAT that fluctuates between rates from 5% to 13%.

Taxation of the agricultural sector remains the most difficult, not only because for a part of the population doing this business (farmers) is often to ensure survival, but as this remains one of the most informal sectors in the Albanian economy. VAT in agriculture has have been subject to numerous changes, where the approaches have focused on the functioning of the farmer-processing industry-trade scheme, and through it, we could finally have a cycle closure.In 2014, at the insistence of the organizations they represented this sector, the VAT was adjusted and equalized after a mistake of several years, which had collapsed the VAT refund system for this sector. But the operators of this sector then and now also demand halving the value of VAT, as not only is it necessary to reduce overall costs, but also to be competitive in the market.Again based on the NBF study, Albania is the only country in the region and beyond that has such a high VAT for the agricultural sector, where starting from Malta, which has a 0% VAT for this sector and in cases where in some countries such as Austria, Italy or Spain reaches levels of 10%, again accompanied by compensations or subsidies.

Based on the European Directive 2006/112 / EC, dated 11/28/2016, chapter XII, where we are approximating the legislation to meet the conditions of membership, and

[3] Demi,A.,Xhaferri Sh.,Uku S.,Shahini Sh.,Lushaj A. 2021) The impact of fiscal policies on Albanian economic growth: the case of value added tax.

why the rate of the tax regime is not determined, it is clearly stated that it should be simplified and provide for compensation.
With a VAT of 10%, the expected impact would be: Reduction of the level of informality in this sector; Increased interest of foreign investors to invest in Albania and above all, very positive impetus for the development of the agricultural sector. The approximation of VAT would be much more necessary at this moment where the difference with tourism is so large and the sector agritourism would facilitate such an initiative. Partnership should be seen as a way to breathing should be given not only for survival, but as a way to live better. [4](Ballesha E., 2017)
Tourism is one of the most massive phenomena in modern society, which is associated with meeting the needs of people meeting and recreation. However, people temporarily change their permanent place of residence and travel to places inside or outside their country. [5](Vlahova K., Todorovi E. E. 2013). The increase of tourists will lead to the increase of the income of the accommodation units, generally the hotel, consequently to the increase of the income of the tourism sector. Since there are many tourist agencies, the branches of which are located and spread around the world, vacationers have more alternatives to choose one destination compared to another. It even starts to regulate the market to some extent and make the competition between the agencies stronger by offering more attractive prices in order to generate demand for their country.[6]
According to the Minister of Finance, the reduction of VAT in the tourism sector will lead to the formalization of this sector, increase the number of tourists in the country, will attract foreign public and private investment, increase GDP through considerable inflows, increase income from foreign tourists and tour operators. [7].Tourism is the sector that employs a significant number of employees (seasonal employees) during peak periods, when the influx of tourists is high. European countries are operating in a global and highly competitive market. Low VAT rates allow maintaining competitiveness in Europe both in terms of price level and quality, thanks to investment in innovation, contributing to keep EuropeDest destination number one for the long term[8]. This initiative of the Government was supported by the Business Community, emphasizing once again the strategic importance of this sector. The negative effects that come as a result of lowering the VAT rate, according to Minister Ahmetaj will be reduced by increasing the taxable base.

5. Analysis

To analyze the effect of reducing VAT from 20% to 6% on revenues in the tourism sector for the period 2015-2020 will be based on the data in the table below. Based on this overview we will analyze the trend of changing the level of the number of businesses, the taxable base and the value of VAT for both levels and the effect that the reduction of VAT has given.

Table 1. Statistics of VAT

[4] https://www.monitor.al/frymemarrja-e-shumepritur-per-turizmin-dhe-bujqesine-2/.
[5] Tourism economy: Statistical control no. 8.4.2002 Skopje, June 2000.
[6] Hajnu SH., "Monitor" Magazine, No. 23 (2006) The Knock of Tourism, page 29
[7] AgroWeb 25 April 2017
[8] https://www.coursehero.com/file/p3b8vb1d/Reduktimi-i-norm%C3%ABs-s%C3%AB-TVSH-s%C3%AB-nga-20-n%C3%AB-
6-n%C3%AB-sektorin-e-turizmit-n%C3%AB-Shqip%C3%ABri-n%C3%AB

	Totali TVSH			TVSH 20%			TVSH 6%			Subjekte me % tjeter (10%)		
Viti	Nr.subjekt	baza e tatueshme	Vlere	Nr.subjekt	baza e tatueshme	Vlere	Nr.subjekt	baza e tatueshme	Vlere	Nr.subjekt	baza e tatueshme	Vlere 10 %
2015	4,916	666,071,512,665	96,254,991,119	3,124	296,478,398,525	59,295,679,705	-			1,792	369,593,114,140	36,959,311,414
2016	5,247	800,957,105,005	113,132,021,405	3,527	330,363,109,045	66,072,621,809	-			1,720	470,593,995,960	47,059,399,596
2017	5,408	895,367,117,098	127,426,731,138	3,836	386,870,567,635	77,374,113,527	193	19,925,933,383	1,195,556,003	1,379	488,570,616,080	48,857,061,608
2018	7,436	926,279,081,923	131,298,147,451	5,508	401,321,963,480	80,264,392,696	243	36,548,927,233	2,192,935,634	1,685	488,408,191,210	48,840,819,121
2019	7,679	1,015,982,065,863	141,780,407,342	5,672	419,598,529,890	83,919,705,978	297	44,441,305,833	2,666,478,350	1,710	551,942,230,140	55,194,223,014
2020	7,771	935,158,157,640	132,775,071,351	5,550	400,422,944,790	80,084,588,958	256	19,575,972,300	1,174,558,338	1,965	515,159,240,550	51,515,924,055

Fig.1 Vat according to years

Source: Statistics and Authors' Calculations

The table above shows that the number of businesses subject to the VAT level respectively 20%, 6% and 10%, has increased from 2015-2020, from 4916 entities in 2015 to 2021, although it was a pandemic period this number peaked in 2020 (7771 businesses). There was also an increasing trend and the taxable base from 2015-2019 where it reached a record value of 1015982055863 ALL and in 2020 although we had an increase in the number of businesses in 2020 compared to 2019 from 1.2%, the taxable base decreased by 0.8%.

The same trend until 2019 has had the value of VAT where in 2019 it reached the highest value followed by a decrease in 2020. According to an analysis made for these years the number of total entities subject to VAT has increased and peaked in 2019 unlike the tax base compared to 2015 has increased 52.5% and VAT by 47.3%.

Table 2. Calculation of VAT by 20% and differences by 6%

Vitet	Rillogaritjet 20 %	Diferencat
2017	3,985,186,677	(2,789,630,674)
2018	7,309,785,447	(5,116,849,813)
2019	8,888,261,167	(6,221,782,817)
2020	3,915,194,460	(2,740,636,122)
		(16,868,899,425)

Fig.2 Calculation of VAT by 20% and differences by 6%
Source: Authors' calculations

Referring to three tables for three years if implemented and for the accommodation structure 20% we see that we have a lack of revenue in GDP, where VAT of 6% accounts for 0.9 to 1.8% of total VAT. The change of fiscal policies during 2017 with the application of the reduced VAT rate from 20% to 6%, for accommodation structures, which began to be implemented from June 1, 2017 from the table we see in 2019 we have an increase in entities compared to 2017 with 54% when VAT increases 23%. The pandemic in 2020 had an impact on VAT revenues compared to 2017, 2018 although the number of businesses increased the taxable base and VAT revenues decreased. The difference between 20% VAT and 6% VAT is 16,868,899,425 ALL, so we have a decrease in budget revenues from the reduction of VAT from 20% to 6%.

6. Results and discussion

Although VAT seems to be the main tax, which brings revenue to the state budget, it actually goes back to business, thus being merely an instrument of the formalization process. For this reason, the conclusion is the same, whether for VAT on Tourism, Agriculture or any other sector with specific needs, the tax administration and fiscal policy should make separate analyzes for each sector, where individual needs are carefully assessed, so that assistance be reciprocal and development secure.

Implementation by the Ministry of Tourism and Environment of the order no. 243 dated 09.07.2019 for the implementation of the DCM no. 730 dated 20.10.2016 "On the approval of the regulation on the classification procedure of the accommodation structure ....." in the market has brings a contraction of this activity along with the pandemic situation this referring to the number of businesses of the accommodation structure has a decrease of 24% compared to 2019.

7. Conclusion

VAT is a tax that contributes directly to the public revenues by increasing or decreasing them correspondingly, so, affects nominal GDP indirectly and also, economic growth positively.[9] (Demi, A., Xhaferri SH., Uku S., Shahini SH., Lushaj A., 2021).
A well-constructed fiscal policy would be quite accommodating to avoid the confusion created which services provided by the tourism sector are included in the VAT mitigation package reduced to 6% applied in our country. Existence of an effective administration taxation is also essential, not only facilitating trade and business development and creating an environment that attracts and secures foreign investment, but also the functioning of the revenue system at all levels of government. Stimulant schemes can used in the tourism sector to promote the hotel industry. Reduced VAT to 6% applied in our country. The existence of an effective tax administration is also essential, not only facilitating trade and business development and creating an environment that attracts and secures foreign investment, but also the functioning of the revenue system at all levels of government. Incentive schemes can be used in the tourism sector to promote the hotel industry. Continuous training of the staff of the accommodation structures to give flexibility to the facilitation package.

References

1 (Demi, A., Xhaferri Sh., Uku S., Shahini Sh., Lushaj A. 2021) The impact of fiscal policies on albanian economic growth: the case of value added tax.
2 [Draft Law "On an amendment of the Law No. 92/2014 "On value added tax", as amended ", published on 5 April2017 at www.parlament.al].
3 https://www.monitor.al/frymemarrja-e-shumepritur-per-turizmin-dhe-bujqesine-2/.
4) Tourism economy: Statistical control no. 8.4.2002 Skopje, June 2000.
5 Hajnu SH., Monitor Magazine, No. 23 (2006) The Knock of Tourism, page 29.
6 AgroWeb 25 April 2017.
7 https: //www.coursehero.com/file/p3b8vb1d/Reduktimi-i-norm%C3%ABs-s%C3%AB-TVSH-s%C3%AB-nga-20-n%C3%AB-
6-n% C3% AB-sector-of-tourism-n% C3% AB-Albanian% C3% ABri-n% C3% AB.
8. https://www.coursehero.com/file/p3b8vb1d/Reduktimi-i-norm%C3%ABs-s%C3%AB-TVSH-s%C3%AB-nga-20-n%C3%AB- 6-n% C3% AB-sector-of-tourism-n% C3% AB-Albanian% C3% Abri-n% C3% AB.
9. Tax policy center, (2020), History of the VAT, retrieved from: www.taxpolicycenter.org.
10. Hassan, B., (2015), the role of Value added tax (VAT) in the economic growth of Pakistan, Journal of Economics and Sustainable Develo.
11. Value Added Tax implementations https://www.tatime.gov.al/eng/c/6/71/value-added-taxpment 6/13, (174-183) https://core.ac.

[9] Demi,A.,Xhaferri Sh.,Uku S.,Shahini Sh.,Lushaj A. 2021) The impact of fiscal policies on albanian economic growth: the case of value added tax

Penalty order pursuant to Code of Criminal Procedure in the Republic of Albania

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Abstract

Based on the Code of Criminal Procedure, the criminal trial can take place with the ordinary trial or with any of the special trials. The provision of special trials in the criminal process has come due to the reduction of the judicial burden that the authorities dealing with investigation, trial and execution of criminal judgments have. However, the provision of special trial rules must also guarantee the standard of due process, while maintaining the same guarantees, which can certainly be respected with the ordinary trial procedure. The Albanian legislator, precisely with the changes of the Code of Criminal Procedure of 2017, has provided for some types of special trials such as trial by agreement and penalty order (criminal decree of conviction). From all the analysis of the justice system in Albania, it was concluded that the Code of Criminal Procedure needed a reform, which would fix the problems related to the investigation, trial, or implementation of decisions. One of the parts of this code where it was intervened was the part of special trials. With the provision of the penalty order, the aim has been that of judicial economy, reducing court costs, reducing the workload of courts and prosecutors for minor criminal offenses, as well as reducing the number of prisoners in institutions for the execution of criminal judgments. In this paper, the legal framework provided for this type of special trial such as the penalty order will be analyzed, focusing first on the legal conditions that must exist to apply this type of trial and then will be addressed and types of court decisions on whether or not to approve a penalty order.

Keywords: sentence, penalty order, prosecutor, defendant, criminal trial.

I. Introduction

The strengthening of the judiciary such as the courts and the prosecution, but also the judicial police has brought in recent years a large influx of procedural actions both during the investigation phase and during the trial phase. This fact has brought a very large load of these bodies, a load which in our country is even greater and due to the vetting process. In the framework of the criminal justice reform, with Law no. 35 of 2017, changes were made to the Criminal Code, which entered into force on August 1, 2017. In particular, in Chapter IV "Special Trials", Section III is provided "Approval of the penalty order ".

In the report of the Committee on Legal Affairs, Public Administration and Human Rights that accompanied the adoption of Law no. 35/2017 "On some additions and amendments to Law no. 7905, dated 21.03.1995, "Code of Criminal Procedure of the Republic of Albania", as amended, regarding the penalty order it is expressly stipulated that: "The Penalty order added to the Code is completely new and provides for a new special trial, that of the request for a penalty order. Penalty order is provided for the achievement of the following goals: 1. Judicial economy through reduction court costs; 2. Reducing the workload of courts and prosecutors, related to low-risk criminal offenses, and 3. Reducing the number of prisoners in Albanian

prisons.
This special trial procedure envisages the simplification of the criminal proceedings, requesting the court to impose the sentence, without conducting the main trial but at the same time without violating the rights of the defendant.
The purpose pursued by the legislator in relation to the sentence penalty order is to resolve the case as soon as possible. The prosecutor in this special proceeding may request for a fine and other supplementary punishments to be given, instead of an imprisonment sentence.
In the case of a request for approval of an imprisonment sentence penalty order the defendant has a relatively short time to decide whether or not to object the way the case is resolved before the penalty order becomes final. This underscores the importance of negotiations ahead of this moment.
The purpose of a sentencing penalty order is to avoid complicated and exhaustive preliminary investigations or public hearings. A penalty order is a procedure controlled by the prosecutor. A common denominator in all jurisdictions that provide for a penalty order is the fact that the prosecutor decides on the legal qualification and proposes a sentence that normally cannot consist of an imprisonment sentence. The law gives the defendant a certain period of time to object the imprisonment sentence penalty order. If the penalty order is not objected, then the court decision for the penalty order becomes final. If there is an objection to the penalty order, the case will be proceeded with as a usual trial or may be returned to the prosecutor for further investigation.

II. Request for approval of the penalty order

The article 406/a of the Criminal Code provides that when the defendant is accused of committing a criminal offense, within three months from the registration of the name of the person to whom the criminal offense is attributed, the prosecutor issues a reasoned penalty order and asks the court for its approval, in cases when he deems that imprisonment should not be applied.
In the criminal order, the prosecutor imposes the main sentence with a fine, and depending on the case, may impose one or more additional sentences. Depending on the economic situation of the defendant, the prosecutor may order that the fine be paid in installments, setting deadlines for their payment.
It is also provided that the fine may not exceed half of the maximum provisioned in the Criminal Code for this type of punishment.
At the end of the investigation, the request for approval of the penalty order is filed in the court secretariat, together with all the acts of the preliminary investigation file. The request for approval of the penalty order is notified to the defendant.
Regarding the conditions that must exist for the approval of the penalty order of punishment according to article 406 / a of the Criminal Code, it is provisioned that: first, the defendant must be charged with a criminal offense; second, the prosecutor should consider that the defendant should be fined; and third, the deadline, ie the prosecutor should, within three months from the date of registration of the name of the person to whom the criminal offense is attributed, submit a request for approval of the penalty order.
If these three conditions are met, the prosecutor issues a reasoned penalty order and

asks the court for its approval.
In the interpretation of the provisions of the Code of Criminal Procedure, it is provided that the above-mentioned conditions must be met cumulatively, ie all three must exist simultaneously. This is because otherwise the prosecutor can not conclude in issuing a request for approval of the criminal sentence order.
The rules stipulated in the Code of Criminal Procedure regarding the notifications made by the prosecutor upon the completion of the preliminary investigation of the defendant, his defense counsel, as well as the victim or her heirs, when their identity and place of residence result from the proceedings, do not apply in cases of application of provisions of Article 406 / a of the Code of Criminal Procedure. This provision is understandable as the penalty order itself is not decided on the basis of a court decision taken at a hearing where the parties are heard. Judicial economy, which is one of the main goals of the criminal order, also dictates that low-risk cases be resolved quickly and without undue delay. Moreover, the approval of the penalty order can be opposed only by the defendant according to the provisions of article 406 / ç of the Criminal Code.
Following the above reasoning, the opinion is accepted that Article 327 of the Criminal Code relates to the actions of the judicial police and the prosecutor, at the end of the preliminary investigation and that they do not find application in the case of a request for a criminal sentence. Thus, the deadlines of this article are not respected, on the contrary they are shortened as much as possible and therefore it is processed with a penalty order in order to save time.
The penal order of the prosecutor is a decision taken by him after the latter has assessed the existence of criteria and legal conditions provided by the first paragraph of Article 406/a of the Code of Criminal Procedure and without firstly consulting the defendant. In these circumstances, the legislator considered that the request for approval of the criminal order should be notified to the defendant.
This condition is closely related to the provisions of the following articles in relation to the criminal order and especially to the right to challenge the court decision to approve the criminal order. Thus, the defendant has the opportunity to prepare his defense at an early stage.

III. Decision on the approval of the criminal order

The prosecutor's request for approval of the penalty order is issued after the latter has assessed the existence of legal conditions and criteria provided by the first paragraph of Article 406/a of the Code of Criminal Procedure without firstly consulting the defendant. In these circumstances, the legislator has estimated that the request for approval of the penalty order should be notified to the defendant. This condition is closely related to the provisions of the following articles in relation to the penalty order and especially to the right to challenge the court decision to approve the penalty order. Thus, the defendant has the opportunity to prepare his defense at an early stage. According to Article 406/b of the Criminal Code, the court reviews the request for approval of the penalty order, without the presence of the parties and decides within thirty days from its filing. The decision for the approve the penalty order shall be reasoned and must contain the generalities of the defendant, the summary of the fact and the legal characterization of the offense, the sources of evidence and

the facts to which they refer. The decision must also contain the fine, the manner of its execution and the type of additional sentence imposed. Finally, the decision must provide for the right of the defendant to appeal the court decision and the time limit within which this decision can be appealed.

IV. The decision to refuse the approval of the penalty order

Before the court makes a decision on the acceptance or not of the penalty order, it has the obligation to analyze mainly whether the formal conditions provided by article 406 / a of the Criminal Code are met. The court must also analyze whether a full investigation has been conducted that makes the case resolved in the state of the acts, the existence of the criminal fact and the connection of the defendant with this criminal fact.

The court rejects the request for approval of the penalty sentence order in the following cases: *first* when the court finds that there is one of the cases of dismissal of the accusation or case. Regarding the cases of dismissal of the accusation or the case in article 328 of the Criminal Code it is foreseen that they are: when it becomes clear that the fact does not exist; the fact is not provided by law as a criminal offense; the victim has not appealed or withdraws the appeal in cases where proceedings are initiated at his request; the person can not be taken as a defendant or can not be convicted, there is a cause that extinguishes the criminal offense or for which the criminal prosecution should not have started or should not continue; it turns out that the defendant did not commit the offense or it is not proven that he committed it; with a final decision the defendant was tried for the same criminal offense; the defendant dies;

Second, the court rejects the request for approval of the penalty sentence order where it is found that the defendant is charged with a criminal offense, for which the law does not allow the implementation of the penalty sentence order. This means that the criminal offense for which the defendant is charged is a crime and not a criminal offense.

Third, the court rejects the request for approval of the criminal sentence order when it is found that the prosecutor has requested a fine or one or more additional sentences which the court deems inappropriate. This rule relates to the court's assessment of the appropriateness of the sentence and relates to the principle of proportionality between the criminal offense committed and the sentence sought to be imposed on its perpetrator. Based on the constitutional jurisprudence, it is argued that in order for a criminal sentence to be admissible in constitutional terms, in accordance with Article 17/1 of the Constitution, it must be fair and proportionate to the offense (Constitutional Court of Albania, Decision no. 19, 2011).

In other words, the court of first instance must make an assessment of the factual circumstances considering the dangerousness of its suspected perpetrator, and after this assessment the court assesses whether the defendant should be fined to a certain extent, or and any complimentary sentences.

Fourth, if the Court deems that the measure of fine requested by the prosecutor, is inappropriate referred to above or the case can not be resolved in all directions, in the situation that the acts of preliminary investigation are, then it is available to reject the criminal order. issued by the prosecutor. This means that the court in turn can reject the penalty order in those cases when it finds that the prosecution has not investigated

the financial ability of the defendant to pay or not the fine (Tirana District Court no. 1951, 2019).

Whereas if the court finds that one of the cases of dismissal of the accusation or case exists, it must decide to dismiss the case. This is because the legislator has given the role of guarantor of the defendant's rights in the criminal process and there is no logic that if we are facing one of the cases of dismissal of the accusation or the case, the court can decide to approve the penalty order. This and in function of Article 11, paragraph 1 of the Criminal Code where it is provided that the court is the authority that renders justice.

Meanwhile, if the court deems that we are in cases when the defendant is accused of a crime, or where an inappropriate sentence is requested or and when it is found that the case can not be resolved in the state that the acts are, it decides to return the acts to the prosecutor. In this case, a new request for a criminal sentence can not be resubmitted by the latter. It should be noted that the judge's decision on whether or not to approve the pen order is available *de plano* (Mercone, 2003).

Meanwhile, the court decision for the approval of the penalty order is notified to the defendant and the person civilly responsible for the damage caused by him. The decision to approve the penalty order is notified to the defendant, the person civilly responsible for the damage caused by him. This is because this decision was taken without hearing the defendant or his defense, who can appeal it within ten days of becoming notified. Failure to exercise this right within the prescribed period, results in the consent of the defendant and consequently the decision becomes enforceable. On the contrary, the appeal of the defendant or the civilly responsible person is submitted to the same court, to the only judge who has approved the request of the penalty order.

Appeal to the decision to approve the penalty order can be said to have a double content. On the one hand it shows his disagreement with the special trial and on the other hand there is an appeal against the sentence given by the decision to accept the penalty order (Conso & Grevi, 2003).

Filing a complaint within the deadline by the legitimate person automatically leads to the revocation of the decision approving the penalty order. In this case, the judge is obliged to set the date of the trial referring to the rules stipulated by Article 333 of the Criminal Code, which means the conduct of proceedings according to the ordinary trial. On the other hand, the objection of the defendant or the person who is civilly liable for the damage caused does not impede the exercise of the right to seek summary judgment or to reach an agreement on the conditions for admission of guilt and sentencing. However these new searches of the defendant must be made before the main trial begins.

On the other hand, in the case of objection to a penalty order, this opposition as stated above is conducted by the same judge, where the latter sets the date of the trial and notifies the parties and their defense counsel. There are no problems regarding the incompatibility of the same judge who received the penalty order and then conducted the ordinary trial procedure, as according to the Code of Criminal Procedure this judge has given an order and not a decision (Lara, 2019). The same reasoning regarding the consent of the same judge may apply in cases where it is disposed to reject the request for approval of the penalty order and return the acts to the prosecutor. This is because the request for sending the case to court and the disposition of the pre-trial judge is

reviewed or tried by the same judge.

Conclusions

The penalty order eliminates the contradiction in the trial as the legislator, referring to the objective parameter, has assessed that in cases when a fine should be given, no court debate is needed. However, on the other hand, the defendant has all the possibilities that if he does not agree with this special trial, he can oppose it and the case against him will follow the normal course of the trial. The penalty order as one of the new trials stipulated in the Code of Criminal Procedure in the last four years has found little application in practice. In fact, although the legislator in the provision of this special trial wanted to incentivize the justice operators for the application of this trial, in practice there are sporadic cases of this trial. Regarding the reasons why this type of trial is not applicable, they can be identified mainly in the wrong sense of this institute by the prosecution body. In fact, it is ascertained that the prosecution in the requests addressed to the court for the approval of the penalty order observes the performance of superficial and completely formal investigative actions, thus leading in many cases the rejection that the court makes to the requests for the penalty order. It is therefore appropriate for the prosecution body to take more responsibility for the rigorous implementation of the requirements of the Code of Criminal Procedure in relation to the acceptance of a penalty order.

V. References

Conso, G., & Grevi, V. (2003). *Compendio di Procedura Penale.* CEDAM.
Lara, D. (2019). *Comment on Criminal Procedure.* Tirana: Morava.
Mercone, M. (2003). *Diritto Processuale Penale* (Vol. i XI). Simone.
Albania, C. C. (2011). *Decision no. 19, dated 01.06.2011.* Tirana.
Court, T. D. (2019). *Decision no. 1954, dated 29.07.2019.* Tirana.

Legal-social perspective of Adult Trafficking in the last decade, Elbasan Region

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Abstract

Trafficking in human beings in Albania, continues to be widespread in a large part of the population, causing a major problem, because the number of convictions of traffickers by the courts, despite the identification of a higher number of victims, remains low. The content of this paper consists of the legal and social analysis of trafficking in human beings of adult age during the last decade, in Albania and in the Region of Elbasan in particular. The main focus of this paper will be: 1. DCM no. 499/2018, which has as its main purpose the protection, including the timely identification and proper identification of victims/potential victims of trafficking, adults, Albanians, foreigners or stateless persons, for all types of exploitation, of domestic or international trafficking, whether or not related to organized crime; 2. comparative treatment of concrete data on the number of trafficked adults, the last decade in the region of Elbasan and examples of some of these cases that have been identified and supported by services from public and non-public actors. Finally, attention will be paid to what has been done so far, to enable good management of adult trafficking in Albania and in the Elbasan Region in particular, by the central and local government but not only and what needs to be done in the future for the prevention, reduction and support of this target group. The paper is developed in terms of a theoretical, analytical, argumentative and legal approach. The two methods used in this paper are comparative and empirical. I have tried to research about the reality on the topic in question, interpreting it as objectively as possible.

Keywords: Trafficking in human beings\adults; victims of trafficking; potential victims of trafficking; reintegration; Elbasan County.

1. Introduction

Trafficking in human beings/adults in Albania continues to be widespread in a large part of the population, resulting in a major problem. The current legislation is updated, for which i will focus on this paper in paragraph no. 2 regarding the topic in question, is DCM no. 499, dated 29.8.2018 "On the approval of standard action procedures for the protection of victims and potential victims of trafficking". The definition of Victims of Trafficking (VT), Potential Victims of Trafficking (PVT), etc. will be cited.

Then will follow the procedures that provide for situations in which our country, Albania, or certain areas of the country, are used, or can be used as a country of origin, transit and destination for the movement and use of VT\PVT, Albanians, foreign or stateless, as well as situations in which, VT\PVT with Albanian citizenship, or presumed Albanian are located outside the territory of the country.

The procedures provide for specialized sectorial and cross-sectorial\multidisciplinary interventions. Their implementation is an obligation of all state institutions, at central and local level that work in the country or have a state mission abroad. Acting in accordance with these procedures is also an obligation of all non-state

agencies operating in the territory of the country. At any moment in which, during their activity, they come in contact with a person who they suspect may have been traumatized or informed that it is a VT\PVT, they should be immediately contacted and consulted with the Responsible Authority. They also mean cooperation with analogous structures in other countries.
In the 3rd paragraph of this paper I will continue with the procedure of coordination of work between the responsible authorities for the referral of cases of trafficking in human beings/adults. Specifically with the State Police, State Social Service (SSS), Social Protection Structures in the Municipality, Joint Coordinated Units (mobile units, field teams, task forces); Residential and day care institutions, National and international institutions with/without VT/PVT programs.
For cases identified and known as trafficked, importance will be given to the reintegration process, as an important phase for the individual, including the social and economic reintegration of the person. Successful reintegration includes settling in a stable and secure environment, access to a reasonable standard of living, mental and physical well-being of the individual.
Specifically in the Region of Elbasan, there are services provided by four (4) reintegration NGOs, partly public and non-public, residential and daily, for this target group, which we will read analyzed in more detail in the continuation of the work.
It will be continued in paragraph no. 4, by comparing concrete data for the Region of Elbasan during the last decade, illustrated in table no. 1 of this paper. It will also be continued for this region and with the coordination\coordination of work between different institutions such as the Municipality, Police, DrShSShEl (Regional Directorate of State Social Service of Elbasan Region), various NGOs, etc, reflected in 3 concrete examples, respectively in the Municipality of Cerrik, the Municipality of Gramsh and DRShSShEl.
It will be continued in paragraph no. 5 with the conclusion that: the practices put in place, the legislation in force and the interaction mechanisms, as analyzed in this paper as a whole and for the Region of Elbasan in particular, have made it possible to have good results so far in our country.
Finally, the paper will pay attention to the analysis of what needs to be done and ongoing for the prevention, reduction and support of VT\PVT in Elbasan Region but not only summarized in 5 recommendations.

2. Adult trafficking

Trafficking in human beings in Albania, continues to be widespread in a large part of the population, causing a major problem, because the number of convictions of traffickers by the courts, despite the identification of a higher number of victims, remains low. In 2019 at the national level, the Albanian State Police investigated 34 cases with 45 suspects and only 5 traffickers were convicted. This is the lowest number of convictions since 2014. The Office of the National Coordinator Against Trafficking reports the highest number of VT/PVT in 2019, with 103 in total (98 Albanians and 5 foreigners) of which are: 7 VT , 96 PVT, 67 juveniles, 36 adults of which 19 females and 9 males. Foreign victims from Europe and the Philippines are exploited for sex trafficking and forced labor, while irregular migrants from Asia are

employed as domestic workers by wealthy families and are vulnerable to what is termed domestic slavery. Also vulnerable to trafficking are migrants from the Middle East, Central Asia and Africa, who transit through Albania to go to Western Europe. Albanian women and children are exploited by traffickers, mainly during the tourist season, for sex trafficking and forced labor within the country. Traffickers use scams to force victims to have sex trafficking, such as marriage or employment offers. In the Region of Elbasan, there is a growing category of victims of sex trafficking, from girls who came from different parts of Albania to study at the University of Elbasan. In the present case, most of the traffickers are female student friends of the victims, who use the aforementioned scams.

The current legislation in force updated, for which i will focus on this paper, regarding the topic in question is DCM no. 499, dated 29.8.2018 "On the approval of standard action procedures for the protection of victims and potential victims of trafficking".

"Victims of Trafficking" (VT), according to Article 110/a of the Criminal Code of the Republic of Albania is the recruitment, transportation, transfer, concealment or reception of persons through the threat or use of force or other forms of coercion, kidnapping, fraud, abuse of office or benefit from social, physical or mental condition or giving or receiving payments or benefits to obtain the consent of a person who controls another person, for the purpose of exploiting the prostitution of others or other forms of sexual, labor exploitation compulsory services, slavery or similar forms of slavery, exploitation or transplantation of organs, as well as other forms of exploitation ".

"Potential victim of trafficking" (PVT), is the person for whom, the agencies\ institutions responsible for initial identification, based on indicators\special circumstances of the case, in which, at least three or more many elements constitute reasonable suspicion that the person may have been trafficked. This article punishes sex trafficking and labor trafficking with sentences of 8-15 years in prison for the offense of an adult trafficker.

Victims of trafficking (VT) or Potential Victims of Trafficking "(PVT) is any person subject to trafficking in human beings, as defined above, as well as trafficked persons officially identified by the Group\Structure responsible for the Official Identification of the National Referral Mechanism (NRM) of Albania, in accordance with the "Standard Operating Procedures for Identification and Referral of VT and PVT".

Vulnerable persons\groups, and persons\groups at risk of trafficking, are a wider group of persons with a greater opportunity or risk of being trafficked, based on the existence of certain risk factors.

DCM no. 499/2018, has as its main purpose the protection, including the timely and appropriate identification of VT\PVT, adults or children, Albanians, foreigners or stateless persons, for all types of exploitation, domestic or international trafficking , related or not to organized crime.

The procedures provide for situations in which our country, Albania, or certain areas of the country, are used, or can be used as a country of origin, transit and destination for the movement and use of VT\PVT, Albanians, foreigners or stateless, as well as situations in which, VT\PVT with Albanian citizenship, or presumed Albanian are outside the territory of the country.

The procedures provide for specialized sectorial and cross-sectorial\multidisciplinary interventions. Their implementation is an obligation of all state institutions, at

central and local level that work in the country or have a state mission abroad. Acting in accordance with these procedures is also an obligation of all non-state agencies operating in the territory of the country. At any moment in which, during their activity, they come in contact with a person who they suspect may have been traumatized or informed that it is a VT\PVT, they should be immediately contacted and consulted with the Responsible Authority. They also mean cooperation with analogous structures in other countries.
The procedures are designed in the same way with the international instruments that address the issues of prevention and fight against trafficking in persons, as well as reflect the recommendations given for the same field of action by international organizations, such as: UN, OSCE, UNICEF, UNODC, etc.
For the implementation of DCM no. 499/2018 are the Ministry of Interior, the Ministry of Health and Social Protection, the Ministry of Education, Sports and Youth, the Ministry of Finance and Economy and the Ministry of Europe and Foreign Affairs.

3. Procedure of coordination of work between the responsible authorities for the referral of cases of trafficking in human beings/adults

The summary procedure is as follows:

State police
In the country, the agency responsible for initial identification is the Border Police (green and blue). In the territory of the country, the agencies responsible for primary identification are state and non-state agencies, including: social care centers for the needy, organizations with assistance programs for the needy, regional offices of the state social service in the regions, state police structures , state labor inspectorate, schools and educational institutions, health care institutions, social service structures in the municipality. Outside the country, the agencies\institutions responsible for identifying potential victims of trafficking with Albanian citizenship are employees of the country's diplomatic missions, as well as other state and non-state agencies with activities in the field of protection of victims of trafficking.
Indicators for initial identification of VT\PVT by the State Police\Department of Border and Migration are: - The person entering or leaving has crossed the border, or is trying to cross the border irregularly\movements have been avoided border control; - The person coming out is accompanied by persons who are suspected of being smugglers or traffickers; - The person entering does not have a travel document because it was kept by the employer, the person with whom he lived, etc; - The person does not know the address where he will live; - The person has taxi phone numbers; - The person has wounds; - The person has luggage that does not correspond to the purpose of the trip; - The person during the interview is contradictory to the statements.

State social service
Indicators for identifying vT\PVTs are as follows: - The person was brought from another country to work\earn more money; - The person has a limited number of contacts; - The person is illegally employed\works in hazardous work; - The person has contacts with individuals or groups suspected of illegal activities; - Forced to work

under certain conditions; - Come from a country known as a country of origin; - Are not able to show identity documents; - Allow others to in asin for them; - Are unable to communicate freely with others; - Show anxiety and fear during communication; - Do not have access to medical service; - Are in illegal work; - The person does not take care of his hygiene; - The person has marks on the body (eg bruising), which indicate physical or sexual violence against him\her; - The transport of the person, accommodation, employment, are regulated by persons known or for whom there is information that they are traders or users; - The person has arranged the work, the school for a person who has a business relationship with the employer; The person was not allowed to choose accommodation.
The tasks/steps of the SSS (State Social Service) employee are as follows: - The employee of the state social service, if he suspects a case of trafficking based on the initial identification indicators, takes measures to handle the case. - If he finds that the person needs immediate medical assistance, the employee accompanies the person to the health center or calls the medical emergency. - In case the person refuses to receive assistance or generally refuses to communicate with the employee of the state social service, or in case other persons obstruct the employee in these and further steps of the procedure, the employee: informs the person where to go for help; notifies the regional director of social services who immediately verbally notifies the police for identification. - If the person agrees, the employee conducts an initial interview with him/her and makes the first needs assessment. - The employee of the state social service informs the person about the possibilities of assistance and takes steps according to the decision taken. - In case of need and decision for accommodation in a shelter, APAP notifies, requests the sending of shelter staff and facilitates the meeting with them. - In case of need and decision for stay in the family or independently informs about the possibilities and the way of contacting the help. - The social services employee immediately drafts the Notification on Protection/Identification and sends it electronically to APAP.

Social protection structures in the municipality
Indicators for identifying VT\PVT are as follows: - The person was brought from another place to work\make more money; - The person has a limited number of contacts; - The person is illegally employed\works in hazardous work; - The person has contacts with individuals or groups suspected of illegal activities; They are forced to work under certain conditions; - Come from a country known as a country of origin; - Are not able to show identity documents; - Allow others to in asin for them; - Are unable to communicate freely with others; - Show anxiety and fear during communication; - Do not have access to medical service; - Are in illegal work; - The person does not take care of his hygiene; - The person has marks on the body (eg bruising), which indicate ose physical or sexual violence against him\her; - The person has arranged the work, the school to a person who has a business relationship with the employer; - The person was not allowed to choose accommodation.
The tasks\steps of the municipal employee are as follows: - If he suspects a case of trafficking based on initial identification indicators, the social protection structures in the municipality take measures to handle the case and notify the Secretariat of the AP. - In case it finds that the adult needs immediate medical assistance, the social protection structures in the municipality immediately notify the nearest health

center. - In case the person generally refuses to communicate with the employee of the municipal structure, or in case other persons obstruct the employee in these and further steps of the procedure, the employee notifies the head of social services who immediately notifies the police. - The employee conducts an initial interview with the person he\she wishes and reaches conclusions about his/her status in relation to the trafficking and informs the director of social services of the municipality. - The social services employee immediately drafts the Notice of Protection/Identification and sends it electronically to the AP.

Joint coordinated units (moving units, ground team, task force); residential and daily care institutions, national and international institutions non-member with / with programs for victims / possible traffic victims

Indicators for identifying VT/PVT are as follows: - The person was brought from another country to work\earn more money; - The person has a limited number of contacts; - The person is illegally employed\works in hazardous work; - The person has contacts with individuals or groups suspected of illegal activities; - Forced to work under certain conditions; - Come from a country known as a country of origin; - Are not able to show identity documents; - Allow others to in asin for them; - Are unable to communicate freely with others; - Show anxiety and fear during communication; - Do not have access to medical service; - Are in illegal work; - The person does not take care of his hygiene; - The person has marks on the body (eg bruising), which indicate ose physical or sexual violence against him\her; - The person has arranged the work, the school a person who has a business relationship with the employer\sen; - The person was not allowed to choose accommodation.

The tasks\steps of the employees of these units are: - Support actions of other actors (outside the main responsible), including the AP and deadlines. - If the employee has doubts, based on the initial identification indicators, for a possible case of trafficking immediately notifies the PA secretariat. - If the coordinated unit does not have specialized/professional staff for interviewing adult victims of trafficking, the unit requests from the AP a suitable person for interviewing. - If the person does not want or can not, and if the Unit does not have police officers, then the member of the Unit immediately notifies the police orally or reports to 116006 or the Application "Report! Save! - The member of the unit together with the expert sent by the AP conducts the interview. - The employee informs the person about the possibilities of assistance and takes steps according to the decision taken. - In case of need and decision for accommodation in a shelter, the AP is notified and the sending of the shelter employees is requested, and the meeting with them is facilitated; - In case of need and decision for stay in the family or independently, the person is informed about the possibilities and the way of contacting the help. - The employee also consults with the Secretariat of the AP and refers the case for assistance according to the will of the potential victim of trafficking in persons. - AP Secretariat is called E-mail regarding the steps taken for the case. Upon receiving the information, if necessary organizes the meeting of the AP.

The mechanisms of the fight against trafficking in persons are as follows: - "Central Mechanisms against trafficking" as: State Committee for the Fight against Trafficking in Human Beings; - National Anti-Trafficking Task Force; - Office of the National Coordinator for the Fight against Trafficking in Human Beings; - Responsible Authority for the National Referral Mechanism for Victims of Trafficking; - "Regional

Mechanisms against trafficking" consisting of: - Regional Committees for Combating Trafficking in Human Beings and Technical Tables; - "Local mechanisms for children" such as. CPU, Sector for the Protection of Minors and Domestic Violence.

The cooperating institutions are as follows: - Prefecture; - Municipality and Administrative Units; - County Council; - State Social Service; - Police; - Regional Employment Directorate; - State Intelligence Service; - Regional Employment Directorate; - Department of public health.

In cases identified and known as trafficked, importance is given to the reintegration process, as an important phase for the individual, including the social and economic reintegration of the person. Successful reintegration includes settling in a stable and secure environment, access to a reasonable standard of living, mental and physical well-being of the individual.

Specifically in the Region of Elbasan, we have services provided by four (4) reintegration NGOs, partly public and non-public, residential and daily, for this target group. From the seven (7) municipalities that are composed of Elbasan Region only in the municipality of Elbasan there are these four NGOs that are as follows:

1. The association of "Women's Forum" is non-public, because it is funded only by a donor. This association offers the Emergency Center for this target group only for 72 hours (three days). This association offers services at the national level, which means services made available for the entire territory of the country, and not only limited to the Elbasan Region.
1. "Wilhelm's help for Albania" - Antonia House. As a goal: upbringing, health and social care, social education, education of independence, education of work, psycho-social treatment of girls, creating around them conditions and characteristics of a family environment, as well as their integration in the environment outside the institution. Placing the girl in a family environment, with priority given to the origin in accordance with the social policies of the country.One of the parents must have custody because the center does not take custody.This association offers services referring to VT\PVT only for Elbasan Region , which means services made available for the entire territory of this region, and not spread throughout the country. the condition to be special cases of success and adults in this center (example: talented cases in music, dance, etc.).
2. The "Aid to Balkans" Foundation (A2B) is non-public, because it is funded only by a donor. This association offers the Residential Center for this target group only for the Elbasan Region. The number of seats in this residential center is for six (6) VT\PVT.
3. The association "Tjeter Vizion" is partly public, because it is funded by the state and donors at the same time. This association offers the Emergency Center for victims of major trafficking (+18 years old) only for the Region of Elbasan, in cases where the victim has been treated in this center for years since he was a minor. As a result, the condition is that the minor/adult victim in this center turns 18 years old. The association accommodates the victims at the age of +18 in an apartment located outside its building and then starts the procedure for their transfer to other Residential Centers that provide services specifically for this target group. These centers offer services at the national level and are specifically as follows:

- Association "Different Equals" located in Tirana.
- Association "Vatra" located in Vlora

- "National Center" located in Linza (Official source from the Ministry of Health and Social Protection).

The Services Provided Directly by the above mentioned Centers are as follows: - food, clothing, temporary accommodation; - Psycho-social assistance; - Medical assistance; - Legal assistance; - Educational education; - Qualification and professional treatment; - Occupational, rehabilitation activities; - Referral for reintegration; - Preparation for reintegration; - Undertaking family reintegration negotiations; - Monitoring and evaluation of cases after referral to reintegration centers or community.

Albanian legislation provides in addition to the aforementioned services for victims of adult trafficking and financial support in cash. Specifically, law no. 57/2019 "On social assistance in the Republic of Albania", one of its goals is to alleviate poverty and social exclusion for individuals and families, as well as to create opportunities for their integration, through the provision of a system of interventions and services to improve of their living. This law has defined this target group as a category in need of receiving social assistance in the form of Economic Assistance (EA). Specifically, Article 7 of this law states that the beneficiaries of economic assistance are, among others, VT\PVT, after leaving the social care institutions, until the moment of their employment.

VKM no. 597, dated 4.9.2019 "On determining the procedures, documentation and the monthly measure of benefit of EA and the use of additional fund over the conditional fund for economic assistance", determines that the measure of EA for each VT/PVT in family relations that is not treated in social care institutions, it is 3,000 (three thousand) ALL per month. Example: Mrs. A. B residing in the administrative unit of Elbasan, benefits as a special category in the status of victim of trafficking in the EA system from 2014 onwards, every month the value of 3,000 ALL. This lady according to the previous law no. 9355\2005 "On social assistance and services" as amended, was not a beneficiary category.

4. Adult Trafficking in the last decade in Elbasan Region

In the Region of Elbasan, specifically during the last decade, regarding the target group of VT\PVTs, these data are registered in table no. 1 as follows:

Table no. 1: number of VT\PVTs in the last decade in Elbasan Region

Year	VT	PVT	Adults	Minors	Female	Male	Foreigners	Total No
2014	1	8	4	5	9	0	0	9
2015	6	4	4	6	10	0	0	10
2016	1	6	3	4	7	0	0	7
2017	1	3	1	3	4	0	0	4
2018	4	12	2	14	14	0	0	14
2019	0	1	0	1	1	0	0	1
2020	0	9	0	9	9	0	0	9
2021	0	4	0	4	4	0	0	4

From the data of table no. 1 shows that during the last years, the number of adults VT\PVT compared to 2014 until today is decreasing. This is due to the situation caused by Covid-19, because the latter led to the inadmissibility of the movement of

people not only within the country but also in all countries of the globe. On the other hand, the work done by the state administration has continued regularly. Specifically, the meetings of the Technical Roundtable (TT) and the Regional Anti-Trafficking Committee (KRAT) were held, after March 2020 on-line with the ZOOM application. KRAT has continued its work for proactive identification, provision of services, reintegration of Potential Victims of Trafficking or Victims of Trafficking. Awareness activities during these last years, have been limited and with a limited number of participants, in compliance with the anti-Covid-19 measures. In recent years also, during the month of October nominated as "Month of the fight against trafficking in human beings" awareness activities have been held in all 7 municipalities of the region with the participation of some members of KRAT and TT.
From the data of table no. 1 it turns out that over the last decade, the number of VT\PVT adults is only female and not male. Also this number refers only to Albanian citizens and not foreigners, distributed in the seven municipalities of Elbasan region. Types of use always referred to in table no. 1, are mainly for sexual exploitation, distribution of narcotics, creation of pornographic videos and exploitation for work.
In the above paragraph number two, were mentioned the tasks and steps implemented by the employee of the municipality\administrative unit in relation to the target group of VT-PVTs. In addition to these tasks and steps mentioned above, the Municipality for VT\PVT after leaving the social care institutions, convenes the Technical Group, in order to reintegrate them, providing employment, rent and support for all other needs. If it happens that VT\PVT does not have the desire to react for a period of 3 to 6 months and as a result the same situation continues for the victim, then the Municipality personally invites the victim to the table gathered by the Technical Group to raise awareness for the last time, letting them know that this is their last chance to reintegrate, because otherwise if they do not react and this time, following none of the NGOs that provide support services, will not respond. Also, the Regional Directorate of State Social Service Elbasan, supports VT\PVT after leaving the social care institutions, in order to reintegrate them, providing employment, rent and other needs. The following are some examples in some of the municipalities of Elbasan and DrShSShEl (Regional Directorate of State Social Service of Elbasan Region):

1. **Municipality of Cerrik:**

The 18-year-old K.L. girl lives in the city of Cerrik, in a family with many socio-economic problems. In addition to economic problems, the parents have been very negligent in caring for the girl in question and their 2 other children. K.L was often associated with different boys. The value of her dress did not match her family income. On 3.12.2020, the girl went to the premises of the Cërrik Police Station together with her mother to report a peer to her for harassment and threats through social networks. The Municipality of Cerrik, after assisting the police, has taken over the management of the case. After the full evaluation of the case, he drafted the Individual Protection Plan for the Victim, where it is planned by this municipality as follows:
1. Psycho-social counseling of the girl and parents.
2. Family support.
3. The mother was advised to notify her husband, who was in Greece at the time, to return and stay close to the daughter for a specified period of time.

4. Case monitoring in cooperation with the school and the police.
On 31.03.2021 the Municipality of Cerrik assisted the police in the case of Xh. L's cousin of the girl in question, who was denouncing several people who had abducted her by car and after giving her something to drink, she had found herself on the street, on the outskirts of the town of Librazhd. Xh.L then called her cousin K.L to take her. K.L had contributed to her return to the family. K.L and Xh.L are considered potential victims of trafficking.

2. Municipality of Gramsh

The 18-year-old A.S girl lives in the town of Gramsh. The case in question was referred by her family regarding the disputes they had with the girl, in the Municipality of Gramsh, which took over the management of the case immediately, offering her support and normalizing the relationship established between them. Initially, A.S cooperated, but then she stopped attending school for three days, and even left home without letting her family know where she was going to sleep. After 3 days she went to school and withdrew her school documents on the grounds that she would attend another school in the city of Vlora. On 17.09.2020, AS appears at the municipal office and says that I came to inform you that I will leave for the city of Vlora, in a boarding school that was found by a friend, with whom she had contacts through the network social. For this friend whom she says she has known for a year, none of the family members knew about her existence or the plan to leave their daughter. The municipality immediately after the girl leaves for home, informs her mother who repeats, was not aware of everything that her daughter had planned. After the conversation with the mother of A.S, the municipality addresses the police commissariat to inform her about the problems of the case in question. The police immediately offered their support and together with the employee of Gramsh municipality sent the girl to DrShSshEl which the latter engaged the relevant Anti Trafficking sector to continue interviewing and managing the case in cooperation with the municipality and other public and non-public actors. After the end of the interrogation in the presence of the psychologist, the municipality returned the girl to the family. Then the Municipality of Gramsh has drafted the Individual Protection Plan for the Victim, where it is planned by this municipality as follows:
1. Continuous psycho-social counseling of the girl and parents provided by the organization "Different and Equal" in Tirana.
2. Support the family by meeting the needs of the girl.
3. Case monitoring in cooperation with the school and the police.
As a result, the girl has started attending school again and has shown remorse for all the actions performed by her in the family. A.S is designated PVT.

3. DrShSShEl (Regional Directorate of State Social Service of Elbasan Region)

The treatment center of VT\PVT "Vatra" in the city of Vlora, has requested the cooperation of DrShSShEl in December 2017, for further reintegration of a beneficiary who was in this center for several months, respectively the citizen VZ Cooperation consisted of these points :
1. Finding an apartment in the city of Elbasan.

2. Mediation for finding a job.
3. Mediation in other services in this city.
4. Case monitoring in the apartment.

DrShSShEl in cooperation with NGOs, public and non-public institutions, coordinated to support the victim V.Z in its further integration. With the help of the center "Vatra" V.Z was placed in a rented apartment and through the employment office it was possible to provide employment to the victim. The social worker of DrShSShEl accompanied her not only when she started working but also in her every need from the first day of her stay in the city of Elbasan. Also, the social workers of DRShSShEl have made continuous visits to the apartment where the victim lived, in order to closely monitor the case. This VT still continues to work in this warehouse.

5. **Conclusions and Recommendations**

So far, the practices put in place, the legislation in force and the interaction mechanisms, as analyzed in the paragraphs above in this paper as a whole and for the Region of Elbasan in particular, have made it possible to have good results. The Albanian state is and will continue to be committed to include as many structures from the central level to the local, state and non-state level, inside and outside the country, (coordination and cooperation between them is also in the content of this paper), for to help young people, children, women and men victims of trafficking, children of victims of trafficking, in order to integrate them socio-economically. These efforts put the Albanian state on a par with European and international efforts in the fight to stop human trafficking and modern slavery.

Leaving aside the analysis of what has been done so far, to enable good management of adult trafficking in general and in particular in the Elbasan Region, the work will continue, paying attention to what needs to be done and on for prevention, reduction and support of this target group in this region, as follows:

-The Albanian state should provide more financial support to NGOs that host VT\PVT. Specifically in the Elbasan Region for the center "Tjeter Vizion" the state offers monthly payments to employees and food consumed in the center by the victims. To cover all other needs this center had to find donors. However, it happens that there are not always donors and basic needs such as: medicine, energy, water, computer, etc. no one pays.

-The Albanian state should provide more support to the victim's family when the latter is not involved in trafficking, in order to strengthen the victim. Specifically, i refer to the financial support, but not only, because it turns out that the payment of EA that is provided to the victim by the state until the moment he is employed is insufficient.

-The Albanian state should also enable a center (state or private) to provide specialized services for VT\PVTs increased in the Elbasan Region, since it is missing so far. Specifically, the specialized services are, for example: parenting courses for VT\PVT mothers; social-educational services for VT\PVT etc.

-Strengthen punitive measures for women who are willingly prostituted because they do not want to work legally under the pretext of being paid less.

-There is still prejudice about the employment of VT\PVT increased by employers. Measures must be taken to prevent this prejudice. Specifically, i think legal changes

that provide for punitive measures.

References

1. DCM no. 499, dated 29.8.2018 "On the approval of standard action procedures for the protection of victims and potential victims of trafficking".
2. Law no. 57, dated 18.07.2019 "On Social Assistance in the Republic of Albania".
3. DCM no. 597, dated 04.09.2019 "On determining the procedures, documentation and the monthly amount of economic assistance and the use of additional funds over the conditional fund for economic assistance."
4. Official data published by the State Social Service.
5. Official data published by the Regional Directorate of the State Social Service of Elbasan.
6. Official data published by the Ministry of Welfare and Social Protection.
7. Official sources confirmed by the Municipality of Elbasan of the Elbasan Region, Albania.
8. Official sources confirmed by the Municipality of Gramsh, Elbasan Region, Albania.
9. Official sources confirmed by the Municipality of Cerrik, Elbasan Region, Albania.
10. Official sources confirmed by the Association of "Women's Forum" Elbasan, Albania.
11. Official sources confirmed by the Association "Wilhelm's Aid for Albania" - Antonia Elbasan House, Albania.
12. Official sources confirmed by the Foundation "Aid to Balkans" (A2B) Elbasan, Albania.
13. Official sources confirmed by the Association "Tjeter Vizion" Elbasan, Albania.
14. Official sources obtained from the Elbasan Prefecture.
15. Official sources obtained from the Ministry of Defense.

Abbreviations

VT - Victim of trafficking
VMT - Potential victim of trafficking
APAP - Relevant Member of the Responsible Authority
AP - Responsible Authority
SSS - State Social Service
DRShSShEL - Regional Directorate of State Social Service Elbasan
NE - Economic Assistance
TT - Technical Table
KRAT - Regional Anti-Trafficking Committee
OKB - United Nations
OSCE - Organization for Security and Co-operation in Europe
UNICEF - United Nations Children's Fund
UNODC - United Nations Office on Drugs and Crime

Administrative and Judicial Review of Procurement Procedures Complaints

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Abstract

Public procurement, as a very important part of the activity of public institutions, plays a key role in meeting the needs for goods and services, in function of the purpose and mission of the institution.
The purpose of this paper is precisely to address the role of the Public Procurement Commission and the Court in the administrative and judicial review of complaints during procurement procedures.
For the realization of this work, the procurement procedures of the General Directorate of Nurseries and Kindergartens, Municipality of Tirana during the 2-year period 2020-2021 have been reviewed. From these procurement procedures, the procurement procedures of the purchase of food items for the public nurseries and kindergartens of the Municipality of Tirana have been separated, which have been the subject of judicial review. 6 court decisions of the Administrative Court of First Instance Tirana were analyzed with the object: "Repeal of the decision of the Public Procurement Commission… Securing the lawsuit, suspension of the contract. An interpretative analysis of the law "On Public Procurement", DCM "On the approval of public procurement rules" and the Unifying Decisions of the High Court and the Constitutional Court was also performed.
Suspension of the signing of contracts of new competitive procedures would seriously affect the public interest, namely the highest interest of the child which prevails over any other interest.
Based on the study of procurement procedures, law, and case law, the question arises, whether the suspension of the contract can be requested by the court, when the administrative review of complaints by the CPC has ended, and when the spirit of the law is not to suspend the contract, but to proceed with the further steps of this procedure?

Keywords: Procurement Procedure, Contract, Administrative Appeal, Judicial Review, Public Funding, Bidding.

1. Introduction

The local government, as the decision-making service unit closest to the citizens, has the obligation to develop investments, public services as well as the social ones of the community.
Contracting authorities, before conducting procurement procedures, take measures to plan the needs for goods and services and the monetary funds necessary for these procedures. These funds are approved by the respective municipalities, with the obligation to be well managed by the Contracting Authorities and institutions subordinated to the Municipality. Referring to the rules of public procurement, the main principles of law, the needs of the institution, and the legal deadlines provided for the development of procurement procedures, measures are taken for the development of public procurement in time, without creating delays in meeting the needs of the institution. After the announcement of the winner, the Economic

Operators have the right of complaints addressed first to the Institution that has developed the procedure and then to the Public Procurement Commission, whose decision is final in terms of administrative review.
From the study conducted in the practices of procurement procedures in the General Directorate of Nurseries and Kindergartens, the Municipality of Tirana for the years 2020-2021 showed that the PPC through the final decision has disposed: *"Not to accept the complaint of the economic operator ..." To lift the suspension for Procurement procedure ... developed by the Contracting Authority General Directorate of Nurseries and Kindergartens Municipality of Tirana ".*
Consequently, the Contracting Authority, pursuant to the decision of the PPC, has continued with the further steps of the procurement procedure, announcing the winner in the Electronic Procurement System, and notifying the PPC regarding the implementation of its decision, as the competent body. higher, which reviews complaints of procurement procedures.
Subsequently, taking into account that the supply of food for public kindergartens and nurseries of the Municipality of Tirana is daily, continuous and uninterrupted, the institution has taken the necessary measures to sign the contract with EO declared winner according to the decision of the PPC.
This is because in article 24, of law no. 162 "On Public Procurement", provides:
"Public Procurement Commission
1. *The Public Procurement Commission is the highest body in the field of procurement, which reviews complaints about procurement procedures, in accordance with the requirements set out in this law.*
2. *The Public Procurement Commission is an independent public legal entity, financed from the State Budget.*
3. *The Public Procurement Commission takes decisions on the complaints submitted before it, taking into account, in addition to the general principles mentioned in Article 2 of this law, the following principles: impartiality in reviewing complaints, consistency in decision-making, legality, speed and efficiency, accessibility, public character, as well as the principle of adversarial proceedings. "*
In view of these legal provisions and referring to the decision of the CPC no. 655/2018 dated 04.10.2018, where it is quoted: *"CPC is provided by law as a quasi court. As such in its decision-making the Public Procurement Commission applies the main principles of law. One of them is the legal principle which emphasizes the fact that the court decides on the basis of accusations (claims) and evidence. The Public Procurement Commission refuses to be placed in the position of the complainant's lawyer and to invest in a complaint which is not based on any argument, but only on hypothetical allegations and unreasonable suspicions"*institutions are obliged to correctly implement all decisions that are received from this commission, can not even proceed with the signing of the contract if the matter is being considered in the CPC.

2. Judicial review for the abrogation of the decisions of the Public Procurement Commission and the suspension of the contract

In the public procurement practices of the institutions of the Municipality of Tirana, it is noticed that a part of the procurement practices have become the subject of judicial review by the Administrative Court of First Instance Tirana, as a result of

the appeal by Economic Operators disqualified in the procurement procedure. If we refer to the decisions and reasoning of the court for these issues during the 2 years 2020-2021, for the procurements developed by the General Directorate of Nurseries and Kindergartens in the Municipality of Tirana, it is noticed that the claim filed by the complaining EO are rejected as ungrounded by law and in evidence. So the complaining EO have initiated the court with requests without legal basis. Even referring to these requests, without legal basis and contrary to the evidence and facts, the complainants have requested the suspension of the contract, a fact that has brought difficulties and chaos with the good management of the General Directorate of Kindergartens and Kindergartens Municipality of Tirana to provide the service and the mission of this institution.

This after referring to the Regulation of the General Directorate of Nurseries and Kindergartens, approved by the Decision of the Mayor of Tirana with No. 19521/1, dated 16.05.2019, the General Directorate of Nurseries and Kindergartens, Municipality of Tirana, among others, performs the daily supply of food for all nurseries and public kindergartens of the Municipality of Tirana. The winning Economic Operators, with whom the contracts for the supply of food are signed, deliver the goods to the institution on a daily, continuous and uninterrupted basis, and then they are distributed in the respective nurseries and kindergartens every day.

Given that the food supply of public kindergartens and nurseries in Tirana must be daily, continuous and uninterrupted, the contract of the new competitive procedure of the year must begin on the day of termination of the previous contract, as food products do not can be stored and stored for several days, but distributed daily.

The study shows that in 2020 a part of the complaining economic operators (who were also the previous contractors) claimed before the court that, due to the pandemic, the kindergartens and nurseries of the Municipality of Tirana were closed for about 3 months, and for this reason, as the supply was daily, a significant part of the previous contract quantities remained unfulfilled. Referring to these claims the complaining EO requested that the supply and the contract be postponed beyond the deadline for its completion for another 3 months.

From the study of procurement procedures it resulted that during the period 08.03.2020 - 01.06.2020, by order of the Ministry of Health, the activity of nurseries and kindergartens was suspended due to the pandemic, and consequently the food supply was not carried out. The General Directorate of Nurseries and Kindergartens, referring to the guidelines of the Public Procurement Agency and the legal provisions, amended the contract by extending the deadline by as many days as the activity in the Nurseries and Kindergartens was suspended.

The court reasoned that this claim of the appellant companies does not stand, as the contract signed between the parties has a deadline for its completion and it was postponed by the institution for as many days as the activity in the nursery and kindergartens was suspended.

Also from the study of procurement procedures for the years 2020-2021 it results that, the contracts for the supply of food items have been signed after the finalization of the procurement procedure, Open Procedure Framework Agreement, which provides: ***"The quantities provided are only indicative quantities and do NOT condition it Contracting Authority to purchase them. The Contracting Authority has the right***

to purchase less or more quantities than anticipated. (but in any case within the estimated value of the framework agreement).
The contractor will not be entitled to compensation and will NOT be allowed to make changes to the unit prices, for example if the contracting authority decides to purchase fewer or more quantities than those specified and / or if the contracting authority decides not to purchase any of these quantities for certain items ".
As the above, it turns out that there is no obligation for the institution to fully implement the contract, especially if we take into account the force majeure (pandemic) that has caused this situation.
Currently, as mentioned in this study, the Institution of the General Directorate of Nurseries and Kindergartens, has finalized the procedure and signed the contract, as otherwise a high public interest would be violated, that of raising and feeding children. With the end of the contract in the previous year, the children of public kindergartens and nurseries in Tirana would be left without food, if the Court would have accepted the complainant's request for suspension of the contract.
Contracting Authority General Directorate of Nurseries and Kindergartens, is an Institution which is responsible for the daily supply of food products for 40 kindergartens and 36 public kindergartens of the Municipality of Tirana (for about 8000 children).
The court rejected the claimant's request and allowed in all the studied cases, the Institution to enter into a contract with the winning Economic Operator as, referring to Article 29, letter b, of Law no. 49/2012 "For administrative courts and adjudication of administrative disputes", is quoted:
"Conditions for securing the lawsuit
The court decides to secure the lawsuit, if the following conditions are completed:

a. *there is a reasonable suspicion, based on documents, of the possibility of causing serious, irreversible and immediate damage to the plaintiff;*
b. *the public interest is not seriously violated;*

In the concrete case from the study of these procurement procedures, it resulted that, non-supply with the above mentioned food items, would cause lack of food for about 8000 children, who regularly attend kindergartens and public kindergartens of the Municipality of Tirana. It would also cause non-compliance with the food menu, weights and norms approved by the Ministry of Health and Social Protection (paperwork nr. 3242/4 protocol, date 19.06.2019).
In these conditions, we estimate that the suspension of the contracts signing of new competitive procedures would seriously affect the public interest, specifically the best interest of the child.
Regarding the above, as well as referring to article 29 of law no. 49/2012, the principle of not seriously violating the public interest, that of feeding children continuously and uninterruptedly, prevails over any other interest.
We also emphasize that in this case there is no possibility of causing serious, irreversible and immediate damage to the plaintiff.
The Constitutional Court has reasoned with Decision no. 32 dated 24.11.2003 that:*"Suspension of the administrative act as a judicial procedural action, is conditioned by a series of elements… in summary these elements are: filing a lawsuit for the abrogation of the administrative act, the administrative act should be subject to review with reference to Articles 324-326 of the Code of Civil Procedure ".*

In the spirit of this reasoning, also the Joint Panels of the High Court, with Decision no. 10, dated 24.03.2004, have unified the case law: "… the request for opposition in court of an administrative act does not have the features of a genuine civil lawsuit, therefore the suspension of the implementation of the administrative act by the court, when allowed by law "should not be considered as a temporary measure to secure the lawsuit." This decision is also reasoned: *"The court should not base the decision to take an interim measure to secure the lawsuit on facts or actions, as well as on their legal qualification, which have to do with the substantive examination and resolution of the case. Also, the examination of the request for taking the security measure of the lawsuit should be treated in such a way as to avoid any kind of perception according to which the court has prejudiced the resolution of the case for the substantive or is not impartial in the trial.... the court case after case, has the discretion to impose a measure of the nature of securing the lawsuit that it deems appropriate and useful to protect the rights of the plaintiff, but without at the same time endangering the protection of the rights and legitimate interests of the defendant.*

In the reasoning of this decision, we clarify that the suspension of the contract (or the suspension of its implementation) seriously violates the legitimate interests and fundamental rights of about 8000 children. This would bring consequences of total non-functioning of nurseries and kindergartens, chaotic situation as well as a negative social impact on the public interest. The Administrative College of the High Court according to Decision no. 335, dated 29.04.2014 hasreasoned: "... the suspension of the execution of the administrative act can be taken by the Court during the review of the claim, in a court session and not with a request for securing a lawsuit according to".

In article 121 point 2 of law no. 162/2020 "On Public Procurement" as amended, cites: *"Appeal in court*

2. The review of this appeal in court does not suspend the procurement procedures, the conclusion of the public contract for the procurement of goods, services or works by the contracting authority or the execution of obligations, according to the procurement contract by the respective parties ".

Regarding the above, we clarify that, referring to the specific nature of procurement, the very spirit of the legislator is not to suspend the conclusion of the contract, the competitive procurement procedure, but to continue with the further steps of this procedure, always in order to protect the interests of high public as well as meeting the needs of the institution.

The General Directorate of Nurseries and Kindergartens in this case has taken all measures to finalize the procurement procedure and enter into a contract with the winning EO pursuant to the decision of the PPC, in order to continue the supply of food to fulfill the mission of the institution and to provide the service in accordance with the standards provided by the World Health Organization, regarding the nutrition and development of children, in kindergartens and public kindergartens of the Municipality of Tirana.

It turns out that from the study conducted in these practices, it is worth noting that the claims of the complainants refer mainly to the request for disqualification of qualified Winning Economic Operators, who have submitted a bid of lower value than the complainant. The institution has saved and well-managed public funds, as it has been declared the winner of the lowest value offer."

Regarding the above, referring to article 87, of law no. 162/2020 "On public

procurement" where it is quoted: *"The winning bid must be: a) the bid that, based on the requirements and criteria set out in the tender documents, meets the requirements of the procurement object with the lowest price ..."* We clarify that the winning bid announced by the institution was the bid that met the criteria and had the lowest price.
Also noticed in these procurement procedures is the violation of competition by disqualified Economic Operators, who have addressed a request for abrogation of the administrative act to the Court, an appeal that is contrary to law and reasoning spirit of the Joint Colleges of the High Court. Specifically in a procurement procedure of 2021 it resulted that, two different bids were presented with different values by two administrators, who are brother and sister to each other. The Institution has disqualified these two bids on the grounds that free competition has been violated and has referred the matter for treatment to the Competition Authority.
It is the Public Procurement Law itself no. 162/20120, which has sanctioned the obligation to respect the competition of economic operators in the procedure. Article 1 "Object and purpose", point 2 / ç provides: "To promote competition between economic operators", point d "To ensure equal and non-discriminatory treatment for all economic operators participating in procurement procedures", and Article 2 "Principles of selection" point a provides: "Non-discrimination and equal treatment of bidders and candidates."
Also, the General Directorate of Kindergartens and Nurseries in the above case, has found that referring to the verification of the payment list of Social and Health Insurance Contributions, part of the employees are employed simultaneously in both competing companies.
Regarding the above, the claim of the plaintiff: "For securing a lawsuit, suspension of the contract and abrogation of the administrative act as an absolutely invalid act", does not stand because it is contrary to the legal provisions and the reasoning spirit of the United Colleges of the High Court, for these reasons has been overturned by the Administrative Court of First Instance Tirana.

Conclusions

– From the review of all procurement practices in this institution it resulted that the claims of the complainants refer mainly to the illegal requirements, namely the disqualification of Economic Operators, who meet the legal criteria and have submitted a bid of lower value than the complainant. the institution was declared the winner of the lowest value offers, saving and managing public funds.
– The complainant's request is illegitimate and was rejected in all 6 cases by the Administrative Court of First Instance Tirana, as unsupported by law and evidence.
– The spirit of the law and the reasoning of the High Court of the Constitutional Court, is not to suspend the conclusion of the contract of the competitive procurement procedure, but to continue with the further steps of this procedure, always in order to protect the highest public interests as well as meeting the needs of the Contracting Authority.

References

Law no. 162 dated 23.12.2020 "On Public Procurement".
VKM Nr. 285, dated 19.05.2021 "On the Approval of Public Procurement Rules".

Law no. 49/2012 “On administrative courts and adjudication of administrative disputes”.
VKM Nr. 285, dated 19.05.2021 “On the Approval of Public Procurement Rules”.
Description no. 3242/4 prot., Dated 19.06.2019 of the Ministry of Health and Social Protection.
Regulation of the Institution approved by Decision of the Municipality of Tirana with No. 19521/1, dated 16.05.2019.
Decision No. 32 dated 24.11.2003 of the Constitutional Court.
Decision no. 10, dated 24.03.2004, of the Joint Colleges of the High Court.
Decision no. 335, dated 29.04.2014 of the Administrative College of the High Court.
Decision No. 2758 dated 17.05.2021 of the Administrative Court of First Instance Tirana.
Decision No. 2303 dated 16.07.2021 of the Administrative Court of First Instance Tirana.
Decision No. 2759 dated 17.05.2021 of the Administrative Court of First Instance Tirana.
Decision No. 2108 dated 02.07.2021 of the Administrative Court of First Instance Tirana.
Decision No. 1513 dated 23.01.2020 of the Administrative Court of First Instance Tirana.
Decision No. 1736 dated 27.07.2020 of the Administrative Court of First Instance Tirana.

The maritime issue between Albania and Greece

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Abstract

This article aims to provide an overview of the Albanian and Greek maritime case regarding the demilitarization of maritime borders between the two neighbor countries. As this is a delicate matter, all moments should be treated and analyzed in detail with reference to the legal basis and mutual agreements. The Albanian and Greek maritime agreement have brought the need for a deepening in the international and jurisdictional aspect of the issue, because of that fact the Albanian-Greek border has been an issue in discussions, ongoing research by historians, lawyers in the field of international law and politicians themselves.
In this context, the object of this article is a deep analyze of the historical problem of Albanian territoriality with Greece, seen in the historical, international maritime aspect in relation to the sovereignty of the state. An important place in this article takes the analytical point of view on one side and on the other hand the analyze of the demilitarization agreement in respect to the international law, including all other bilateral agreements during the decades and not forgetting domestic jurisdiction that is one of how the state demonstrates its competencies and determines its sovereignty. As well we will see the new perspective on neighborly relations and international rules between the countries.

Keywords: *Issue, border, sea, convention, agreement, state, case, international law, dispute.*

Introduction

This paper aims to provide an overview of the issues of the Albania-Greece maritime agreement regarding the demilitarization[1] of maritime borders. Even though: Internal jurisdiction is one of how the state demonstrates its competencies and determines its sovereignty, in this case we will notice that internal jurisdiction in some cases conflicts with international jurisdiction. The question naturally arises: Is the agreement drafted in accordance with international law? Does international law take precedence over the agreement of the two states? We must abide by the provisions of the International Conventions which define the land and sea territories of states. But if we look closely at the agreement concluded between Albania and Greece, it is evident that some basic constitutional rules and principles have not been respected and it is noticed that some of the institutes of the law of the sea, fixed in the Montego Bay Convention of 1982, as well national legislation has not been considered in drafting the bilateral agreement.

Historical flow framework regarding the claims of the parties regarding the maritime border.

Problems related to the borders between Albania and Greece have existed for many decades. The territorial claims of the Greek state relied mainly on the characteristics of the provinces they claimed, such as relying on the Orthodox population as part

[1] Delimitation is the delineation of the border line between different states in general, without going into details, according to, Puto Arben, International Public Law: Albin, Tirana F. 309, 2005.

of the Byzantine Empire's past. Such claims emerged during the Berlin Congress of 1878, which aimed to establish peace in the Balkans. The Treaty of Berlin gave Montenegro and Serbia parts of the territory and defined the Kalamas-Selemvria line as Greek borders in protocol number 13. By this claim the Greece wanted to establish its sovereignty over Albanian lands which were still under ottoman influence.
But, according to the provisions of Berlin Protocol Nr. 13 of the Berlin Conference shifted the border line to Greece, which brought dissatisfaction and revolt which later lead to autonomy and further to the Declaration of Independence.
The Conference of Ambassadors also created a commission which would physically determine the territorial division of Albania, a commission which physically presented itself to see the territories. In the decisions of the Conference of Ambassadors on the demarcation of the Albanian-Greek border, in one of the decisions of 11th of August 1913, the ambassadors gave the right to Greek territorial claims, based on the Greek historical theory of northern Epirus, a considerable part of the territory of south of Albania. The border between Albania and Greece was established in the bay of Ftelias in Saranda. Next, the border line between Albania and Greece, crossed the Strait of Corfu, leaving the island of Corfu to Greece.[2] On the other hand, Albania did not agree with the decision of Berlin, which considered as unfair that supported the neighbor governments in granting Albanian territories and that served legally to create border demilitarization between Albania and Greece. This decision was one of the basic elements which served as a key basis for the demarcation[3] of the Albanian-Greek border. Eventually the demarcation ended as a process by the great powers with the document of the Florence Protocol dated 17th of December 1913.[4] This document, together with the relevant maps prepared by the Military Geographical Institute of Florence, represents the final international legal act concluding the demarcation of the borders between the two states. This protocol includes 15 minutes which include the definition of boundaries with some detailed changes. However, the Greek side again did not agree with this decision, requesting the redefinition of the borders in some areas in the south-east of Albania.
On 17th of May 1914, the Corfu Protocol[5] was signed, which served for negotiations between the two neighboring states. Further, the dissatisfaction of the two countries regarding the definition of borders continued to be discussed in the organization of the League of Nations. It was with the decision of this organization that it was decided to send an international commission to the Albanian-Greek border, which would determine and review the Albanian-Greek border, a work which lasted for several years. Officially, the borders were sanctioned in the Firence protocol[6]. The protocol was signed by Greece and Albania, becoming one of the main acts of establishing the border line between them[7].

[2] Puto Arben, International Public Law: Albin, Tirana 2005. F. 79-80.
[3] Demarcation is the demarcation of the border line in place, going into detail and with the help of special border signs (pyramids, pillars, walls, etc.).
[4] Puto Arben, The Albanian issue in the international acts of the period of imperialism 1912-1918, "8 Nëntori", Tirana, p. 423-426, 1987.
[5] Puto Arben. Political Albania 1912-1939, TOENA publications, Tirana, p. 136-137, 2009.
[6] Gurakuqi Romeo, The File of Neutralization of the Corfu Channel (December 1913-July 1914), published in the Temporary Cultural-Literary Hyll i Dritës, no.3 (266).
[7] Puto Arben, Political History of Albania, 1912-1939. Tirana, 2010.

The sea issue

To be as clear as possible regarding the international legal issue of maritime borders between Albania and Greece, the legal norms of international law regarding the maritime territory and the international norms that have been applied in the agreement between these two countries should be considered for analysis. On the other hand, the jurisprudence of the ICJ court plays an important role in resolving disputes in the maritime field, as the law of the sea occupies a dominant place in the jurisprudence of the International Court of Justice[8]. Of course, we can say that the coordination of economic and political interests of the maritime and coastal states, has till recently been a central issue in international maritime law.

The concepts of international law in matters of maritime law at that time were not what they are today. At that time the notion of exclusive economic zone was not known, just as the notion of continental shelf was not known either and at the same time the breadth of territorial waters (territorial sea) was not fixed.

The status and legal regime of these waters has not always been clear and the same for all countries. Therefore the Albanian-Greek border line in the Corfu Strait area, defined by the acts of the Conference of Ambassadors of 1912-1913 and the Firence Protocols of 1913-1925 do not take into account these changes that occurred later. The need for the use and exploitation of marine waters by states, created the internationalization of marine waters which defined the procedural rules and norms that must be applied by states in such a way as not to violate the sovereignty of any state.

It can be said that the principle of sovereignty was a catalyst for the development of the law of the sea after the Second World War, which was fixed in international treaties. It should be noted that for centuries maritime law was based exclusively on customary international law[9], and it was only after World War II that it became the subject of extensive codification.

The principle of sovereignty aims to safeguard the interests of coastal states. This principle according to Professor Yoshifumi Tanaka essentially promotes the extension of national jurisdiction to offshore areas and supports the territorialization of the oceans.[10] An important aspect in bilateral relations is the observance of the general principles of law referred to in Article 38 (1) of the ICJ Statute[11] as well as the observance of *jus cogens* norms, which cannot be changed even by means of such treaties, threats or pressures of any kind or form[12]. International law of the sea stipulates that on one side water areas must be free for the use of maritime assets and at the same time states exercise sovereignty over some parts of these waters[13].

Thus, over time the maritime belt adjacent to the coast became increasingly important

[8] See, Angela Del Vecchio, Roberto Virzo, Interpretations of the United Nations Convention on the Law of the Sea by International Courts and Tribunals., 1st Ed. P. 436, Springer 2019.

[9] Angela Del Vecchio, Roberto Virzo, Interpretations of the United Nations Convention on the Law of the Sea by International Courts and Tribunals., 1st Ed. P. 437, Springer 2019.

[10] Yoshifumi Tanaka, The International Law of the Sea, Cambridge University Press 2nd Ed. p. 127, 2015.

[11] https://www.icj-cij.org/en/statute

[12] Krisafi Ksenofon, About Land and Sea of Albania, Uet Press P. 128, 2014.

[13] On the basis of the principle of freedom and the principle of sovereignty, the ocean has been divided into two categories. The first category relates to marine space adjacent to coasts subject to the national jurisdiction of the coastal State. The second category concerns marine space beyond national jurisdiction where the principle of freedom applies.

for coastal states for various purposes such as: neutrality, security, customs control, sanitary regulations, fishery oil or gas extraction, mineral extraction numerous as well as economic policy based on the economic doctrine of mercantilism. On this basis, immediately after World War II, the coastal states increasingly extended their jurisdiction to the high seas to control offshore resources, leading to the expansion of territorial waters from 3 to 12 nautical miles, but also the claim of extending national jurisdiction over the continental shelf and the respective water space up to 200 nautical miles[14]. This kind of situation brought conflict between Western states in the international arena. Precisely, seeing that the watersheds generated disputes between the states, to manage this conflict situation the UN committed itself which concluded its first Conference on the Law of the Sea (4 multilateral conventions were concluded, which covered various aspects in the field of the law of the sea.[15] Without rules on maritime delimitation in spaces where coastal State jurisdictions overlap, coastal States cannot enjoy the legal uses of maritime spaces effectively.

The first convention was adopted on the law of the sea was the Geneva Convention of 1958. Although the Convention sought to clarify views on maritime waters, it did not definitively define maritime territory issues with some other specifics to it, so states still needed legal regulation. Then in 1982 the Montego Bay Convention was adopted, which has a general scope and regulated those areas that were missing in the previous conventions, and which enriched the process of codification of the law of the sea. These conventions do not contain any provisions regarding the delimitation of inland waters, although this problem may arise, for example, in the case of a bay with several shores. In addition, the only maritime boundary, which would limit the continental shelf and the EEZ / fisheries zone with one line, is under discussion. Given that the factors to be considered may be different for seabed and overflow waters, it seems possible that the boundary line of a continental shelf and an EEZ will also change.[16]

However, the 1982 Convention established a new and complete legal regime on the seas and oceans and serves as a reference point for all matters relating to international maritime law, because: it clarified many problems of international maritime law (untreated) and specifically the rational, effective, and equitable allocation, use and exploitation of maritime spaces and their resources, had a special priority. Specifically, Article 2-3 of the convention stipulates: the territorial sea is under the sovereignty of the state in the same form as the territorial territory, it also stipulates that the sovereignty of the state extends beyond its land territory and its inland waters and on the principle of well-defined, territorial sea can last up to a maximum of 12 nautical miles from shore.[17]

At the international level, the duality in the oceans, which distinguishes the territorial sea from the high seas, was clearly confirmed in the decision of the Arbitration Tribunal in the *Bering Sea Fur-Seals case* between Great Britain and the United States of America in 1893[18], where it was decided that: *the coastal state could not exercise*

[14] Until the midtwentieth century, the scope of the territorial sea was limited to the narrow maritime belt, and the enormous area of the oceans remained the high seas.

[15] See, James Harrison, Making the Law of the Sea: A Study in the Development of International Law, Cambridge University Press, p.27, 2011.

[16] Yoshifumi Tanaka, The International Law of the Sea, Cambridge University Press 2nd Ed. p. 474, 2015.

[17] Montego Bay Convention on the Law of the Sea 1982.

[18] Yoshifumi Tanaka, The International Law of the Sea, Cambridge University Press 2nd Ed. p. 127, 2015.

jurisdiction over the high seas beyond the three-mile border. The Tribunal thus rejected a request by the United States to exercise jurisdiction over the ocean beyond the usual three-mile border.

In this regard, it is important to note that the approaches of international courts to maritime determinations may consistently change over time. Therefore, there is a need to analyze both legal changes and ongoing case law regarding the delimitation of maritime boundaries to clarify the direction of law development in this area.

In this context, in nowadays, the Convention on the Law of the Sea is the basic document that takes precedence over any other international legal regulation in this field, including the 4 Geneva Conventions adopted at the first UN session on the law of the sea. It clearly states the general principles, rights, and duties of States Parties in the field of international law.

The significance of consent in the international legal order was emphasized by the Permanent Court of International Justice in its judgment in the 1927 *SS Lotus Case* when it said: International law governs relations between independent States. The rules of law binding upon States therefore emanate from their own free will[19].

The case of delimitation varies flexible consideration of different geographical and non-geographical factors is also required with the aim of achieving equal results to the claiming states. The delimitation of maritime spaces is quite complex for example, due to the proximity of coastal states to each other, different and varied configurations of maritime coasts, the presence of islands or other factors that can and should be considered in determining of maritime borders.

In 2009 the two neighboring countries Albania Greece agreed to sign an agreement (for the delimitation of their respective areas, continental shelf, and other maritime areas) without any objection although as a result, Albania lost two points strategic, such as the middle of Otranto and the part in Corfu. Although it was not necessary to redefine the border of maritime space between Albania and Greece, as this border was previously defined in the Florence Protocol 1913 as above[20].

After the publication of this pact, there was public concern that the agreement had been concluded in violation of constitutional provisions and international law, namely the 1982 Montego Bay Convention on the Law of the Sea. Various circles of public opinion requested that the Albanian Parliament should not ratify this agreement for the above reasons. Thus, some political parties of the left spectrum addressed the Constitutional Court of the Republic of Albania with the request for declaring the agreement invalid, a body which should exercise control and constitutional review. The main task of which is to control the performance or non-performance of actions by state bodies or the issuance of laws that conflict with constitutional provisions[21].

In the case of Albania, the principle of strict equivalence should not have been applied for the definition of the maritime border, which has brought unfavorable consequences for the Albanian state, unjustly losing significant areas of maritime space, because the two coasts have different geographical conditions. Instead, the principle of equality should have been combined with the principle of equity, which makes it possible to achieve a just and satisfactory result for both coastal states. Meanwhile, the request of

[19] James Harrison, Making the Law of the Sea: A Study in the Development of International Law, Cambridge University Press, p.22, 2011. See also, Gideon Boas, Public International Law: Contemporary Principles and Perspectives Australia p. 27, 2012.

[20] Krisafi Ksenofon, About Land and Sea of Albania, Uet Press P. 125, 2014.

[21] See, Anastasi, A. & Omari, L. Constitutional Law. Tirana 2008.

the Greek side was accepted that the Gulf of Corfu be treated as a bay with the status of inland waters, but such a thing did not happen for the bay of the city of Sarada in the south of Albania.

The ICJ Chamber in the *Gulf of Maine case*[22] affirmed the point, by stating that: *'No maritime delimitation between States with opposite or adjacent coasts may be effected unilaterally by one of those States'*. Hence, maritime delimitation is international by nature.

Regarding the delimitation of territorial seas, according to Article 12 (1) of the Geneva Convention of 1958, provides for the threefold rule of "agreement - equidistance (middle line) - for special circumstances": *Where the coasts of two States are opposite or adjacent to each other, neither of the two States is entitled, failing agreement between them to the contrary, to extend its territorial sea beyond the median line every point of which is equidistant from the nearest points on the baselines from which the breadth of the territorial seas of each of the two States is measured. The provisions of this paragraph shall not apply, however, where it is necessary by reason of historical title or other special circumstances to delimit the territorial seas of the two States in a way which is at variance with this provision.*

The Convention rightly stipulates that: when the same continental shelf is adjacent to the territories of two or more States whose coasts are opposite each other, the boundary of the continental shelf belonging to those States shall be determined by agreement between them. On the other hand, it is accepted that the border between Albania and Greece in the Corfu channel passes through the strait, which has never been opposed by the parties.

Further, reviewing the international agreement Albania-Greece before ratification, the court, according to article 52 of the law on the Constitutional Court, is set in motion by one or several political parties provided that the issue is related to its / their interest. The request to overturn this agreement was raised by Albania's opposition political party.

At the end of the review of this request on 08.12.2009, the Constitutional Court of the Republic of Albania ruled with a decision, in which it addressed the legitimacy of the claimants, to invest about it in reviewing the incompatibility of the Agreement with the Constitution of the Republic of Albania and the Montego Bay Convention of law of the Sea.

Conclusions

International law creates opportunities for states to adapt and regulate their own domestic legislation, but always to be complying and respect regarding to international law. Therefore, equity as a custom of international law is the fairest method for delimiting the exclusive economic zones of both parties, knowing that Albania and Greece have ratified the Montego Bay Convention. The position of the International Court of Justice is that delimitations of areas should be done in respect of the spirit of international law and especially Article 38 of the Statute of the International Court of Justice, which hierarchically lists the sources of international law, such as: conventions, international customs, and other general principles of international law.

The state cannot refuse to fulfill the obligations of a treaty on the grounds that it

[22] https://www.icj-cij.org/en/case/67

is contrary to domestic law (Article 27 of the 1969 Vienna Convention on the Law of Treaties). Thus, the unconstitutionality in the domestic aspect cannot serve as a justification for the non-implementation of the obligations undertaken in international law. The drafting, signing and ratification of the treaty must be done in the spirit of constitutional principles such as the rule of law, democracy and the legitimacy of representative bodies, legitimacy which is lacking if the procedure of equipping the president with full power is not considered. Always respecting the important principle: the principle of non-interference with the internal provisions for the implementation of a certain article of the treaty.

Failure to provide the delegation with full powers by the President of the Republic violates the powers of the President of the Republic provided by Article 92 of the Constitution, and consequently the principle of separation and balance of powers guaranteed by Article 7 of the Constitution.

In the case of the agreement between Albania and Greece, the Constitutional Court, considering the decision of the International Court of Justice in 1969[23], noted that the application of the midline method, equidistant from the shores of both parties, creates anomalies and inequality and that in the delimitation of maritime spaces the principles of justice and honesty must be applied, to have a just and honest solution.

According to the above analysis, the agreement was contrary to some provisions of the Albanian constitution: In the decision of the Court, it was stated that the Agreement between the Republic of Albania and the Hellenic Republic on the delimitation of marine waters, continental shelf and other areas belonging to base on International Law, are incompatible with Articles 3,4,7 and 92 / ë of the Constitution of the Republic of Albania, which in our view confirmed the guarantee of the sovereignty of the country and its territorial integrity. The decision also confirmed that the maritime agreement with Greece had deficiencies in content (which did not consider domestic legislation) as well as defects of a technical nature.

For this reason, according to Prof. K. Krisafi, the act for which the two countries sign as an agreement, failed to become a genuine agreement as provided by international law and domestic legislation (namely the Constitution of Albania), and consequently does not part in acts of international law[24]. As the procedures for converting the signed act into an agreement were not completed, the agreement was not ratified by either party and as such was not registered with the UN Secretariat as provided for in Article 2 of the UN Charter.

The most accurate recommendation in this context would be the possibility of negotiating a new agreement in respect of the criteria and conditions established by international law in accordance with the domestic law of the two states (respecting the previous Florence protocols of 1913, 1925), as it is the best solution for the level of relations that two neighboring states have. Improving the climate for negotiating this agreement will take time, and time is the best factor for a fair solution. Let us mention the fact that it took Greece years to conclude agreements with other neighboring countries to resolve issues of this nature.

In certain circumstances there may be a duty to enter negotiations arising out of bilateral or multilateral agreements. Article 283 (1) of the Convention on the Law of the Sea, 1982 provides, for example, that when a dispute arises between states parties

[23] Delimitation of the continental shelf in the North Sea between Denmark, the Netherlands and Germany.

[24] Krisafi Ksenofon, About Land and Sea of Albania, Uet Press P. 127, 2014.

concerning the interpretation or application of the Convention, "the parties to the dispute shall proceed expeditiously to an exchange of views regarding its settlement by negotiation or other peaceful means"[25].

In case of failure of the two countries to renegotiate the agreement, then it is recommended to review this issue through the international arbitration institution, as a similar issue is resolved by Slovenia and Croatia in the PCA in 2017.[26] Whereas, the case law of the ICJ Court is a valuable aid in interpreting treaties, identifying the rules and norms of customary international law as well or in deciding on the principle of *ex aequo et bono*[27].

Therefore, the law of the sea is an important area of international law that must be able to adapt to the changing needs of the international community.

References

1. Puto Arben, International Public Law: Albin, Tirana 2005.
2. Anastasi, A. & Omari, L. Constitutional Law. Tirana 2008.
3. Angela Del Vecchio, Roberto Virzo, Interpretations of the United Nations Convention on the Law of the Sea by International Courts and Tribunals., 1st Ed. Springer 2019.
4. George K. Walker, Definitions for the Law of the Sea, Martinus Nijhoff 2012.
5. Gemma Andreone, The Future of the Law of the Sea: Bridging Gaps Between National, Individual and Common Interests, 1st Ed. Springer 2017.
6. Gurakuqi Romeo, Shqipëria dhe çështja shqiptare pas Luftës së Parë Botërore. Shkodër 2007.
7. Gideon Boas, Public International Law: Contemporary Principles and Perspectives Australia 2012.
8. Gary B. Born, International Arbitration: Law and Practice. Kluwer Law Internationl, The Netherlands 2016.
9. James Harrison, Making the Law of the Sea: A Study in the Development of International Law, Cambridge University Press 2011.
10. Natalie Klein, Maritime Security and the Law of the Sea, Oxford University Press 2011.
11. Malcolm Shaw, International Law, 2008.
12. Malcolm N. Shaw. International Law. 9th Ed., Cambridge University Press 2021.
13. Krisafi Ksenofon, Per token dhe detin e Shqiperise, UetPress 2014.
14. United Nations Convention on the Law of the Sea 2008.
15. Yoshifumi Tanaka, The International Law of the Sea, Cambridge University Press 2nd Ed. 2015.
16. Yvonne Baatz, Maritime Law, 2016.

[25] Malcolm Shaw, International Law, 2008 p.1015.

[26] https://pca-cpa.org/en/cases/3/

[27] Article 38/2 of the Statute of ICJ.

Article: Domestic violence in Albania on the optic of Istanbul Convention

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Abstract

The Istanbul Convention was signed by Albania on 19 December 2011. Gender equality and reduction of gender based violence and domestic violence is one of Albania's priorities, based on legislative, political and executive measures against such phenomena.
The paper shows all steps and efforts taken by Albanian government on implementation of this international instrument, issues, problems and improvement of legal and institutional framework.
The methodology of this research will be focused on the Albanian legal framework changes through years till to ratification of the Istanbul Convention, the first report to the GREVIO Committee of Albania, the recommendation left to the Albanian government from the experts and steps forward on implementing all issues raised.
Guaranteeing women's rights in combating gender based violence and domestic violence is an important objective for all governments and involves legal and institutional aspects, services delivered, and challenges to be faced. In Albania this issue became very sensitive after 90-ties with the political, economical and social changes. The protection of human rights raised the sensibility in women's rights protection and developed a network of civil society NGOs working in this field which reflects the problems emerging from this issue.
Going throw the legal and institutional improvement, the paper aims to understand the real situation of domestic violence in Albania, the institutional development and the actions undertaken to improve the situation in national levels.

Keywords: Albanian legislation, Istanbul Convention, domestic violence, institutional development, service provided, NGO.

Introduction

In recent years, Albanian society is coexisting with the phenomenon of domestic violence. Aware of its negative impact on the physical, psychological, economic and social integrity of children, women and the elderly, it was sought to prevent and treat this phenomenon with appropriate instruments. Various studies (Garunja, Aracne 2020, pg.13-18) show that it is difficult to measure the level and prevalence of domestic violence, developed within the walls of the home, considered as a family matter. Old patriarchal traditions and their cultural influence, unhealthy life situations, gender discrimination, unemployment, intergenerational control in the family, keep the phenomenon alive and stimulate shame, fear of punishment, cultural norms, stereotypes on domestic violence, affecting its non-reporting.
According to INSTAT Albania (2020), 52.9% of women declared to have been raped at least once, 36.6% of them are currently experiencing a situation of violence. Due to family relations in 2019, were registered 14 murders, of which 70.6% of the victims were women and 29.4% were men.
Improving the situation and fulfilling the international obligations, the Albanian

state undertook the obligation to recognize and fight against this phenomenon. The first attempts are very early. The Family Law (Family Code 9062/2003), the first post-communist law regulate the family relations, offered legal help to the abused partner, recognize the right to address a court request to remove the abusive partner from cohabitation, a requirement which was never applied in family proceedings (Article 62).

Organizations, oriented towards the protection and guarantee of women's rights, lobbied strongly in decision-making institutions and with 20,000 signatures sent to the Albanian Parliament the first draft law on Measures against Violence in Family Relations. This law entered into force in 2006 and is the first one focused on the phenomenon of violence in family relationships. It charged all institutional actors with duties and responsibilities and creates a coordinated mechanism for the treatment of domestic violence cases, based on the successful model of piloting the coordinated community response against violence against women at local level and following the specific platform designed for this purpose (CoE&UNWomen, Tirana 2015).

The implementation of the law highlighted an inefficient institutional system in intervening and providing protection to victims of violence, as well as highlighting the need for continues improvements and amendments. So far this law[1] has been amended several times[2] with the sole purpose of improving the legal and institutional framework for the protection of victims of violence. The legal framework of the Republic of Albania was enriched with other laws that focused on the recognition and promotion of women's rights as a guarantee for the elimination of gender based violence.

In 2008, the *Law on Gender Equality* aims to improve gender equality, including the establishment of the national gender machinery, women's participation in decision-making in political and public spheres, and other specific mechanisms. The *Law on Protection against Discrimination*[3] in 2010 established the Commissioner for the Protection against Discrimination as an independent body that safeguards protection against discrimination. The legal improvements goes ahead with the amendment of *Criminal Code* in 2012 and 2013 and so on[4], which touched upon domestic violence and the protection of women and girls from violence and abuse. This Code introduce stalking, criminalize forced sexual intercourse with adults or husband/partner

[1] The Law no.9669 date 18.12.2006 "For Measures against Violence in Family Relations", published in the Official Gazette No 150, dated 18.01.2007 in force since 01.06.2007 http://www.osce.org/albania/30436.

[2] Law no.9914, date 12.5.2008 published on Official Gazzette no. 76, date 28 May 2008. Law no.10 329, date 30.9.2010 published on Official Gazzette no. 142, date 25 October 2010. Law no. 47/2018, date 23.7.2018 published on Official Gazzette no. 115, date 3 August 2018.

[3] Law no.10221, date 4.2.2010 "On protection against discrimination", published in the Official Gazette No. 15/2010. http://www.ilo.org/aids/legislation/WCMS_178702/lang--en/index.htm.

[4] Law no. 7895, dated 27.1.1995 Criminal Code of the Republic of Albania (Amended by: laws no. 8175, dated 23.12.1996; no. 8204, dated 10.4.1997; no. 8279, dated 15.1.1998; no. 8733, dated 24.1 .2001; No. 9017, dated 6.3.2003; No. 9030, dated 13.3.2003; No. 9086, dated 19.6.2003; No. 9188, dated 12.2.2004; No. 9275, dated 16.9.2004; 9686, dated 26.2.2007; No. 9859, dated 21.1.2008; No. 10 023, dated 27.11.2008; No. 23/2012, dated 1.3.2012; No. 144, dated 2.5.2013; No. 98, dated 31.7.2014; No. 176/2014, dated 18.12.2014; No. 135/2015, dated 5.12.2015; No. 82/2016, dated 25.7.2016; No. 36/2017, dated 30.3.2017; 89/2017, dated 22.5.2017; No. 44/2019, dated 18.7.2019, No. 35/2020, dated 16.4.2020, No. 146/2020, dated 17.12.2020; No. 43/2021, dated 23.3.2021; Decisions of the Constitutional Court: No. 13, dated 29.5.1997; No. 46, dated 28.8.1997; No. 58, dated 5.12.1997; No. 65, dated 10.12.1999; No. 11, dated 2.4.2008; No. 19, dated 1.6.2011; No. 47, dated 26.7.2012; No. 9, dated 26.2.2016; No. 24, dated 4.5.2021.

without their consent, criminalize sexual harassment or punish the encouragement, and intermediation or offering remuneration for persuasion to prostitution, and introduced domestic violence as a criminal offence for the first time in 2013 article 130/a, CC.

The Albanian Legislation counts important improvements such as Law No.10192 dated 03.12.2009 on "*Prevention and Fight against Organized Crime and Trafficking through Preventive Measures against Property*"; Law "*On Social Assistance and Social Services*" (2011 and 2014), Law "*On Social Program for Housing Inhabitants in Urban Areas*" (2012), *Electoral Code* (2012), Law "*On the Registration of Immovable Property*" (2012), Law "*On Legal Aid*" (2013), *Civil Procedure Code* (2013), Law "*On the Organization of the Judiciary*" (2013), and Law "*On the Rights and Treatment of Convicted and Detained Persons*" (2014), Law no. 37/2017 "*Criminal Justice Code for minors*", Law no. 111/2017 on "*Legal aid guaranteed by the state*", Law no. 22/2018 "*On Social Housing*", which offer support for women, etc.

At their core, these laws are geared towards recognizing, guaranteeing and enforcing the rights of women and groups in need by providing social and supportive services to victims of trafficking and domestic violence, social housing programs, political and decision-making process representation, recognition of the right of ownership on common family property, free legal aid, procedural rights in court hearings in case of women as injured party.

Implementation of, through public policies and action plans aim on advancing gender equality and minimize domestic violence in the future. The "*National Strategy on Gender Equality and Elimination of Domestic Violence*"[5] (as the main public instrument) constituted an institutional network on central[6], local[7] and anti-trafficking[8] level which promote gender equality and reducing domestic violence through strengthened interactions between social inclusion programs and actions (Garunja, Aracne 2020).

On this prospective, the current Albanian legislation advocate the principle of cooperation between state institutions with NGOs, to combat gender-based violence. When the public system cannot respond to existing needs, or cannot provide the required quality of the social services, contracting procedures through competition become necessary. Therefore, it is important that the legislation predicts the detailed procedures ensure the NGOs contracting by the state institutions. On these foundations is built and consolidate the ongoing cooperation well regulated by law between them (Garunja, *European Online Journal of Natural and Social Sciences*, 2019, p. 662-678).

[5] Approved by Council of Ministers' Decision no.913, dated 19.12.2007. See: http://www.osce.org/albania/32827. Approved by Council of Ministers' Decision no. 573, dated 16.6.2011. See: http://www.dsdc.gov.al/previewdoc.php?file_id=1617. Action Plan has 14 specific objectives and 113 activities, designed to achieve the Strategic Priority Goals to be implemented over 2011-2015.

[6] Five line ministries: Ministry of Social Welfare and Youth, Ministry of Interior, Ministry of Health, Ministry of Justice and Ministry of Education and Sports, including all their subordinate agencies.

[7] Municipality, police department, court, prosecutor, bailiff, forensic, health structures, employment offices, education department, and specialized NPOs to deal with cases.

[8] National Coordinator, Anti-trafficking and Border Police, State Social Services, and National Reception Centre for Victims of Trafficking.

With the ratification of CEDAW[9] and the Istanbul Convention[10], Albania imposes herself the implementation of these standards and was put under an international monitoring body on the fulfillment of all these standards against gender-based violence.

2. Domestic violence in Albania and the institutional response to the phenomena

Domestic violence is a global phenomena. All persons who are subject of it; women and girls, men and boys, all the society members: women who have the protection order issued, unaccompanied children 0-18 years old with protection order; youths; women in need; all community members; girl child; women and girls in difficult economical conditions; each individual, groups of individuals whose rights have been violated; victims of trafficking; minor boys until 11 years old, etc.
Through the created instruments, the Albanian State fight against this phenomenon until its complete elimination, build up a social and economic rehabilitation for victims and support their effective protection. These services aim to improve the living conditions of victims of DV and their families or relatives.
Various studies on GBV&DV situation[11] shows some causes that affect directly this phenomenon, like:
1. *Socio-cultural causes*: Socio-cultural attitudes deepen inequality between men and women. Traditional and cultural situations keep alive this inequality, like the society justification and tolerance on male violence, stereotypes and gender roles, conflict resolution are based on violent and abusive models, the imposition of ideas and values in an authoritarian way. These attitudes stimulate the DV, create a culture of DV transmitted among generations.
2. *Economic reasons:* Unemployment, dependence of other persons, high cost of living, low wages, economic assistance, lack of housing, etc.
3. *Health causes:* physical and mental health problems, addiction to alcohol and drugs or gambling, stress, behavioral problems, etc.
4. *Emotional causes:* Lack of emotional competencies from different family members or aggressor. Lack of self-esteem, empathy, social skills, warmth, etc. makes it difficult to establish peaceful and secure relationships between people, part of the family. People with low self-esteem and self-confidence, which generates frustration, lack of impulse control and affective shortcomings, orienting them towards the exercise of violence.
5. *Other causes*: Using violence as an instrument of strength of the power person against the weak. Malfunctioning marital relationships and/or family history of conflicts.
The dynamics and structure of the family leading to the isolation of the family and the lack of other important social ties.

[9] Albania ratified the CEDAW Convention with Law no. 1769, dated 9.11.1993, published in the Official Gazette no. 33, dated 15.10.2008. From this moment, according to the Constitution of the Republic of Albania, article 122/1, this convention is part of the domestic legal system.

[10] The Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention) is part of the Albanian legal system from 1 August 2014. The Convention was signed on 19 December 2011 and ratified on 4 February 2013. Albania was the second member state of the Council of Europe which ratify the Convention without any reserve.

[11] Studies of UNDP, UNWomen, Council of Europe, National NPO etc.

Identifying the causes of violence serves to public and private institutions on recognizing their operational capacities, to interact and improve the conditions of victims of violence. Providing diverse, fast, effective and comprehensive services become a real answer on improvement of life conditions of violence victims.

The National Strategy on Gender Equality (NSGE) (2016-2020) as a guiding document on principles of gender equality in society, recognizes as its third strategic objective the fight against gender-based violence (GBV) and domestic violence (DV). On this dimension the Strategy aim:

a) to promote further development of gender equality and ensure respect of human rights of all Albanian citizens (women and men). Law no. 9669 dated 18.12.2006, "*On measures against domestic violence*", as amended (Article 8/8) together with the DCM no. 334 dated 17.02.2011, "*On the coordination mechanism for case referral of domestic violence and the manner of its proceedings*" create the National Referral Mechanism, which will coordinate the work, tasks and responsibilities of the involved institutions. This mechanism operates at both central and local level, taking over the institutional treatment of the violence case in all its specifics, such as immediate intervention, long-term emotional, economic, health, professional treatment, professional capacity building of the victim to reintegrate to normal life after the relief period, socio-economic and health support after leaving shelters. This mechanism to ensure the success requires the cooperation of all private and public actors, national and local, NGOs, business, etc. It's members are: the mayor of the local unit, representatives of the police structure, judicial district court, district prosecutor, education directorate, public health directorate, social services structure at the local unit, bailiff's office, prefecture representative, representative of the relevant employment office, heads of non-profit organizations dealing with domestic violence issues, heads of centers/ shelters set up for victims of violence, representatives of religious institutions that can provide services to victims of DV and the head of District Bar Association. The engagement of these actors is based on the responsibilities and tasks that each of them has on identifying DV problems, their treatment, rehabilitation of victims, organization of joint interdisciplinary training of collaborative staff. The local government units have different roles, as coordinator and collaborator with all other institutions; service provider; controller and service funds donor.

b) Empowering girls and women by increasing their participation in decision-making, through setting the legal quotas of 50% in each sector of administration and public functions; political representation and decision-making.

c) Ensure the *economic and social empowerment* of women and men by *addressing gender inequalities* that lead to poverty and by promoting social inclusion through employment services, vocational trainings for victims of trafficking and DV.

d) *Increase awareness on gender-based violence*, on legal and administrative protection and support services for victims of violence and of abusers.

Different studies (CoE&UNWomen, Tirana 2015) shows that only 68%[12] of victims and stakeholders *are aware on the existence of laws and policies* that support the work on VAW, 21.5% think that *the implementation of all above mentioned laws/policies directly affect positively the work on VAW,* if there will be mobilized resources to increase the professionalism and affectivity of the services. On the light of Istanbul Convention (IC), the strategy aim to establish qualitative services as a response against GBV&DV.

[12] Article 20 IC.

These services are divided into two types: general[13] and specialized[14].
Nationally, 42 services (69.3%) are general services, and 19 (30.6%) are specialized services. Of these 12 service providers (20.3%) work with victims of violence against women directly about 75% or more, 10 service providers (16.9%) work directly in about 50-75% of their work, 11 service providers (18.6%) work directly in about 25-50% of their work, 12 service providers (20.3%) work directly in less than 25% of their work. (Albania report on GREVIO Committee, 2017)
Specifically in relation to specialized services, the statistic show that seven service providers (53.8%) dedicate 75% or more of their work to the victims of violence against women directly; two services (15.4%) dedicate 50-75% of their work directly; two services (15.4%) dedicate 25-50% of their work directly, and two other services (15.4%) dedicate less than 25% of their work to victims of violence against directly. (Albania report on GREVIO Committee, 2017)
The types of services provided by general and specialized services are the following: 11 of them (7%) provide housing, employment and vocational training programs; 14 (9%) *telephone helpline;* 35 (24%) *support for sexual violence victims;* 28 (19%) *support in legal proceedings;* 20 (14%) provide services in *counseling center/emergency (crisis) center;* 10 (7%) include *programs for perpetrators in their services*, and 29 (20%) include *support for children witnessing violence in their services.* (Albania report on GREVIO[15] Committee, 2017)[16].
The map of services for DV victims includes financial support of public institutions with public funds and NGOs financed by foreign donors. According to the study (CoE&UNWomen, 2015), about 48 services are focused on *Information and counseling* to every woman and girl in need and any other family members that may have been subjected to DV. Consulting services are provided both by telephone and face to face and most of them are guaranteed by NPOs based on donor funding and projects.
Counseling on the telephone, are mainly provided by NPOs and, rely on project duration or donor support. They provide psychological and emotional support to the victims of violence through the expertise of social workers or psychologist, psychotherapist (if the victim need more qualified help for a psychological intervention to address trauma and post trauma stress disorder). This services are accessible from all types of phones and operated 24/7. There is a national hotline available for all victims of DV&GBV.
Online counseling collaborate with other local services which guarantee *Face to face counseling* who have at their core a face to face meeting, which might have some elements of emotional support, are planned as a normal counseling for victims and conducted by counselors. At the center of the service is the victim who seeks to talk to her counselor to tell the case, the event and the problem that worries her. After hearing from the counselor, the case is referred as needed to the responsible persons in resolving the case or its ongoing treatment.

[13] Article 22 IC.
[14] Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO).
[15] Report submitted by Albania pursuant to Article 68, paragraph 1 of the Council of Europe Convention on preventing and combating violence against women and domestic violence (Baseline Report) Received by GREVIO on 16 January 2017 GREVIO/Inf(2017)1 Published on 19 January 2017, pg. 42-44. https://rm.coe.int/albania-state-report/16806dd216.
[16] DCM No. 518, dated 04.09.2018 for "*Community and residential social care services, criteria, procedures for their benefit and the amount of personal expenses for the beneficiaries of the organized service*".

About 41 services provide *Support in crisis (emergency) situations* only for women and girls or their family members suffering violence against women/DV meeting the required legibility criteria® to be admitted to round-the-clock specialized services (e.g. national shelters or some NPOs). *Emergency shelters* for the most part operate for a limited time and their sustainability is guaranteed by NPO projects with donor funding. In 2014, Albania counts eight shelters accommodated a total of 145 women and 179 children. Four shelters operated by NGOs and two government-run shelters as well as two emergency shelter run by NGOs for victims of GBV&DV. These shelters are established on some cities, their services offered psychological and emotional counseling and employment support, shelter, health care and education, free legal aid etc.

Support/self-help groups are provided by 13 service providers. When received by the service providers' target groups, violence victims/survivors benefit it free of charge. Is established as 24 hours service; other as 10-19 working hours/week; or less than 10 working hours/week.

Mediation/couple counseling is provided by 14 service providers. This service is mainly provided by NPOs and is free of charge. It usually consists of a couple of sessions the main purpose of which is to find the possible balance in the couple relations.

Outreach is often focuses on large cities and is less present in suburban and rural areas. The means used for outreach purposes are mainly limited to brochures, booklets and posters. The media are used less frequently and/or only in major national campaigns. The use of television and radio for outreach purposes carries financial costs that are often unaffordable for service providers. Recently there has been an increase in the use of social media for outreach purposes; however, despite being found to be a very effective method in most of the cases, one should also take into account that not all women and girls in need can access the social media (especially true to those living in suburban and rural areas).

Training and awareness campaign- increase the capacities of general and special service providers. In the case of NPOs (especially in the case of the organizations providing sheltering services) focus their work on women's economic empowerment by planning and conducting training courses dedicated to that end. This helps to increase their professionalism, helps the quality of service, shares experiences, knowledge and opinions with other experts in the field, find practical and successful solutions to difficult cases, creates cooperation networks between experts and unify practices. Actually, 22 service providers[17] provide *training for staff on discrimination and equalities*, 29 service providers[18] do not provide such trainings, and other part do not have any information about it which shows the *need for training and capacity building of service providers on the issues of discrimination and equalities*. Service providers *involve victims in their services* as part of different awareness raising activities or in the volunteers' group. (GREVIO national Report, 2017).

45 services provided *Case advocacy (referral)* which seems to be more present in the cases of coordinated response (interdisciplinary groups/teams).

26 services provided *Legal counseling* centered to the victim and protection of legal rights. *Free legal Aid* established a tool on the victims hand to claim the compensation from perpetrators. The law No. 10039 /2008 "For Legal Aid" classifies the legal aid

[17] 10 NPOs, 4 state social services, 6 health care services, and 2 municipalities. 5 services didn't provided information.

[18] 2 NPOs, 2 state shelters, 8 municipalities, 16 health care services and 1 state social service.

offered by the State as primary and secondary. The victims of Domestic violence are very interested to profit from the implementation of the free legal Aid Law but the results of this implementation are very scarce. The needs of citizens for free legal aid support are covered or addressed by NGOs specialized on this issues, through their restricted human and material resources (Helsinki Committee, 2012, p. 2).

Education, employment and social inclusion measures are defined as long term recovery measures because they are related to health, legal and employment support. Employment and economic empowerment of victims/survivors remain the most sustainable way to avoid victims to fall back into the cycle of violence. The social inclusion and protection is guaranteed by legislation and the state strategy but the complexity of procedures and cost of bureaucracy to prove that someone is a victim/survivor become an huge obstacle. Are 20 services which support victims through these training programs or short courses (two to three days long) and not necessarily as part of a training package (CoE Mapping services, 2013).

Immediate financial assistance/support-involves the preparation of the documents necessary for the victim to benefit cash social assistance, if there is a protection order or if she has the status of a —victim of trafficking; food parcels or clothes for children, or, in the case of a shelter, safe accommodation can be coupled with food, clothing, etc.

Medical/healthcare service and *Forensic medical examination:* is provided mainly by NPOs which referrers cases to a forensic physician or healthcare services which can provide help in ensuring the necessary forensic medical examination.

The *services offered to perpetrators* of VAW, consisted on relationship counseling, individual counseling, family therapy/counseling; mediation; anger management, work group, assistance in finding employment, group therapy for men and boys, different psychotherapy sessions and test and information/counseling for HIV/AIDS and sexual transmitted infections. There exists a specific program for perpetrators called "Counseling Line for Men & Boys" managed by Counseling Centre for Women & Girls (an Albanian NPO). The staff is composed by male counselors, trained in collaboration with different international organizations specialized in this field who are offering face to face and phone counseling's even to men who are not obliged by Court to follow a program to this center (CoE&UNWomen, Tirana 2015).

Victims of domestic violence show a variety of problems and dynamics. The state structure tries to intervene with concrete and effective protection measures, civil, administrative, and legal, criminal punishment for the perpetrator and their full rehabilitation in society. Civil society organizations active in the field of human rights protection strongly believe that victims of domestic violence need immediate psychosocial/emotional support; information on possible legal procedures to be followed to address the case; support and information on their legal rights and obligations; information on available services; information on the social assistance provided by various players involved in the case management; practical information on how to apply for covering their basic economic needs; support in completing the necessary documentation set; etc. Among the providers of such services NPOs offer about 16% of them, 10% are provided by specialized entities against DV created by the government, 5% are social and community centers, 42% are services included in a general service and 27% are defined as other forms of services[19].

[19] Services classified as "part of a more general services" and services classified as "something else", because these services are part of general services, i.e. municipal office for gender equality

3. The Istanbul Convention standards on the optic of Albanian institutional authorities. Issues to be raised.

The Albanian Constitution in the sanctioning and protection of human rights (UDHR), guaranteeing the rights of women (CEDAW and the Additional Protocol) and more against gender-based violence (Istanbul Convention) tried to fulfill the international standards.
The main aim of Istanbul Convention consisted on: *"Protection of women from all forms of violence, and prevention, prosecution and elimination of violence against women and domestic violence; eliminating all forms of discrimination against women and promoting fundamental equality between men and women, including ways of empowering women; drafting a comprehensive policy and protection framework and assistance for all victims of violence against women and domestic violence; promoting international cooperation, with the aim of eliminating violence against women and domestic violence; providing support and assistance to law enforcement organizations and agencies to cooperate effectively in order to adopt an integrated approach to eliminating violence against women and domestic violence".*
To achieve the above goals, the State focuses on improving the legal framework in force in protection of women's rights as well as on a better lobbying with stakeholders in the promotion of these rights. Ratification of the above conventions forced Albania to undergo an in-depth analysis of the legal and administrative standards offered to groups in need, continuous monitoring and their improvement thanks to suggestions and criticisms on possible shortcomings.
Albania has reported several times to the CEDAW Committee[20], subjecting to the analysis of achievements and legal gaps regarding the fulfillment of obligations raised for the Albanian state from the Convention "On the Elimination of All Forms of Discrimination against Women", (CEDAW) in several areas such as: women's participation in politics and decision-making, domestic violence, access to the justice system and social services, economic empowerment. The periodicity of the report serves to measure the progress made by the Albanian state, the steps taken in relation to the concerns and recommendations expressed by the Committee on the Elimination of Discrimination against Women in its Progress rapport (Ombudsman, Tirana 2016)[21].
On the same logic, the reporting of the Albanian state to GREVIO in January 2017 was seen as a scan of the services and mechanisms on the standards established by the IC for GBV & DV victims. The report highlighted the complexity of services provided in support of groups in need, a general and specific legal framework and new and existing bodies and institutions, local and central, public and private to support GBV & DV victims.
Albanian society has already accepted violence as a social element with a great impact on the lives of almost half of society. Violated women make up 52.9% of Albanian society. 36.6% of women admit that they continue to experience a situation of violence. 88.9% of women, according to INSTAT Albania, turn out to be victims of the

and against domestic violence; child protection unit; directory of public health, hospital, directory of state social services, national constitutional institution for protection of human rights.

[20] Pursuant to Article 18 of the CEDAW Convention, the Albanian state has submitted to the CEDAW Committee the fourth periodic national report on the implementation of this Convention, approved by Decision of the Council of Ministers no. 806, dated 26.11.2014.

[21] CEDAW, 46th session, July 12-30, 2010; *See:* Committee for the Elimination of Discrimination against Women, Concluding Remarks on the Fourth Periodic Report on Albania, 1413th and 1414th Sessions, 12 July 2016.

criminal offense of Murder due to family relations (Article 79/c) versus 11.1% who are men.

In 2020, are registered 17,829 injured persons of criminal offences, of whom 4,546 are women, about 25.5 % of total. Injured juvenile in the year 2020 are 1,035 or 5.8 % of the total; 270 are girls and 765 are boys. Injured girls of sexual crimes account for 20.7 % of the total girls injured. In absolute terms in Albania, 3,333 women have reported to police domestic violence. Cases of domestic violence reflect the number of reports made to the police, a phenomenon which may even cause a person's death. Thus in 2020, out of 52 homicides, about 13.5 % of them are homicides as a result of family relations (article 79/c)[22]. The number of author of Sexual crimes has increased from 2018 with 114 cases (113 men and 1 female), to 2019 with 162 cases (161 men and 1 female) and 2020 with 165 cases (all men). Among the victims of sexual offenses, the Sexual crime has a high number of injured women and this number is increased from 2018 to 2020[23]. In 2020 the injured persons by criminal offences in total are 25.5% women and 74.5 % men. % of injured women is higher in gender based crimes such as sexual crime (86.4% women and 13.6% men) or domestic violence (art 130/c PC) (67.1% women and 32.9% men) compared to the rest where the highest percentage of injured persons belongs to the male gender. It is noticed that, among injured persons by sex and offences like trafficking, domestic violence and sexual crimes, on 2020 the number of juvenile persons of both sexes is increased[24] (INSTAT, 2021). Number of intentional homicide increased during 2019 (58%) and 2020 (52%), accompanied by the increasing of the % of murders caused on family relationship (2019 – 24.1% and 2020 -13.5%). In cases of domestic violence according to INSTAT 2021, it results that the perpetrator of the criminal offense is the spouse (3.7%), wife (29.9%), ex-spouse (3.3%), other family members (40.4%) parent (15.2%), child (7.2%).

The institutional response to domestic violence aimed to helping the victim with immediate intervention provided by law enforcement institutions and the judiciary system. According to the statistics of the Ministry of Interior, the period May 2016 - May 2020, marked the highest level of domestic violence in May 2020 with 127 cases, with an increase of 32.3 percent compared to April 2020. The situation is more serious in June, which reflects an worldwide concern of the Covid-19 pandemic period[25]. During 2020, it was reported that 1596 protection orders were issued by the Courts of First Instance throughout the country. In 1420 cases the perpetrator was the spouse, 40 cases sister, 124 cases brother, 268 cases child, 172 cases parent and 613 other cases[26]. The above data raise questions about the quality and efficiency of the services and the problems they are facing.

[22] Source: www.instat.gov.al

[23] The year 2018 shows that 13 men and 92 women are injured by sexual crimes, in 2019, 21 men and 127 women and in 2020 counts 18 men and 114 women. *See*: *Men and women 2020*, Instat, Tirana 2021, Albania

[24] Trafficking in human beings: 2019 - damaged adult men 20% and 50% damaged adult women against juvenile damaged men 5% and 25% juvenile damaged women. 2020 - damaged adult men 16.7% and 50% damaged adult women against juvenile damaged men 16.7% and 16.7% juvenile damaged women. Domestic violence: 2019 -damaged adult men 26.3% and 67.3% damaged adult women against juvenile damaged men 3% and 3.6% juvenile damaged women. 2020 - damaged adult men 30.3% and 64.3% damaged adult women against juvenile damaged men 2.6% and 2.8% juvenile damaged women. Sexual crime: 2019 - damaged adult men 3.4% and 44.6% damaged adult women against juvenile damaged men 10.8% and 41.2% juvenile damaged women. 2020 - damaged adult men 4.5% and 40.9% damaged adult women against juvenile damaged men 9.1% and 45.5% juvenile damaged women.

[25] https://faktoje.al/izolimi-i-detyruar-nga-pandemia-dhe-shtimi-i-rasteve-te-dhunes-ne-familje/

[26] https://www.drejtesia.gov.al/wp-content/uploads/2021/12/Vjetari-2020-i-plote-per-publikim.pdf

1. National Referral Mechanism

The National Referral Mechanism[27] as a coordinated network of institutions responsible for the protection, support and rehabilitation of victims, (*See above*) has encountered difficulties which directly affect its outcome[28], such as:

- Inter-institutional communication finds ambiguities on the responsibilities of each institution;
- Is required an accurate reconciliation of data;
- The services provided remain at an average level;
- The focus of institutional intervention should be oriented on psychological support and employment;
- The cooperation with partners that provide complementary services is good and should be expanded;
- Institutions part of the mechanism raised the issue that many cases of violence from rural areas are not reported;
- DV & GBV case management policies are not properly evaluated by the heads of local institutions. They are missing the meetings chaired by the Mayor, and delegate employees who are neither competent nor informed about the issues to be discussed;
- The municipality lacks psychological experts and lawyers to handle cases.
- Many victims of violence prefer financial assistance than to work[29].

2. Justice System

The role of the judiciary system on protection measures against domestic violence through a fast and fair service, without economic costs and simple according to the law[30], before the court or other competent bodies emerged that: courts have the authority to take decisions on immediate protection orders and protection orders (Art. 12 of DVL). In accordance with Article 16/1 of the DVL courts set a hearing with regard to a protection order within 15 days from the filing of a petition. Courts have to take a decision on issuance of an immediate protection order for minor children within 24 hours and for adults within 48 hours. The order will be proven in another hearing to be set within 20 days. In these cases the petitions are to be reviewed by the judges on duty (as specified in the duty lists). Under Article 17/3 of the DVL, courts will also set the validity period of protections orders, as deemed necessary by them, which may not, however, be longer than 12 months. Article 23 of the DVL states that the judicial decision containing the immediate protection order is considered to be enforceable immediately and is an enforceable act upon its reading or notifying to the parties. In the disposition of its immediate protection order ruling,

[27] This is composed of: Steering Committee; Interdisciplinary Technical Team that follows the case and meets the needs of victims, coordinates and supervises the provision of services; manages cases; forwards data on concrete cases to the leaders of the interdisciplinary technical team; monitors and reports to the steering committee, as well as the Local Coordinator for the referral of cases of domestic violence to each municipality and is the representative of the social services office at that local government unit.

[28] http://www.asp.al/pdf/A.Hasanbelliu_-_Mekanizmi_kombetar_i_referimit_te_dhunes_ne_familje.pdf; See also: *Final Report, Analysis of the Functioning of the Coordinated Mechanism for Referral of Cases of Domestic Violence at Local Level in Albania*, Ministry of Health and Social Protection in cooperation with UNDP Albania, December 2019.

[29] https://www.levizalbania.al/media/files/2021/09/16/Refleksione_Raport_Monitorimi.pdf

[30] Law on Measures against violence in family relations in the Republic of Albania

the court will specify that it is an enforceable act. It will immediately be enforced by the judicial enforcement officers, police commissariats and local government units (municipalities) if it is not complied with by the abuser voluntarily.
Still the process of execution of PO&IPO remains one of the problems that directly affects the effectiveness of the court decision. It should be executed immediately by the Bailiff office, which does not proceed *ex officio* but start with the execution process only under the claim of interested party. The support through legal process shows a mixed or confused practice in many cases with services of a legal nature. Victims lack access to civil remedies against state authorities about the quality of services provided as in case of setting up a specific system that enables court users to receive compensation after a malfunctioning judicial system (GREVIO 114 recommendation).

3. State Police and Domestic Violence structures

For a more active role of the State Police as a guarantor of the protection of life and citizen's health, the latest amendments to the LDV, in article 13/1 determined that "2. *In the order for immediate protection measures, according to point 1 of this article, until the court issues the immediate protection order or the protection order, is ordered the immediate removal of the perpetrator from the apartment, when the victim and the perpetrator live in the same shelter, unless the abuser is a minor, elderly or disabled person, and/or one or more of the following measures are prescribed:".* "3/1. When extraordinary measures are imposed in the whole country or in a part of its territory, respectively, the head of the responsible structure of the State Police is obliged to issue the order for the precautionary measures for immediate protection, according to point 2 of this article, in each case when it finds that violence has been used. Throughout the period of extension of extraordinary measures, in the request to the court for the assessment of precautionary measures, received through the order for precautionary measures issued immediately, the police must ask the court to issue a protection order, without requested in advance the issuance of an immediate protection order". Denunciations[31] of domestic violence at State Police show an increase of trust and public awareness. The 24-hour operation of the 112 hotline guarantees the denunciation of an illegal action, including cases of violence against women or in the family, while preserving the anonymity of the denouncing person.

4. Free Legal Aid

Law no. 111/2017 "*On Legal Aid guaranteed by the State*", although with delays in setting up structures and issuing bylaws, seeks to respond to the need of citizens for a service guaranteed by the State. This delay in the State response has been covered so far by the intervention of donor-funded NPOs, which provide free legal aid through the implementation of various projects to help groups in need. The law provides as beneficiaries both individuals and NPOs that provide this service for their target group. In September 2020, 12 non-profit organizations were authorized as providers of free legal services, but their funding remains limited, affecting directly the provision and quality of service. 10 law clinics set up at higher education, public and private institutions, missed the necessary funding. Also, in cases where court decisions established the benefit of secondary legal aid or the exemption from

[31] https://mb.gov.al/wp-content/uploads/2021/02/MASAT-DHE-ADRESIMI-I-PROBLEMATIKAVE-T%C3%8B-DHUN%C3%8BS-N%C3%8B-FAMILJE.pdf

payment of court fees for the vulnerable part, the costs have not been implemented from Local Lawyer's Chamber.

5. Compensation

The lack of the right to compensation of victims of gender-based violence strongly violates international standards for due process and the rights of these victims. The new amendments to the Criminal Procedure Code (Article 58) recognize the right of victim of any crime, including gender-based violence, to seek compensation and to be admitted as a civil plaintiff in criminal proceedings.

6. Services

- *Safe housing* – insufficient number of shelters, their reduced capacity, unfavorable geographical location to be accessed by all victims, numerous bureaucratic procedures to obtain the status of a DV victim and to be housed in these shelters.
- *Online and face to face counseling services* (psychological, psychiatric, social, medical, legal, etc.) - most of them are provided by NPOs supported by donor-funded projects, which over the years are reducing their financial support affecting directly the services provided. This service is offered for the most part in Albanian language and there is a lack of these consultations in other languages which might not be free of charge. Their limited geographical reach increases the cost of benefits for victims so more and more trained staff is required to provide these services. Continuous and coherent training serves to increase the capacity of service providers and case management in need.
- *Education, employment and social inclusion measures* - there is lack of a referral system to inform all victims about the services they receive in education, employment, social rehabilitation or integration programs after leaving the shelter. Employment programs and relevant training in increasing the intellectual capacity of victims of violence must be continuous, effective and respond to the needs and requirements of victims. The measures taken should focus on the long-term recovery of victims of GBV&DV through applying the quota policy in employment, social housing or education (higher education or vocational training) (Refleksione Association, Tirana, 2013).

The coverage of most of the general and special services, short-term or long-term by NPO shows that the Albanian State still does not feel ready to take over the responsibility of these services. It lacks in human, logistical and financial resources to provide them, avoiding facing real problems and finding sustainable solutions to them.

Conclusions

Albanian institutions are in constant challenge with historical, social, political and economic evolution. But, the biggest challenge has to do with the goals they have set for themselves in protecting and improving the standards of the services for the citizens. Our history has shown that social problems change, transform but never ended. Therefore, institutions should increase their vigilance in identifying issues, recognizing them, reporting, resolving, preventing and continuously

monitoring the results of their interventions. In the case of gender-based violence and domestic violence, the challenge of the Albanian State is in several planes: legal, social, economic, medical, political, on national and local level. Improving the legal framework comes as an obligation to guarantee justice for all those persons whose rights protected by law have been violated; social integration is realized through the rehabilitation and return of the victim to a normal life; economic well-being comes as a result of increasing professional capacities and personal training in facing the competition on free market and among the professionals; the medical standard is achieved thanks to the establishment of the health (physical, mental and emotional) of the individual at the center of the service and the professional morale of the providers; political developments enable the undertaking of policy-making initiatives that encourage, promote and assist groups in need, create equal conditions of benefit and promote positive examples that stimulate social awareness on national and local social challenges.

References

Albanian Helsinki Committee, *Report on offering state legal aid in Albania*, Tirana, February 2012. http://www.ahc.org.al/site/doc/Raport_ndihma_juridike-shkurt%202012.pdf

Avokati i Popullit, *Mbi zbatueshmerine e Konventes CEDAW ne Shqiperi (On the implementation of the CEDAW Convention in Albania)*, Tirana 2016.

Committee for the Elimination of Discrimination against Women, Concluding Remarks on the Fourth Periodic Report on Albania, 1413th and 1414th Sessions, 12 July 2016.

Final Report —*Mapping of Support Services against Violence against Women and Girls,* Council of Europe and UN Women, Tirana, June 2015.

Garunja E., *Non Profit Organizations on the Protection and Promotion of Women's Rights: Albanian Case*, European Online Journal of Natural and Social Sciences 2019; Vol.8, No 4 pp. 662-678, ISSN 1805-3602, www.european-science.com

Garunja. E., *Domestic violence in Albania. The new Albanian law of "Measures against domestic violence in the family relationship"*, Aracne Editrice, April, 2020, ISBN 978-88-255-3248-7

Hasanbelliu, A., *Mekanizmi Kombetar i Referimit te Dhunes ne Familje*, ASP&OSFA, Tirana, 2017 http://www.asp.al/pdf/A.Hasanbelliu_-_Mekanizmi_kombetar_i_referimit_te_dhunes_ne_familje.pdf;

Instat, *Men and women 2020*, Tirana 2021, Albania

Ministry of Health and Social Protection, *Final Report, Analysis of the Functioning of the Coordinated Mechanism for Referral of Cases of Domestic Violence at Local Level in Albania*, in cooperation with UNDP Albania, December 2019.

Refleksione Association, *Road Map and costing of the Council of Europe Convention on preventing and combating violence against women and domestic violence*, Tirana, 2013.

Report submitted by Albania pursuant to Article 68, paragraph 1 of the Council of Europe Convention on preventing and combating violence against women and domestic violence (Baseline Report) Received by GREVIO on 16 January 2017 GREVIO/Inf(2017)1 Published on 19 January 2017, pg. 42-44. https://rm.coe.int/albania-state-report/16806dd216

Laws:

DCM No. 518, dated 04.09.2018 for "*Community and residential social care services, criteria, procedures for their benefit and the amount of personal expenses for the beneficiaries of the organized service*".

Law no. 1769, dated 9.11.1993, published in the Official Gazette no. 33, dated 15.10.2008.

Istanbul Convention

Web pages:

www.instat.gov.al
https://faktoje.al/izolimi-i-detyruar-nga-pandemia-dhe-shtimi-i-rasteve-te-dhunes-ne-familje/
https://www.drejtesia.gov.al/wp-content/uploads/2021/12/Vjetari-2020-i-plote-per-publikim.pdf
https://www.levizalbania.al/media/files/2021/09/16/Refleksione_Raport_Monitorimi.pdf
https://mb.gov.al/wp-content/uploads/2021/02/MASAT-DHE-ADRESIMI-I-PROBLEMATIKAVE-T%C3%8B-DHUN%C3%8BS-N%C3%8B-FAMILJE.pdf

Austrian diplomacy for Albania, according to the Austro-Hungarian archives in 1912

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Abstract

The Dualist Kingdom during 1912, will be the main state among the Great Powers, which throughout 1912 will be interested in Albania in a multidimensional sphere. What initially required that Albanians have an evolutionary cultural and political development, not seeing the revolution as favorable, for a people who were almost completely illiterate. In the Austrian documents it is noticed that another concern is the religious and provincial division between the North and the South of Albania.
At the same time it makes an accurate description of the relationship between the Ottoman Empire and the Albanians. Austrians see that Albanians do not obey the young Turkish policies, which try to exploit Albanians, especially during the election period. But on the other hand he also notices the mistakes that this empire has made against a large people within it, forcing them to turn to their Slavic neighbors to ask for help. But interesting is the fact that at the same time the Austrians in the documents between the consular network throughout Europe, makes a description of the Albanian mentality which is pro-Ottoman, and above all next to the Sultan.
In the relations between the Great Powers, in relation to Albania, he sees the clear positioning between the two blocs in Europe. On the one hand, Italy, which as the current part of the Central Bloc, came closer during 1912 in support of Austria for Albania, not leaving it alone to triumph in this Balkan springboard. On the other hand, he sees the relationship with Russia, which during this year, feeling frightened by the issue of the Black Sea Straits, does not show a protective interest in the demands of the Balkan states to Albania, which clash with Austrian interests.
But the most important event remains the First Balkan War, where all the interests of the two blocs in Europe, and of the Balkan states are expressed simultaneously. Austria-Hungary will come out openly in defense of Albanian lands, using both diplomatic language and diplomatic threat. At this stage we see openly how Albania becomes a strategic point for Austrian interests, at the same time Albanian lands will serve to amplify the hatreds between Slavs and Austrians in the near future.

Keywords: Dual Monarchy, archives, Ottoman Empire, Albania, First Balkan War.

Introduction

The year 1912 will be an important year for the history of the Albanian people, and consequently for the strategic Balkan area. The political situation in the Albanian territories will be very tense in the first months of this year. This year would be the most intense year of the war that started two years ago, with numerous uprisings in the northern area, which would be comprehensive in fighting for all Albanian lands by the end of the year. Added to the political situation was the lack of food and damage due to confrontations with the Ottoman army during the uprisings, as a result of which, the situation had begun to become unbearable. A genuine descriptive, analytical situation but also as a determining factor in the fate of the Albanian people

during this time, we will find in the documents of Austro-Hungarian diplomacy during 1912.

The Dual Monarchy was a state that would pay attention to any political or insurgent movement of the Albanian people. She knew that in the winter of 1911 - spring of 1912 it was impossible to start another uprising in the northern Albanian areas. This was due to the fact that the highlanders were in the field where they had taken out their cattle during the winter, and it was impossible for them to return to fight in the highlands. While in the southern areas the situation was quite different. Weapons were stored there in the mosques, and it was expected that the Ottoman Empire would be opposed from time to time (Meta, B. & Gjermeni, S., 2014, d.40). This inconvenient moment due to natural interests made it impossible to reconcile for a general uprising. But the Austrians saw two main external factors driving the start of an Albanian uprising in the spring. First was Italy, which, being at war with the Ottoman Empire, encouraged the Albanians to retaliate by wanting to take advantage of the strategic position of Albanian lands (Duka, F., Egro, D., Gjermeni, S., 2012, d.172). Second was Montenegro, which ran parallel to Italian interests, both for the family connection they had (since the king of Italy was the son-in-law of the king of Montenegro), and for the fact that he could seek a change of border between the Ottoman Empire and the Montenegrin state on the Jezero-Arzanica border line.

As a result, Austria-Hungary was not afraid that an uprising would start in Albania. At the same time, the Ottoman Empire itself was not afraid of this, which in the talks with the Austrian ambassador said that in Kosovo they are divided and that until the spring the interests between the groups are different. This made the uprising mostly local in nature (Kaba, H. & Meta, B., 2012, d.105).

However, from July the opinion of the two empires began to change regarding the risk of an Albanian uprising. The Austrian documents clearly show that the Albanians had already begun to agree between the northern and southern areas, but also the military who had experience in the Ottoman army, were dispersed in the areas of Debar, and Korca seeking to establish cells to organize uprisings. Yet the southern territories still appeared calmer, seeing that it was not yet time for a general uprising (Meta, B., Dezhgiu, M., Musaj, F., 2012, d. 39).

The skepticism of the Austrians was more an expression of their current interests. Vienna had no interest in having an uprising until the period of the last quarter of 1912. She had even told the highlanders of the Shkodra area, that it would be in your interest not to rise up for another two years against the Ottoman Empire (Gurakuqi, R., 2013,408). This response had stunned but also started to disappoint the highlanders who were waiting for the help of Dual Monarchy.

Austria was ready to maintain the status quo of the Balkans, and consequently the maintenance of Albanian lands under Ottoman rule. This is also clear from the Austrian documents in many of the conversations between the Austrian Ambassador to Istanbul Johann Markgraf von Pallavicini and the Ottoman Interior Minister Asim Bey. From the conversations made, it is clear that many times the Ottoman minister provoked the ambassador to know the Austrian intention against the Albanian uprisings, accusing him of being the Austrians who were helping the Albanians. And the official Austrian stance on some of the documents is an open rebuttal of this accusation. The Austrians openly declared that they were for the preservation of the existing condition (Duka, F., Egro, D., Gjermeni, S., 2012, d.180). Even when the

Albanians issued a 14-point ultimatum to the Sublime Porte to protect their rights, Vienna demanded only a decentralization of the Empire, and did not support the Albanians in an autonomy (Buda, A. ad etc., 2001, 493).

Vienna did not agree on autonomy or independence until recent months for other reasons as well. In many of her documents, even addressed to Albanian personalities, she states that Albanians are not yet ready for an autonomy. They stated that Albanians should develop in the form of a cultural evolution and not with revolution (Meta, B. & Gjermeni, S., 2014, d.71), until the cultural gap is removed with the Balkans. The Austrians often pointed out that there are great religious differences between the Christian Albanians and those of the Islamic faith, and the agreements made by groups of different religions, as well as those of the northern and southern provinces, for the Austrians was a positive element that increased values of Albanians, and reduced differences.

But Austria, due to its role in the policy of protection of the Catholics of the Ottoman Empire, through the Cult Protectorate, we find close to the Albanian Catholics and in many cases in their protection. In Ottoman politics but also in Balkan politics, it was always the idea that after every rebellious action of the Catholics it was Austria that helped. Yet every time Austria expressed that the Catholic clergy was as a balancing element against any uprising. The Austrians defended such a thing not only against the Ottomans but also against Romania (Duke, F., Egro, D., Germany, S., 2012. D.59), or Montenegro, two states that repeatedly accused the clergy. Albanian Catholic for instability in the Balkans.

He had to give the greatest protection to the Catholics against the Ottoman Empire, of which they were citizens. Various diplomats often expressed dissatisfaction with the Ottomans that the reforms they made were of little use to Catholics. This is observed in two aspects. First, the Reform Commission coming from Istanbul through all the vilayets of Rumelia was definitely asked to meet with the Catholic clergy of Shkodra to take the concerns of all Catholics there, especially with Archbishop Serreqi (Meta, B. & Germany, S., 2014, d. 315). This is also a form to give him the respect he deserved while they had contributed to maintaining the peace of the highlanders of the Shkodra vilayet. The second defensive element that stands out in the face of the empire is the fact that it was the voice of Catholic grievances or their defense by the Turkish administration. The Austrian ambassador in Istanbul demanded the expulsion of the Shkodra kadi who had offended the Catholics in a meeting at the governor of the Vilayet of Shkodra. It is even strongly stated that Catholics will be strongly defended and that they would never give up the protection of Catholic Albanians (Meta, B., Dezhgiu, M., Musaj, F., 2012, d. 176).

The protection of Albanian Catholics from the Austrians was viewed negatively by the Balkan states throughout the year. During the First Balkan War, the Serbian Minister in Vienna, Jovanović, informed Belgrade that one of the factors that Vienna wants Shkodra to remain in Albania and not be taken over by Montenegro, is the fact that this city is the main center of Catholics (Meta, B. ad etc., 2017, 128).

On the other hand there were times when things did not go perfectly well between the Catholics, or some of the members of the clergy, and Austria, the patron saint of the Catholics. The Austrian ambassador to the Vatican has repeatedly stated that Catholics have already begun to lose patience with a slowdown in the proceedings against the Ottoman Empire, and Austria is blamed for this (Kaba, H. & Meta, B.,

2012, d. 24). Vienna itself was also interested in priests who did not follow pro-Austrian policy. One of them was Dom Nikolle Kaçorri, who would be the Deputy Prime Minister of the first Albanian government, a few months later. Vienna even sought to lobby through its ambassador to the Vatican for not appointing him as assistant archbishop of Durres, as he had deepened the school conflict between the Catholic clergy and Austria (Meta, B. & Germany, S., 2014, d. 94). But such elements were sporadic, and the aim was more to have no division of the Catholic clergy into different currents, mainly to converge with Italian interests.

A very important topic is the study of Austrian diplomacy over the Albanian issue, in the relations that this emperor has with Balkan states. One of the countries that has more diplomatic relations and special interest in dealing with the Albanian issue before the war remains Montenegro. This interest was that it was in the buffer zone between the Albanian territory and the lands of the Austrian Empire, and that Montenegro's greed for Shkodra conflicts with the interests for the protection of this city from the Austrians as the center of Albanian Catholicism. This state is seen that in the early months of the year as a stimulant of the war between Albanians and Ottomans. The highest state representatives of Montenegro in any diplomatic conversation with the Austrian ambassador try to present the situation as a grim situation by predicting or expressing the fridge of an Albanian uprising (Meta, B. & Gjermeni, S., 2014, D.65), this was so often that for the Austrians began not to be seen as credible information. They knew that Montenegrins intended to have war on Albanian territory near its border. This fear was often expressed to the Ottomans Austrians, who did not evaluate additional bodies in the border area with Montenegro (Meta, B. & Gjermeni, S., 2014, d. 92).

Also, the relationship between Albanians and Montenegrins goes between symbiosis and the Montenegrin abusive element against Albanians. In many documents it turns out that Montenegro played a double role from the Kosovo area, it was tried to keep the insurgent arm by giving shelter when escaping from the Ottomans (Kaba, H. & Meta, B., 2012, d. 75) On the other hand, he tried to divide between the highlanders of Shkodra and Catholics of Mirdita. The Mountains of Shkodra advised them not to rise in the uprising, influencing not the coordination of both parties, leaving the people of the weak Mirdita in the face of Ottomans (Kaba, H. & Meta, B., 2012, D.99). This is because the area concerned was weaker, planing expansionist purposes to Shkodra. While Istanbul appealed to Vienna, that if Montenegro would start the fight for the border with the Ottoman Empire, he would highlight problems between Catholic and Muslim Albanians (Lalaj, A., Kambo, E., Boci, S. , 2012, d.165). While the Austrians who understood the goals of profitability, in many studied documents, gave Montenegro messages, and even Krajl Nicholas, that he should not play with the Albanian Charter, to benefit economically (Kaba, H. & Meta, B. ., 2012, d.146).

Of many documents, the description that makes the character of Krajl Nicholas, the Montenegrin king. He was that in the problems he brought about Albanians sought to issue economic aid from Austria, many times called his slanderer, and that the situations he created themselves even when they were not (Meta, B. & Gjermeni, S., 2014, D . 92). Whereas in many documents, as opposed to Austrian diplomats, given ourselves the role he did not in the Balkans, not only with Albanians, he is labeled with the nickname of boasting or adventurator (Kaba, H. & Meta, B., 2012, d. 39).

Serbia was the other Balkan state with whom Austrians often deal with the diplomatic

prisms of Albanians. This country has many similar parallels about the policy that follows with Albanians like Montenegro, but the difference is that the level here is higher than Montenegrin and expressing less frigate than the state of Krajl Nicholas. The Serbian state for several months troubled to declare as an open supporter of Albanians, especially the Albanians of Vilayet Kosovo. Even unlike Montenegro, this state gave weapons to Albanian insurgents, which is often seen as a concern and study of Austrian documents (Lalaj, A., Kambo, E., Boci, S., 2012, d. 96). At the same time, many people who were in violation of the Ottoman Empire, as Isa Boletini, who was already an opponent of Xhonturean politics, had found weapons, or attitude to his family in Serbia. But despite the fact that Serbs declared to Austrians that Albanians had the need for Serbian aid, many diplomas after analyzing the situation of the Serbian state also expressed that it was in fact the opposite. The Austrians knew that Serbs did not care much if there was a war between the two peoples of the same Islamic faith, but its goals were two: to have an impact on Serbia, which coincides with the Kosovo area, and to use as a card if it was to deteriorate the situation to influence the conflict between Albanians and Ottomans (Lalaj, A., Kambo, E., Boci, S., 2012, d. 112).

But in the scenes, the Austrians saw the pure Serbian danger. Those after each incident between Albanians and Ottomans in the Kosovo area saw the impact of promotion by Serb groups, despite the fact that the Serbian state appeared as distanced from violent actions. Austrians have had this action with the intention to declare that their fault was not any major incident that could happen (Lalaj, A., Kambo, E., Boci, S., 2012, d. 215).

While Greece was more open in purposes and in the situation of the situation in relation to Albanians. Greek Foreign Minister Coromilas declared concerned in any conversation with Austrian Ambassador, for the progress of the Albanian population in the Ottoman Empire. He openly stated that Albanians were benefiting from the detriment of other Balkan populations within this empire. While when the Austrians were expressed that Albanians were receiving the same rights that other Balkan peoples were much earlier, he refused to see the same equivalent (Lalaj, A., Kambo, E., Boci, S., 2012, D . 205). Even the Greeks felt even more concerned if in Janina, which was the center of Vilayet on the same name, to put an Albanian governor, although most of the population there was Albanian (Meta, B., Dezhgiu, M., Musaj, F. , 2012, d. 175). But on the other hand, the Greeks were more cold in relation to the use of Albanians for its own purposes.

Bulgaria During the pre-Balkan war, it can be said to play with the neutrality card in its interests regarding Albania. Even at a meeting between Austrian Foreign Minister Berchtold and King of Bulgaria, the latter said that a brave people had to be helped like Albanians and that the development of that people did not break Bulgarian interests at all (Kaba, H. & Meta, B., 2012, d. 10). But the situation began to change in statements, after July 1912, when they started in Ottoman and Balkan diplomatic lines, the idea of an autonomy for Albanians. Then Prime Minister Geshov, who was also in the role of the Foreign Minister, urged an explanation of the Austrians on what was the reason for Albanians to take the first, and to overlook the Bulgarians of the Ottoman state. Such an accusation for the Austrians was unacceptable, so several times for the entire month of Bulgarian diplomats said that Vienna was not more of the Albanian people than other Balkan peoples. But Albanians were now

receiving those rights that other Balkan peoples were timely, among them and Bulgarians (Meta, B., Dezhgiu, M., Musaj, F., 2012, d. 28). However, this was more in the framework of boosting Bulgarians' benefits than in damaging tendencies to the Albanian population by Bulgaria, as could be seen in Montenegro, Serbia and Greece. Romania has a policy of a more excessive concern than geostrategic interests. King Charles I of Romania, worried that he would launch an uprising in the Albanian area in March. The information was obtained from the French military attaché (Meta, B. & Gjermeni, S., 2014, d. 257). As it was seen were the French those who urged Romania to fade the influence of Austrian politics in Balkan territory. In addition to some of the meetings between diplomats or Romanian personalities and Austrian diplomats, they accused more of the Catholic clergyman who was supported by Austria was influencing the destabilization of Albanian lands. Austrians who were even greater responsibilities in this element of Catholic defense, on the contrary, stated that the policy followed by the Catholic clergy was unmistakable and for the preservation of balances without going into rebellious fighting (Duke, F., EGRO, D., Gjermeni, S., 2012, d. 28). The purpose of the attack on the Catholic clergy the only link that can be seen was the protection of Orthodoxy trying to emerge in the Montenegrins. When the latter sought to control the force of Catholics, but as in a direct confrontation they would not be trustworthy, they sought this from a very large Orthodox state in the Balkans, as was Romania.

In the European diplomacy plan, despite the fact that in the first months the interest for Albania was not high as during the months of the first Balkan war, we can again say that the Austrians included in talks in the framework of the Austrian interests the Albanian issue. The division into two European Blocks of the Great War according to the interests that the states had, made it distinct and the perception of these states for Albania according to the interests of the blocks.

In diplomatic relations within the central bloc, in which Austro - Hungary was part, discussions with Italy were more numerous. In part of Austrian documents, it is described as Italy reported or spoke with other non-Austrian diplomats for the difficult Albanian state and the threat of commencing a war by Albanians. It was together with Montenegro were the two states seeking to describe a dangerous rebellious situation in Albania for its own interests. The Austrians knew well that Italy being in a war with the Ottoman Empire best loved a new hearth within this empire. In many of the documents, Austrian diplomats announced that the Italian consus, especially of Ioannina, a city, which was a hotspot for the Albanian uprising, Albanians could buy weapons freely thanks to the Italian consulate that helped (Meta, B. & Gjermeni, S., 2014, d. 262).

Even the problem of arms sales for Austrians was the Italian consulate in Tripoli, where in that city were busy Italian ships with weapons, suspected of being sent to Albania, although Italy had denied that the destination had been Albania. While the hotspots inside the Albanian lands was Himara and Tivari in Montenegro, where the Austrians saw that they were sent to thousands of weapons (Kaba, H. & Meta, B., 2012, d. 191). But Italy did not show a risk of stirring up to Albanians, as in the war with the Ottoman Empire, it would not be able to play a first-hand role to benefit.

While Germany before the Balkan Wars there is no interest or even involved in Albanian issues during diplomatic conversations. She mainly despises the false news of the Montenegrins to present the danger of the Albanian uprising as destabilizers of

the Balkans, calling them Tartar news (Meta, B. & Gjermeni, S., 2014, d. 48). However, for Germany of interest was to preserve the status quo, and to maintain this, the Ottoman Empire had to use any means, even by taking reforms in Albanian viability for the benefit of the people.

From the group of antanta states, Russia was more interested to include the Albanian territory in the interests that it should be shared with Austria - Hungary, as the two sides shared the Balkans according to peoples who supported their interests. Russia during the out-of-war period, a diplomatically shaken state is in relation to statements to Albania. Russia's Deputy Foreign Minister Naratov acknowledged to make reforms in favor of Albanians, but if those reforms were needed for the Macedonian people (Lalaj, A., Kambo, E., Boci, S., 2012, d. 209). While Prime Minister Kukuvzov, said Austria's influence on Ottomans for granting Albanian autonomy was incompatible for Russian interests (Meta, B., Dezhgiu, M., Musaj, F., 2012, d. 44). While Vienna saw any statement made by Russia, not only for Albanians, as a fear of Russian state, that reforms that could be made in the Balkans, Balkan states would attribute Austrians by not feeling Russian support.

Whereas Great Britain was somewhat cold in Albania, in talks with Austrian diplomats. It included Albania at the hotspots of the Ottoman Empire, but did not see it with the enhancement of the situation as other European states. Even during the time spoken in the Balkans and Europe for an uprising in the spring of 1912 by Albanians, the British did not give any great importance (Duka, F., Egro, D., Gjermeni, S., 2012, d. 5). Totally, the situation regarding the French, who in August 1912, saw the meeting between Austrian and German foreign ministers, as a goal of launching the initiative to give Albanians autonomy. Even the French press saw it with the Albanian people contempt, seeing them without civilizations, unlike other peoples who had a good ecclesiastical organization (Meta, B., Dezhgiu, M., Musaj, F., 2012, d. 70). Regarding these statements it is easily understood that France even before the Balkan wars held opened the side of the Balkan states, neighboring with Albania.

In European Chancellars, who were of the same policy with the Austrians or in the face, there was every time the opinion, which the Austrians open or by diplomacy held the Albanian side, even when the Dual Monarchy opposed, this seemed to be unbelievable (Meta, B., Dezhgiu, M., Musaj, F., 2012, d. 3).

The First Balkan War would be the culmination of a clash and the interests of all parties in the Balkans would be vigorously fought. Austria-Hungary at this time will change its tactics of action and diplomacy, strongly supporting the interests of Albanians, which more than ever already coincided with Austrian interests. One of the countries with which Vienna fought very diplomatically and its consular network in the Balkans, would be Serbia. This state was among the main contenders to take large areas of land from the Ottoman Balkans, expressed a burning desire to enter the Adriatic Sea through Albanian lands. Austria opposed at all costs its exit in this area, it asked Italy as a state that also had interests in Albania to join in opposition to Serbian claims. At the same time, it also makes it clear to Russia that Serbia could not be allowed to pass beyond the lands of Prizren (Meta, B., Dezhgiu, M., Musaj, F., 2012, d. 349), the capital of the vilayet of Kosovo. Also in direct talks with Serbian personalities in Belgrade, the Austrian ambassador said that leaving the Albanian territory was ethnically impossible for Serbs, and that the creation of a uniform Albania would be a factor of calm in the Balkans (Verli, M., Dushku, L. , 2012, d. 64).

The issue of the port on the Adriatic claimed by the Serbs varied from the occupation of Shengjin, then the city of Durrës was occupied and from time to time the port of Vlora was asked to be taken. Belgrade diplomats had realized that this request could be a diplomatic war even between Russia and Austria (Verli, M., Dushku, L., 2012, d. 311). But old Serbian diplomats who were outside Serbia, such as Nijatović, the former ambassador of Serbia during the Obrenović dynasty, declared to Austria that St. Petersburg would not start the fight for Serbian claims (Verli, M., Dushku, L., 2012 , d. 177). This was seen as completely true even when the Serbian Prime Minister Nikola Pashić himself wrote to Greece, that he gave up the partition of Albania, since they did not want European states (Meta, B. ad etc., 2017, 144). Things started to get complicated for Austria, by the occupation of Novi Pazar by the Serbs. This meant that for the first time the Serbian and Montenegrin states merged on land, cutting off the land route to Albania, and at the same time creating an opportunity for a naval blockade for Austria in the Adriatic (Hall, RC, 2002, 54 -55).

Consequently one of the states that at the same time bothered Austria with its claims, was Montenegro. This state was already trying to make the occupation of Shkodra a fact, and at the same time kept the port of Shengjin occupied. The Austrians directly stated that Shengjin was being held to be given to the Serbs, and this cooperation the Austrians would not tolerate (Verli, M., Dushku, L., 2012, d. 146). From the many direct relations with Krajl Nikola, the Austrians had realized that he was not a dangerous figure to them. Diplomats thought he was trying to get as much as possible, so that when the assessment is made at a peace conference, he manages to get at least half of them. Even his figure seemed grotesque, when King Nicholas himself informed the Austrians that the Albanians themselves wanted me to be their king (Verli, M., Dushku, L., 2012, d. 298). Krajl Nikolla himself did not attempt to carry out an attack in the entire area of Northern Albania as he began to fear the Austrian threats (Duka, V. 2007, 20).

Greece was the next Balkan state, which was in a political line with Serbia and Montenegro as a territorial contender over Albanian lands. Greece's claim was the southern territory, especially the port city of Vlora. She claimed that in these territories there was a Greek population and after her territory a population that spoke Serbian. The Greek Foreign Minister Coromilas himself strongly defended the thesis that the territories held by the Balkan states from Albanian lands were right (Swire, J., 2005, 137). Both Austria and Italy strongly opposed Vlora, as they had the same interests here. Koromilas tried to be even more direct when he said that Albanian land should be divided between Serbs, Greeks and Montenegrins, but he himself did not take direct measures in Albanian territories on a large scale. Fearing Austria, he invaded the territory of Vlora with Himariotes (Meta, B. ad etc., 2017, 144).

While the Bulgarian and Romanian states do not see any direct interests in Albanian lands in the diplomatic talks with Albania. The Bulgarians wanted to have an exit to the sea, to Serbia on Montenegrin soil and not at all on Albanian or Aegean territory. For the Aegean they were concerned, that intending to go out into the Aegean themselves, they saw a strong rivalry in the future. Romania, on the other hand, was assured by the Austrians that in whatever state form it had for the Albanians, the interests of the Vlachs in the Albanian lands would be preserved (Verli, M., Dushku, L., 2012, 193).

Italy is the state of the Central Bloc which has direct interests in Albanian land.

However, during the First Balkan War, there were also moments of duplication. The Austrians, since the beginning of the war in October 1912, had realized that Italy and Austria wanted to share the areas of influence in the Albanian area. This is especially true when the Italian Foreign Minister had stated that Albanians are a group of wild tribes (Verli, M., Dushku, L., 2012, d. 2). Also, despite the cooperation in the international arena against the Slavic states, where he did not accept the exit of Serbia to the Adriatic, for the tendency to accept that Vlora be given to Greece at a certain moment, the Austrian diplomats saw other goals.

Germany in Albanian problems was more open and closer to Austrian interests. She had told the Russian ambassador in Berlin, through the foreign minister, that we support Austria's demands to oppose Serbia's exit to the Albanian Adriatic. At the same time, Russia was conditioned that in order to keep Istanbul in the hands of the Ottoman Empire, they should stop Serbia from entering the area of Austrian interest, the Albanian territory (Verli, M., Dushku, L., 2012, d . 4). Germany, despite not being in the direct interests of Albania, raised the level of diplomatic talks higher, including the Albanian issue at the highest levels of European interests.

The main state of the Entente, which had to do with direct interests in the Albanian issue during the Balkan war was Russia. In the first phase of the war, she had expressed through Foreign Minister Sazanov that her interest in Albania did not exist, it was enough for the straits to remain in the hands of the Ottomans and not be taken by another state (Meta, B., Dezhgiu, M ., Musaj, F., 2012, d. 276). This kind of cold behavior of the Russians seemed to surprise the Austrians, who knew that the Balkan connection was made by Russia, which was afraid that it could become an autonomous state in the Albanian area. However, the Russians occasionally warned Austria that hostility between them and the Serbs would increase if the port of Shengjin was not allowed to be taken (Verli, M., Dushku, L., 2012, d. 72). The Russians were not openly insistent on Serbian interests, they began to change their behavior, after assuring them that the straits would not fall under the supervision of a state other than the Ottoman one. Austria's persistent behavior and the gathering of Austrian troops in front of the Serbian border, also made Russia withdraw from Serbia's support. As a result, the latter started making plans without port access to the Albanian coast.

Great Britain from the Austrian documents shows that it still intends to defend the principle of the status quo in the Balkans, the principle that the Austrians already saw that could no longer be maintained. However, among the plans of the Secretary of State for Foreign Affairs Edward Gray, Albania occasionally appears. In the first moments he had been for the transfer of the port of Shengjin to Serbia, but when the Austrian diplomat had shown him with a map before where this port was located, he had left this idea in silence (Verli, M., Dushku, L., 2012, d. 36). On the other hand, Gray agreed to have an international port in the Albanian area, but also did not give direct support to Serbia. He, through his ambassador to Serbia, had told Belgrade that if you ask for more than you should, you will lose the support of its allies (Verli, M., Dushku, L., 2012, d. 100).

The Austrians did not take kindly to English politicians. They were more afraid of Britain behind the scenes, as they thought it was pushing Russia to fall to the Austrians in the Balkans and defend its interests there, as the British wanted Russia to leave London to its own interests in Asia (Verli, M., Dushku, L., 2012, d. 177). But

as soon as the ambassadors' conference opened, London asked Austria and Italy to draw up a plan for an autonomous Albania (Jacques, E. 1995, 365), thus recognizing Austria's interests in this part of the Balkans.

France is the last Entente state, which sometimes in its ideas expresses itself more pro-Serbian than Russia itself. Prime Minister Poincaré initially agreed not to touch Albanian lands for Serbian interests. In time, he began to insist on a neutral port in Shengjin to be held by Serbia, and a strip of land that would lead him to the port. The Austrian ambassador was surprised to call this Serbian plan, put in the mouth of the Prime Minister of France (Verli, M., Dushku, L., 2012, p. 221). Unlike the other Entente states, France did not come up with an original solution, it went beyond neutral diplomacy, talking about very Balkan projects. The French were even worried if the Albanian state would be able to pay the debts due to it from the Ottoman Empire. These behaviors openly show that the French were very little supportive of an autonomous Albania.

The diplomatic relationship between the Ottoman Empire and the Austrian diplomats gives us a clean situation on how it was in fact the political situation among Ottomans and Albanians. On the one hand, it is particularly emphasized the relationship with young Turks, who during 1912 had become unpopular for Albanians. Especially the reform commission that went through Rumeli and particularly stood in Albanian vilayets was seen as an abusive action taken by the Ottoman government. Their purpose as expressed the Austrian diplomats was to obstruct the opposition wing against young Turks, which was among Albanians (Meta, B. & Gjermeni, S., 2014, d. 113).

Even the elections held in the Empire disappointed the Albanians as the leader of the reform group Adil Bey openly sided with the young Turks instead of being depoliticized. Moreover, the obstruction of the Albanian nationalists gave one more reason to incite a general uprising, said the Austrian diplomats from Istanbul (Duka, F., Egro, D., Gjermeni, S., 2012, d. 175). This mistake was also admitted by the member for economic affairs of the Reform Commission, who had passed through Albania, the British Graves, who had told the Austrian consul in Thessaloniki that the Albanian nationalist elements should be allowed to pass in the elections. (Duke, F., Egro, D., Germany, S., 2012, d. 225).

An event that was important for the policy of the young Turks, in a series of dissatisfactions that the Albanians had were the mass desertions of Albanian soldiers that started from the end of June 1912. The garrisons in the city of Manastir were important to the Ottoman army because they were positioned in the most central part of the Albanian territories, making it easy to cross into any vilayet. It was in this city that Albanian soldiers launched mass desertions in response to Ottoman policy. For Austrian diplomats who saw the army as the pillar on which the empire rested, they saw the disbandment of the Albanian-inspired army as one of the imminent factors that would sink the Ottoman Empire (Kaba, H. & Meta, B., 2012, d. 109). On the other hand, the Albanians who for three years had made three revolutions against the empire, were one of the reasons that shook the foundations of the young Turks in power (Kaba, H. & Meta, B., 2012, d. 190). Through this event in the documents it becomes clear that the opinion of the Austrians about the Albanian force began to change. They noticed that Albanians could become a threat to the empire if their conditions were not met.

But the dissatisfaction is noticed not only with the political group of the young Turks, but also with the whole Ottoman administration. Albanian MPs to come out after the new elections asked Interior Minister Haxhi Adil bey to have concrete reforms and a Latin alphabet in all Albanian lands. This began to surprise the empire, which already began to realize that the Albanians had begun to come out with the same demands (Duka, F., Egro, D., Gjermeni, S., 2012, d. 250). On the other hand, the governments that emerged after the resignation of the young Turks, accept only decentralization, but never an autonomy for the Albanians, because this was seen as a decrease of authority in the international arena of the Ottoman state (Meta, B., Dezhgiu, M., Musaj , F., 2012, d. 32). While the Ottomans in front of the Austrian diplomats promised investments in Albanian schools, or for investments in the construction of roads, since the beginning of 1912 (Meta, B. & Gjermeni, S., 2014, d. 5), while the Austrian diplomats from Istanbul precisely for these promises, they accuse the Ottoman administration of actions that are not based on an imperial decree to guarantee that the decisions will not be changed (Meta, B., Dezhgiu, M., Musaj, F., 2012, d. 5).

These behaviors were seen by Austrian diplomats as the fault of the Ottoman Empire towards the Albanian people. They openly state that Kosovo Albanians of the Muslim faith are crossing the border to seek protection in the territories of Montenegro, which belongs to another religion. This shows how serious the situation is in the Albanian lands under Ottoman administration (Kaba, H. & Meta, B., 2012, d. 7). Even the cooperation between the Catholics of the Shkodra vilayet with Montenegro is seen because the Ottoman administration did not know how to maintain balance in the people, as in all the reforms made the Muslim element was favored (Meta, B., Dezhgiu, M., Musaj , F., 2012, d. 313). But as the situation began to worsen, some Ottoman diplomats began to admit that the anger of the Albanians came because the empire prevented the Albanian opposition element from coming out with deputies in the Ottoman parliament (Kaba, H. & Meta, B., 2012 , d. 113). This shows that even the Ottoman diplomats began to make a reflection against the causes of the violent opposition of the Albanians.

In many cases, the Ottoman Empire tried not to admit its mistakes, it even accused the Austrian consulates throughout the empire which were inciting the Albanian people to revolt (Meta, B. & Gjermeni, S., 2014, d. 105). Austrian diplomats strongly oppose even in the face of the Ottoman Foreign Minister Asim Bey, that the fault of the uprisings in Albania came from the change of the election results, and the non-observance of the demands of the Albanians (Duka, F., Egro, D., Gjermeni, S. , 2012, d.165). However, until the beginning of the Balkan wars, the Ottoman government never believed in the danger of a general Albanian uprising, which could open up international problems.

From the whole panorama of Austrian documents of the time, it is clear that Albania was created as a state because it was part of Austrian interests during 1912. Also, the repulsion from the Serbian interests of Russia in the Balkans, came because St. Petersburg, noticed the insistence of Austria regarding the strategic interests in Albania. But all this further increased the anger between Serbia and Austria, where it will crush the fragile European balances only a year and a half later. And the Albanians, despite the fact that at certain moments they thought that the Austrians did not support them enough and asked for help in neighboring countries, at the

beginning of the First Balkan War, realized that the Austrians were the only one from the Great Powers that gave them protection. Moreover, when the Ottoman Empire itself had its policies towards Albanians delayed in time and without the strength to implement them.

References

Meta, B. & Gjermeni, S. (2014) *Shqipëria në dokumentet austro – hungareze Vëll. I (janar – mars),* Botimet Albanologjike.

Duka, F., Egro, D., Gjermeni, S. (2012) *Shqipëria në dokumentet austro – hungareze Vëll. II (prill – maj),* Botimet Albanologjike.

Kaba, H. & Meta, B. (2012) *Shqipëria në dokumentet austro – hungareze Vëll. III (qershor – korrik),* Botimet Albanologjike.

Lalaj, A., Kambo, E., Boci, S. (2012) *Shqipëria në dokumentet austro – hungareze Vëll. IV (korrik – gusht),* Botimet Albanologjike.

Meta, B., Dezhgiu, M., Musaj, F. (2012) *Shqipëria në dokumentet austro – hungareze Vëll. V (gusht – nëntor),* Botimet Albanologjike.

Verli, M., Dushku, L., (2012) *Shqipëria në dokumentet austro – hungareze Vëll. VI (nëntor – dhjetor),* Botimet Albanologjike.

Verli, M., Dushku, L., (2014) *Shqipëria në dokumentet austro – hungareze Vëll. VII (dhjetor),* Botimet Albanologjike.

Meta, B. ad etc.(2017). *Historia e Shqiptarëve gjatë shekullit XX Vëll. I.* Botimet Albanologjike.

Buda, A. ad etc. (2001). *Historia e popullit shqiptar Vëll. II Rilindja kombëtare Vitet 30 të shek. XIX – 1912.* Toena.

Buda, A. ad etc. (2001). *Historia e popullit shqiptar Vëll. III Periudha e Pavarësisë 28 nëntor 1912 – 7 prill 1939.* Toena.

Gurakuqi, R. (2013). *Shqipëria 1911 – 1914.* UET Press.

Koleci, N. (1962). *Kryengritja e përgjithshme shqiptare kundër sundimit turk në vitin 1912.* Naim Frasheri.

Hall, R. C. (2002). *The Balkan Wars 1912–1913 Prelude to the First Ëorld Ëar.* Routledge.

Chekrezi. C. A. (Jan., 1917) *Albania and the Balkans.* The Journal of Race Development, Vol. 7, No. 3, pp. 329-341. http://www.jstor.org/stable/29738205.

Vlora, I. Q. (1997) *Kujtime.* Toena.

Vlora, E. b. (2001) *Kujtime Vëll. I.* Shtëpia e Librit dhe e Komunikimit.

Malcolm, N. (2001). *Kosova një histori e shkurtër,* Koha.

Duka, V. (2007). *Historia e Shqipërisë.* Kristalina – KH.

Jacques, E. (1995). *Shqiptarët Historia e popullit shqiptar nga lashtësia deri në ditët e sotme.* Kartë e pendë.

Swire, J. (2005). *Shqipëria Ngritja e një mbretërie,* Dituria.

Protection of Public interests in International Arbitration: The role of Arbitrators and overriding mandatory rules

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Abstract

Traditionally, protection of the most fundamental public interests in international arbitration is guaranteed by the application of arbitrability and public policy, which pose limits to party autonomy. Arbitrability operates as a preventive mechanism, not allowing disputes which involve public interests to be arbitrated. Thus, leaving those disputes to the exclusive jurisdiction of national courts. While public policy functions as a corrective mechanism, not allowing enforcement of arbitral awards that disregard core rules affecting public interests. With the development of international arbitration in the last decades the scope of arbitrability expanded, including disputes where the public interest might appear to be compromised. Whereas the notion of public policy continues to be construed restrictively, limiting its application to violation of international public policy, and not allowing national courts to review the merits of the award even for the purpose of protecting public policy. In the circumstances where the preventive mechanism has become more lenient (i.e., more disputes involving public interests are arbitrable) concerns have arisen as to whether the protection of public interests can be sufficiently guaranteed only by the restrictive application of the corrective mechanism, i.e., the public policy exception, and whether the application by arbitrators of the overriding mandatory rules, which also aim at protecting fundamental public interests, can help in restoring the balance. The paper aims at addressing these concerns.

Keywords: arbitrability, public policy, overriding mandatory rules, public interests, arbitrators.

1. Introduction

Party autonomy is a fundamental principle that lies at the core of international arbitration. Pursuant to this principle, the parties are at liberty to design their arbitration agreement and proceedings according to their needs. They are free to choose both the substantive and procedural rules that will guide the arbitrators in conducting the arbitration process and resolving the dispute on the merits. However, party autonomy is not unfettered. Arbitrability, mandatory rules and public policy, which aim at protecting some of the most important and fundamental public interests pose limits to party autonomy.

Arbitrability generally refers to whether specific subject matters are capable of settlement by arbitration (Kleinheisterkamp, 2013, p. 597).[1] Certain disputes involve sensitive public policy issues that states reserve them to the exclusive jurisdiction of their judicial authorities. Thus, disputes involving sensitive public interests would be non-arbitrable and public interests constituting the core mandatory rules would be safeguarded by courts. Another layer of protection to public interests is provided by the application of public policy as a ground for refusal of recognition and enforcement of foreign arbitral awards under Article V (2)(b) of the New York

[1] In U.S. arbitrability also extends to the question whether the scope of the arbitration agreement covers the dispute in question.

Convention of 1958 on Recognition and Enforcement of Foreign Arbitral Awards, or as a ground for annulment of arbitral awards, as it is provided under Article 34(2)(b)(ii) of the UNCITRAL Model Law on International Commercial Arbitration and many other national arbitration laws (public policy exception).

These two layers of protection (i.e., arbitrability and public policy exception) operating in tandem one as preventive (arbitrability) and the other as corrective (public policy), traditionally have adequately protected public interests. However, in the last decades there has been an expansion of the notion of arbitrability. Therefore, by making this preventive mechanism more lenient (i.e., allowing disputes involving public interests be arbitrable) concerns have arisen as to whether the protection of public interests can be sufficiently guaranteed only by the corrective mechanism, i.e., the public policy exception, and whether the application of the overriding mandatory rules by arbitrators can help in restoring the balance.

This paper aims at addressing these concerns. To achieve this aim, the paper is structured as follows. It first analyzes how inarbitrability protects public interests and how its expansion may affect their protection (Section 2). Then, it discusses which overriding mandatory rules can the arbitrators apply and whether their application can protect public interests (Section 3). Lastly, the paper concludes with some brief conclusions (Section 4).

2. The death of inarbitrability: implications on protection of public interests

Traditionally arbitrability has been defined in terms of public policy (Youssef, 2009, p. 49). Only rights which the parties could freely dispose of fell within the domain of arbitration. While disputes where public interests were involved or likely to be affected, were considered at the exclusive jurisdiction of the courts. Hence, arbitrability is seen as the demarcation between public and private justice (Carbonneau, 2009, p. 143).

With the development of international arbitration and the increased trust in it, in the last decades the role of public policy in the definition of arbitrability started to reduce and the scope of the arbitrability expanded, including disputes where the public interest might appear to be compromised (Youssef, 2009, p. 51-52). In US, the start of this expansive approach to arbitrability is attributed to the *Mitsubishi* case (*Mitsubishi Motors Corp v. Soler Chrysler-Plymouth, Inc*., 1985) where it was clarified that antitrust claims are arbitrable. After *Mitsubishi* many other disputes involving public interests are now arbitrable, such as financial markets, securities, embargoes, consumer and employees protection etc. In Europe as well, the liberal approach towards arbitrability is also noticeable in many national laws, which tie its definition with economic criteria, such as any dispute involving financial or economic interest.[2] Also, the judgment of CJEU in *Eco Swiss* case (*Eco Swiss China Time Ltd v Benetton International NV*., 1999) is recognized as implicitly allowing the arbitrability of competition law claims.

The very strict notion of arbitrability applied originally operated as a preventive mechanism, filtering out of arbitral tribunals' jurisdiction cases in which public interests were involved. As a result, the public policy exception was also construed restrictively. Accordingly, although Article V(2)(b) NYC refers to the public policy

[2] See e.g., Swiss Private International Law Act (PILA), Article 177(1); German Code of Civil Procedure – as amended, Section § 1030.

of the state where recognition is sought, it was interpreted as meaning international public policy – covering only those fundamental values of a legal system which apply even in international situations – and only manifest violations could justify a review of the merits of the award (the minimalist approach). While this strict application of the public policy exception was justified where the number of disputes involving public interests going to arbitration was limited, the question arises whether the same application of public policy exception would continue to guarantee public interests even now that arbitrability has expanded and the original balance is distorted.

In such imbalanced protection of public interests, only by the public policy exception, a solution could be to shift to the maximalist approach, which allows reviewing the merits of awards on the ground of violation of public policy. Otherwise, there would be a high risk of bypassing violations of core rules affecting public interests. However, both approaches are considered too radical, therefore a balanced approach would be more appropriate (Hanotiau and Caprasse, 2008, p. 815). While the minimalist approach still continues to be applied, for instance by US Courts (*Baxter International v Abbott Laboratories*, 2003) or French Courts, which limit the review of the award to only "flagrant, effective and specific" violations of international public policy (*Thalès v Euromissile*, 2004), a recent tendency towards the maximalist approach is also emerging, including France, at least as far as corruption and fraud are concerned (Peterson, 2014).

From the foregoing, it is apparent that at the current state of application of the public policy exception, protection of public interests is at risk of not being sufficiently protected. However, public interests are also protected by overriding mandatory rules. Can their application by arbitrators restore the imbalance of protection caused by the expansion of arbitrability? This leads us to the discussion in the next section.

3. Arbitrators as guardians of public interests: issues concerning application of overriding mandatory rules

Overriding mandatory laws are those rules that limit party autonomy where the most important, fundamental policies are at stake (Kleinheisterkamp, 2018, p. 910) and aim at protecting public interests. Today, it is almost universally accepted that overriding mandatory rules are arbitrable (Radicati di Brozolo, 2012, p. 52; Papeil, 2010, p. 353; Fazitlatfar, 2019, p. 63). Hence, it can be argued that the protection of public interests in international arbitration has shifted away from non-arbitrability towards ensuring that the public policies underlying the mandatory statutory provisions are actually given effect in arbitration (Kleinheisterkamp, 2013, p. 603). Thus, the arbitrators are given the mandate to at least partially act as guardians of public interests. Overriding mandatory rules are a matter of public policy and must be applied to an international relationship irrespective of the law that governs that relationship (Mayer, 1986, p. 275). However, can the arbitrators fully ensure the effectiveness of overriding mandatory rules?

Under international arbitration laws arbitrators are bound to apply the law chosen by the parties, including its overriding mandatory rules (*lex contractus).* In addition, although arbitration does not have a forum and thus no overriding mandatory rules of *lex fori* (Bentolila, 2017, p. 119*)*, arbitral tribunals, under the duty to render enforceable awards, might also apply the overriding mandatory rules of the seat of arbitration to

prevent the potential annulment of the arbitral award under the ground of violation of public policy. The situation becomes problematic when overriding mandatory rules of a state other than the state of *lex contractus* or the seat of arbitration are at stake. In such cases, arbitrators prefer to apply the law chosen by the parties, failing which could lead to the annulment of their award, over the overriding mandatory rules (Kleinheisterkamp, 2018, p. 915). Some courts also seem to support such preference (*Omnium de Traitement et de Valorisation (OTV) v Hilmarton*, 1990; *Northrop Corp v Triad Int'l Marketing SA*, 1987).

This approach allows the parties to opt out overriding mandatory rules of the market where they operate simply by way of contract design, i.e., choosing arbitration seated out of the affected market and an applicable law which is foreign to the affected market. In such cases, due to fear of ineffective application of their respective overriding mandatory provisions, German and Belgian courts have refused to give effect to arbitration agreements (Kleinheisterkamp, 2018, p. 906). Similarly, English Courts in the *Accentuate v Asigra* case (2009) invalidated the arbitration agreement and decided the case on the merits, after refusing recognition to the award rendered in Canada, on the ground that the arbitral tribunal which was mandated to decide under Canadian law, rejected the application of EU overriding mandatory rules. Specifically, the arbitral tribunal had rejected the claim of the English commercial agent for compensation owed under EU law, which according to the *Ingmar* case is recognized as an overriding rule and part of EU public policy (*Ingmar GB Ltd v Eaton Leonard Technologies Inc.*, 2000).

In response to this issue, some scholars argue that arbitrators must apply mandatory rules that are not part of the law chosen by the parties since refusal of arbitrators to do so could have negative consequences on the future willingness of courts to recognize arbitrability in this field (Radicati di Brozolo, 2011, p. 18). Others suggest that arbitrators would not need to apply any overriding mandatory laws, since they would be captured by the transnational public policy (distilled through the methodology of comparative law from the vast range of domestic limitations to party autonomy and the public policies underlying them) and arbitrators would refuse to enforce obligations that contravene it regardless of the applicable law (Gaillard, 2007, p 176-183).

While criticizing the first argument as not being a legal one and the second as being utopian, another scholar compellingly suggests that when the parties have submitted their contract to a foreign law, the arbitration agreement could be enforced by the courts, if the protection afforded by the *lex contractus* is equivalent to that of the *lex fori*, and if not, then an undertaking from the party requesting enforcement of the arbitration agreement that it accepts the application of the overriding mandatory laws of the forum by the arbitrators would be sufficient (Kleinheisterkamp, 2018, p. 926) and a better option rather than invalidating the arbitration agreement.

In sum, entrusting arbitrators the protection of public interests underlying the forum's overriding mandatory provisions raises real concerns as to the effectiveness of protection. However, if the above solution will be applied, their effectiveness could be preserved.

4. **Conclusions**

The expansion of arbitrability has distorted the balance of protection of public interests, since the very lenient incoming filter allows more disputes involving public interests go

to arbitration, while the minimalist approach in applying the public policy exception is still maintained. However, this balance can be restored if arbitrators, to whom the protection of public interests is delegated by way of recognizing the arbitrability of the overriding mandatory rules, apply such rules effectively. Effectiveness of overriding mandatory rules can be ensured, if the enforcement of arbitration agreements providing for a foreign applicable law is linked to an undertaking that these overriding mandatory rules shall be applied by the arbitrators. This approach respects both the parties' original intention to arbitrate and the legislatures' intention to protect fundamental public interests (Kleinheisterkamp, 2018, p. 926). In lack of such undertaking the risk that the arbitration agreement would not be enforced by the courts remains real.

References

Books/Chapters/Articles

Bentolila, D. (2017). *Arbitrators as Lawmakers.* Wolters Kluwer.

Carbonneau, Th. E. (2009). Liberal Rules of Arbitrability and the Autonomy of Labor Arbitration in the United States. In L. A. Mistelis and S. Brekoulakis (Ed.). *Arbitrability: International and Comparative Perspectives*. Kluwer Law International.

Fazilatfar, H. (2019). *Overriding Mandatory Rules in International Commercial Arbitration*. Edward Elgar Publishing.

Gaillard, E. (2007). *Aspects philosophiques du droit de l'arbitrage international*. The Hague, Netherlands: Académie de Droit International de La Haye.

Hanotiau, B. and Caprasse, O. (2008). Public Policy in International Commercial Arbitration. In E. Gaillard and D. Di Pietro (Ed.), *Enforcement of Arbitration Agreements and International Arbitral Awards, The New York Convention in Practice*. London, England: Cameron May.

Kleinheisterkamp, J. (2013). A Dispute Capable of Settlement by Arbitration – or Arbitrators Capable of Settling a Dispute?. *Les Cahiers de l'Arbitrage*, 3, 595-607.

Kleinheisterkamp, J. (2018). Overriding Mandatory Laws in International Arbitration. *Int'l & Comp LQ*, 67(4), 903-930.

Mayer, P. (1986). Mandatory rules of law in international arbitration" *Arbitration International*, 2(4), 274-294.

Papeil, A. S. (2010). Conflict of overriding mandatory rules in arbitration. In F. Ferrari and S.Kröll (Ed.), *Conflict of Laws in International Arbitration*. Munich, Germany: Sellier de Gruyter.

Peterson, P. (2014). The French Law Standard of Review for Conformity of Awards with International Public Policy where Corruption is Alleged: Is the Requirement of a "Flagrant" Breach Now Gone? *Kluwer Arbitration Blog*.

Radicati di Brozolo, L. G. (2011). Arbitration and Competition Law: The Position of the Courts and of Arbitrators. *Arbitration International,* 27(1).

Radicati di Brozolo, L. G. (2012). Mandatory Rules and International Arbitration. American Review of International Arbitration, 23(1), 49- 74.

Youssef, K. A. (2009). The Death of Inarbitrability. In L. A. Mistelis and S. Brekoulakis (Ed.), *Arbitrability: International and Comparative Perspectives.* Kluwer Law International.

Case Law

Accentuate v. Asigra, EWHC2655(QB) (2009)

Baxter International v Abbott Laboratories 325 F.3d 954 (7th Cir. 2003).

Eco Swiss China Time Ltd v Benetton International NV. CJEU C-126/97 Judgment of the Court of

1 June 1999
Ingmar GB Ltd v Eaton Leonard Technologies Inc. CJEU C-381/98, 9 November 2000
Mitsubishi Motors Corp v. Soler Chrysler-Plymouth, Inc. U.S. S Ct 473 U.S. 614 (1985)
Northrop Corp v Triad Int'l Marketing SA, 811 F.2d 1265, 1270 (9th Cir. 1987)
Omnium de Traitement et de Valorisation (OTV) v Hilmarton, Cour de Justice du Canton de Genève (7 November 1989) confirmed by the Federal Tribunal, 17 April 1990, (1994) XIX YBCA 214
Thalès v Euromissile (2004) Cour d'appel de Paris (18 November 2004) Revue de l'Arbitrage 751

Legal Instruments

1958 New York Convention on Recognition and Enforcement of Foreign Arbitral Awards
Swiss Private International Law Act (PILA)
German Code of Civil Procedure – as amended

Association of Delivery Mode and Breastfeeding

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Abstract

Breast milk is a rich fluid. The benefits of it already are worldwide known because there are a lot of studies that show it. But there are some factors that affect the process or the choice of feeding with breast milk like as mother and fetal conditions. This study aims to describe the association between mood of delivery and breastfeeding and especially the initiation of the breastfeeding and how the breast's condition affects the breastfeeding. This is a point (cross-sectional) study, which was implemented for a period of 5 months during the years 2018-2019. The survey included 200 women with a distribution by race, educational level, age, number of pregnancies, mode of delivery, number of abortions, etc. The study used a questionnaire with structured and semi-structured questions through which information was obtained on a number of general elements and mainly those related to the way the birth process and the impact on breastfeeding. The results show that the age group with the greatest involvement in this study is 19-29 years old with 51.5% followed by the age group 30-39 years old with 47% and only 1.5% are in the age group over 39 years' old. Mothers with higher educational level (49.7 %) followed by mothers with 8 years of schooling (29.1%) and mothers with high school (19.9%). 50% of mothers delivery by normal delivery and 49 % of them by cesarean- section. There is a statistically significant relationship between the delivery mode and breastfeeding, $\chi 2 = 4.348$, $P < 0.05$ ($P = .037$); between the delivery mode and the time of starting breastfeeding, $\chi 2 = 6.943$, $P < 0.05$ ($P = .031$), as well as between breastfeeding and breast's condition $\chi 2 = 28.841$, $P < 0.05$ ($P = .0.001$).Conclusion: The mode of delivery affect the time of starting breastfeeding. The key words: normal delivery, cesarean section, breastfeeding.

Intellectual property rights and criminal actions: The relevance of criminal law

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Abstract

Intellectual property rights, shortly referred to as IP rights, are the rights given to persons over the creations of their mind. The intellectual property rights are divided into two main areas: copyright and industrial property rights (trademarks, designs, patent of inventions, utility models, geographical indications, denominations of origins, plant varieties, integrated circuits and trade secrets rights in some jurisdictions). In the context of law, such rights are private rights and their protection is ensured through the intellectual property law as a specific branch of civil law. But, the protection of IP rights is also essential for the social and economic development of the entire society. In particular, the infringement of IP rights may cause serious risks and harm the general public. In this sense, the civil legal remedies might not be sufficient and the intervention of criminal law would be necessary to secure the public interest. Unlike civil law, criminal law does ensure the protection of public interest from criminal acts or omissions. For that reason, some infringements of intellectual property law are considered criminal. Moreover, the intellectual property crime does not simply constitute an economic crime in terms of criminal law, but such an illegal activity is closely linked with organized crime, corruption, money laundering and other criminal offences in the field of taxes or customs. This paper analyses the legal notion of intellectual property rights and the relevance of criminal law in combating the illegal activities related to the infringement of IP rights. In this regard, a special focus is put on the identification of the essential elements for the investigation and prosecution of IP crime as an effective legal remedy against the infringement of rights. The main methods used in this paper are the doctrinal research methodology, interdisciplinary research and the legal analysis methodology, which help to identify the main findings, conclusions and recommendations for safeguarding the intellectual property rights.

Keywords: intellectual property, criminal law, economic crime, IP crime.

I. Introduction

Intellectual property rights ("**IP Rights**") are the rights given to persons over the creations of their mind, such as: literary and artistic works, inventions, designs, names, distinctive signs and symbols used in commerce. These rights enable the creators to have exclusivity over the use of their creations and simultaneously prohibit others from using them without authorization. In this regard, the intellectual property law serves to protect and enforce the creators' rights against unauthorized use or other potential infringement activities.

Actually, IP rights are divided into two categories: (i) Industrial Property, which generally includes trademarks, industrial designs, patents of invention, utility models, geographical indications, denominations of origins and other similar rights (plant varieties, integrated circuits or even trade secrets in some particular jurisdictions); and

(ii) Copyrights and rights related to copyright, which includes literary and artistic works, such as: books, music, paintings, sculpture, films, writings, computer programs and databases.

In the context of law, IP rights are private rights and their protection is ensured through the intellectual property law as a specific branch of civil law. However, IP rights do not represent a precious asset only for their owners or licensees, but they are vital for the entire society. These rights have contributed enormously to the world and development of the society. Nowadays, many companies rely in the enforcement of their IP rights and consumers could be assured about the trade origin or quality of goods/services through the identification of IP rights.

Legal protection of the intellectual property has significance importance for modern states and it has both global and national components. Global economic aspects of the IPR protection includes fulfillment of all basic principles of the multilateral conventions and adoption in the national legislation. Due to the changes in modern economy and business strategy, new tools of protections are introduced. (Janković, 2017, p.144).

In the light of the above, states have cooperated with each other to set some minimum standards to ensure the protection of IP rights and have introduced a special legal regime on this regard. In the context of international law, almost all the states have signed and ratified the most important treaties or conventions in this field: TRIPS Agreement (Agreement on Trade-Related Aspects of Intellectual Property Rights), the Paris Convention for the Protection of Industrial Property (1883) and the Berne Convention for the Protection of Literary and Artistic Works (1886).

The said international legal acts set the obligation of contracting parties to adopt effective and legal remedies for ensuring the protection of IP rights against infringements and unfair competition. As stated above, the protection of IP rights is essential and vital for authors/owners and the society itself as far as the infringement of such rights may cause a serios risk and harm the general public interest. For that reason, the administrative and civil legal remedies might not be sufficient, and the intervention of criminal law would be required to ensure the public interest.

While it is true that not all IP infringements are of a criminal nature, it should be taken into account that these rights present a particular public interest for the society and the economic development of a country. Based on the nature of the unlawful conduct of the infringer and the infringement type, the legislator has provided different kinds of responsibilities and measures: administrative, civil and criminal. In general, civil and administrative remedies are most commonly used by the owners or authors of IP rights to demand compensation for an infringement or injunctions halting further infringements. But, criminal legal remedies may be more efficient to be applied in all those cases where the administrative and civil remedies are not sufficient to deter and prohibit the illegal activity.

The infringement of intellectual property rights does not simply constitute an economic crime, but it is closely linked with other serious crimes as the organized crime, corruption, money laundering or other criminal offences in the field of taxes and customs. By analyzing the legal concept of intellectual property rights and what does they represent in the terms of law, this paper aims to point out the relevance of criminal law in combatting this type of crime.

In light of the above, and based on the IP crime's close link to the other types of

economic crimes described herein, the identification of the essential elements for the investigation and prosecution of IP crimes will help the law enforcement agencies to combat this kind of illegal activity. The paper is so divided in three main parts, namely the first part concerns the legal definition of each intellectual property right, the second part is focused on the criminal actions related to IP crime and the third one points out the importance of criminal law against this type of infringements.

II. What are intellectual property rights: copyright and industrial property law

In the context of international law, many authors affirm that IP rights enjoy a specific protection in the Universal Declaration of Human Rights (UDHR). Recently, even the World Intellectual Property Organization ("WIPO") (2020) has underlined that intellectual property rights are safeguarded by Article 27 of the Universal Declaration of Human Rights (p. 2).
Namely, this specific provision enables the author to use the rights deriving from his/her ownership over an intellectual creation of mind: Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author (Universal Declaration of Human Rights, 1948).
Further to the above, the World Intellectual Property Organization (2016) has also mentioned that countries generally have laws to protect IP for two main reasons:
- to give statutory expression to the rights of creators and innovators in their creations and innovations, balanced against the public interest in accessing creations and innovations;
- to promote creativity and innovation, so contributing to economic and social development (p. 6).
Intellectual property law is a specific branch of law, which is divided in two main areas: copyright and industrial property law. Therefore, it is important to emphasize that we should not confuse intellectual property law with industrial property law, despite the fact that even many legal professionals do often get confused and use the same term as a reference. Industrial property law is just one of the categories of intellectual property law.
In order to assess whether an IP crime has been actually committed, the law enforcement agencies should first have a clear concept over the specifics of copyright and industrial property rights. The legal definition and concept of these rights is an essential element for all the parties involved in criminal proceedings, and, in particular, for the Prosecution Office in charge of investigation of this type of crimes. But, which are the creations of human mind that are protected as intellectual property rights? This part of the paper briefly summarizes the legal definition and concept of each category of IP rights pursuant to the meaning given by law:
(i) Copyright is the legal term used to describe the rights given to creators over their literary and artistic works, including books, music, paintings, writings, sculpture, films, computer programs and databases, performances of performing artists, phonograms and broadcasts. The creators or authors of literary and artistic works have no need to formally register their copyrights in order to obtain legal protection.
(ii) Industrial property is the legal term used to describe the exclusive rights given to owners over their creation or distinctive sings, which are often registered before a

competent agency or state body established for this purpose.
- Trademark is a sign or combination of signs capable of distinguishing the goods and/or services of an undertaking from those of other undertakings, which enables the consumers to identify the trade origin of the concerned goods and/or services and serves as a guarantee for their quality;
- Industrial design is the ornamental or aesthetic appearance of a product, which should be new and have an individual character.
- Patent of invention is the exclusive right for the protection of an invention, which should meet three criteria: novelty, inventive step and industrial applicability.
- Utility model is the exclusive right for the protection of less technical invention, which should be two criteria: novelty and industrial applicability.
- Geographical indications and appellations of origin are signs used on goods that have a specific geographical origin and possess specific qualities, characteristics and reputation due to their relationship with the place of origin.
- Trade secret is the confidential information of a business, which is protected against unlawful acquisition, use or disclosure.

These types of rights entitle their authors and owners to have exclusivity over the use of their property and prohibit others from exploiting or using these rights without authorization. To ensure the protection of IP rights from third party infringements, states have cooperated with each-other by drafting, signing and ratifying very important treaties in an international level such as: TRIPS Agreement (1994), the Paris Convention for the Protection of Industrial Property (1883) and the Berne Convention for the Protection of Literary and Artistic Works (1886).

One of the most important and prestigious IP Offices in the world, that is the United States Patent and Trademark Office, explains that TRIPS establishes minimum standards for the availability, scope, and use of seven forms of intellectual property: copyrights, trademarks, geographical indications, industrial designs, patents, layout designs for integrated circuits, and undisclosed information (trade secrets) and that this agreement spells out permissible limitations and exceptions in order to balance the interests of intellectual property with interest in other areas, such as public health and economic development (https://www.uspto.gov/ip-policy/patent-policy/trade-related-aspects-ip-rights). The main aim of TRIPS Agreement is to enforce the trade-related IP rights by taking into account the differences in national legal systems and set out the obligations on the contracting parties to provide the necessary civil, administrative and criminal procedures in case of infringement of rights.

Also, the adaption of the Paris Convention for the Protection of Industrial Property ("Paris Convention") was the first achievement at the level of binding international law, which reflected the efforts of the states to protect IP rights as a way of promoting the creativity and social-economic development. The Paris Convention applies to industrial property in the widest sense, while article 1 (3) of this convention confirms that industrial property shall be understood in the broadest sense and shall apply not only to industry and commerce proper, but likewise to agricultural and extractive industries and to all manufactured or natural products, for example, wines, grain, tobacco leaf, fruit, cattle, minerals, mineral waters, beer, flowers, and flour (Paris Convention for the Protection of Industrial Property 1883, art. 1.3).

Likewise, the Berne Convention for the Protection of Literary and Artistic Works ensures the same level of protection with regard to copyright and contains a series

of provisions determining the minimum protection to be granted, as well as special provisions available to developing countries. According to article 1 of this convention, the countries to which this convention applies constitute a Union for the protection of the rights of authors in their literary and artistic works (Berne Convention for the Protection of Literary and Artistic Works 1886, art. 1)
Apart from the above, states have also intervened in their national legislation to adopt and ensure an adequate and effective protection of IP rights through the provision and application of various administrative, civil or criminal legal remedies.

III. **Intellectual property crime and related criminal actions**

The economic crimes have become a main concern for both the society and law enforcement agencies. Organized crime, corruption and the criminal offences in the economic sector do actually represent not only some of the most common offences in the judicial practice, but these types of crime are considered to bear high risk for the society.
EUROPOL affirms that economic crime, also known as financial crime, refers to illegal acts committed by an individual or a group of individuals to obtain a financial or professional advantage. The principal motive in such crimes is economic gain (https://www.europol.europa.eu/crime-areas-and-statistics/crime-areas/economic-crime).
As the evolution and development of the human society has led to new and specific forms of crime, the adoption of an adequate and effective criminal justice system is always necessary. Nowadays, the globalization of the society and the huge development of technology have been broadly exploited to commit economic crimes by using various methods and tools. The global pandemic situation caused by COVID-19 disease has contributed even more in this aspect, while the infringement of IP rights has turned to be one of the most common crimes.
All societies, including herein our society, do not protect all the objects, but only those that generate interest and are those for which humans have established certain relations between them. (Hoxha et al., 2018, p.206). In this sense, IP rights represent a valuable relationship, and the adoption of criminal norms is necessary to safeguard these rights against possible criminal acts or omission.
As regards the context of criminal law, economic crimes generate a considerable social damage and undermine the economic system of a country. In this view, all the criminal acts or omissions committed within the economic or financial section may be punishable as an economic crime. Thus, this particular section of criminal law covers a wide range of offences, from corruption, money laundering, tax evasion and IP crime among others.
IP crimes generate a high social damage and undermine not only the private rights of the owners of IP objects and the regular economic activity of the state, but the commitment of these crimes can pose significant risks even for the health and safety of the consumers. In this regard, the US Department of Justice rightly asserts that the impact of today's IP crime is not limited to the economic challenges associated with piracy, counterfeiting, or trade secret theft. Inferior, unsafe counterfeits, ranging from electrical equipment to auto parts to pharmaceuticals, not only defraud ordinary consumers, but also can pose significant risks to their health and safety (US

Department of Justice, 2017, p.2).
Owing to the high profits and low risks associated with economic crimes, IP crime has become very attractive for the organized crime groups. The organized crime is generally responsible for counterfeiting and copyright piracy on a commercial scale. So, there are grounds to believe that counterfeiting and copyright have become more attractive than drug trafficking because high profits might be obtained without the risk of high fines. The profit from the products infringing intellectual property has begun to surpass those of drug and arms, based on the profit/weight basis and always due to lower penalties (Semini-Tutulani, 2020, p. 14).
In addition to the above, IP crime is closely linked to other criminal offences such as: money laundering, smuggling of goods, cybercrime or other criminal offences in the field of taxes and customs. In particular, the acts related to IP crime are considered to have a close link with money laundering. Several studies in this field have found that the perpetrators of IP crimes do usually use different forms or methods of money laundering to hide their income deriving from the illegal activity related to the trade and sale of counterfeit products.
The same conclusion has been also reached in some of the studies and reports that the US Justice Department has conducted to find out the relationship between white-collar crime and infringement of intellectual property rights: Any use of money derived from certain types of IPR violations to fund specific forms of crime is considered money laundering (White Collar Crime Center, 2004, p. 15).
Likewise, the criminal offences in the field of taxes and customs, such as tax evasion for example, present a close link with the criminal actions infringing IP rights. In this direction, the income from this illegal activity are not declared or taxed before the competent state agencies. As a consequence, a significant economic damage is caused to the state budget.
Smuggling of goods constitutes another criminal offence, which is commonly faced when counterfeit or copyright piracy goods circulate within the customs borders. So, the perpetrators do usually use illegal manners related to the smuggling of goods (i.e., hiding the value, weight or nature of the goods) to avoid customs control over the counterfeit goods infringing the IP rights. In such situations, the judicial police officers do often prefer to refer to the Prosecution Office only that criminal activity related to the smuggling of goods and incorrectly evade the fact that the infringement of intellectual property rights in this case constitutes a criminal offence as well.
Lastly, cybercrime is also linked with the IP crimes. Organized crime groups or even individuals exploit the facilities provided by the internet and social media platforms to infringe intellectual property rights and gain financial profit to the detriment of IP authors and owners/licensees.
In conclusion, this paper underlines the decisive role of criminal law to deter and prevent such kind of illegal actions related to intellectual property rights once the civil and administrative remedies are not sufficient.

IV. **The relevance of criminal law against the infringement of intellectual property rights**

Criminal law plays an important retributive, preventive and educational role through the provision of criminal offences and relevant sanctions against their perpetrators.

In this sense, the Criminal Code provides those types of criminal offences that are encountered more in practice and that are more sustainable or known during the historical development of the society, as well as other new types of criminal offences that life dictates (Elezi, 2007, p.9).

In fact, law provides different kind of responsibilities (administrative, civile and criminal) on the infringers depending on the nature of their unlawful conduct. Based on this reason, the legislator has provided various enforcement mechanisms and legal remedies to enable the right-holders to act and combat against infringement of their IP rights.

In view of the above, it should be also pointed out that the administrative and civil legal remedies are the most applicable and used means by the right-holders. Owing to their intention to obtain an injunction within a short period of time, cease the infringement or demand compensation, right-holders prefer to follow the civil route by lodging a lawsuit with the competent courts.

But, in many cases, the civil legal remedies do not bring the desired results and are not sufficient to create deterrence and prohibit the illegal activity. Therefore, criminal legal remedies might be more efficient and adequate in this regard. As mentioned above, TRIPS Agreement has set out the obligation of states to criminalize the infringement of intellectual property rights, especially when the infringement is committed willfully and on a commercial scale.

Namely, article 61 of the TRIPS Agreement requires member states to provide and apply for criminal procedures and penalties at least in cases of willful trademark counterfeiting and copyright piracy on a commercial scale. According to this article, criminal remedies available should necessarily include the imprisonment and/or fines sufficient to provide a deterrent, consistently with the level of penalties applied for the crimes of a corresponding gravity. Meanwhile, in appropriate cases, such remedies shall also include the seizure, forfeiture and destruction of the infringing goods or any other instrument used for committing this criminal offence. (Agreement on Trade-Related Aspects of Intellectual Property Rights 1994, art. 61).

Under the above legal obligation that the TRIPS Agreement has set out, the member states have duly criminalized the willful infringement on a commercial scale of almost all IP rights as a criminal offence that is committed against both the private and public (i.e., the regular economic activity of the state) interest. The relevant sanctions and procedures have been implemented and provided in the national Criminal Codes and Codes of Criminal Procedure, respectively.

In many jurisdictions, the criminal prosecution of an IP crime may be initiated only in case a private party lodges a complaint with the competent authorities. Upon the request of the latter, that might be the right-holder or the licensee, the police officers or the prosecutor may investigate and initiate the criminal proceedings.

If this is the case, a strong cooperation should be established between the private party and the Police Office/Prosecution Office. The interested private party should submit all the relevant information and documents in its possession to the competent authority as the same might be of a crucial value for the prosecution of the criminal case. Moreover, the measures for preserving evidence should be taken rapidly and without wasting time.

We may understand how important the criminal prosecution of IP crime is when we analyze the approach of US authorities in dealing with it. The FBI's Criminal

Investigative Division's Intellectual Property Rights Unit ("IPRU") oversees its national intellectual property rights program, which includes dedicated FBI Special Agents responsible for investigating (i) thefts of trade secrets, (ii) manufacturing and trafficking in counterfeit goods, and (iii) IPR infringement, which causes significant economic impact (US Department of Justice, 2018, p.10).

To summarize, right-holders may choose between different legal remedies to protect and enforce their rights. If the problem is minor, administrative or civil remedies would be sufficient. Otherwise, in case of a severe and persistent problem, the criminal remedies might present the best option to deter and prevent the commitment of further IP infringements.

V. **Conclusions**

Intellectual property rights are exclusive rights given to persons over the creations of their mind. Such private rights are divided into two main areas: copyright (literary and artistic works) and industrial property rights (trademarks, designs, patent of inventions, utility models, geographical indications, denominations of origins, plant varieties, integrated circuits and trade secrets rights in some jurisdictions). The protection of IP rights is vital and essential not only for the IP owners, but even for the whole society since a serious risk and harm may be caused to the general public interest when these rights are infringed.

For that reason, some infringements of intellectual property rights are considered criminal under particular circumstances, and in this regard, the relevance of criminal law might be very important to deter and prohibit the commitment of an IP infringement. In general, it is true that IP owners prefer to rely their protection on the administrative or civil legal remedies in order to cease the infringement, obtain injunctions and seek compensation. But, criminal legal remedies may be more efficient to be applied in all those cases where the administrative and civil remedies are not sufficient to deter and prohibit this illegal activity.

Pursuing the provisions of intellectual property law, the owner has the exclusivity to use its rights and simultaneously prohibit third parties from using the said rights without authorization. In the context of international law, states have dedicated special importance to the protection of IP rights. Nearly 180 states over the world have signed and ratified the most important legal instruments on the protection of intellectual property rights, such as: TRIPS Agreement (Agreement on Trade-Related Aspects of Intellectual Property Rights), the Paris Convention for the Protection of Industrial Property (1883) and the Berne Convention for the Protection of Literary and Artistic Works (1886).

According to the above, states are obliged to adopt effective legal remedies for ensuring the protection of IP rights against infringements and unfair competition. In view of this legal obligation, states have so established the corresponding rules and procedures in their national legal framework. Thus, different kinds of responsibilities, procedures and measures have been provided depending on the nature of the unlawful conduct of the infringer and the type of infringement: administrative, civil and/or criminal legal remedies.

Of course, not all the infringements of IP rights are of a criminal nature. However, the infringement of intellectual property rights does not simply constitute an economic

crime, but such offence is also closely linked with other serious crimes, such as: organized crime, corruption, money laundering, smuggling of goods, cybercrime or other criminal offences in the field of taxes and customs. In this sense, the identification of the essential elements on the investigation and prosecution of IP crimes is even more important to help the law enforcement agencies in combatting these illegal activities and ensuring the protection of private or public rights.

In view of the above, both the law enforcement agencies and legal professionals must have a clear legal concept over the specifics of copyright and industrial property rights in order to assess whether an IP crime has been actually committed. In particular, the Prosecution Office should be specifically specialized in this field and should perfectly know the legal definition of each separate right according to the specific IP law. This would enable to not have the cases dismissed and declared out of the criminal jurisdiction.

IP crimes are considered as economic crimes, that means, they refer to illegal acts committed by an individual or a group of individuals to obtain a financial or professional advantage. The economic gain, as the principal motive of an IP crime, is associated with lower risks in comparison with other types of crimes. For that reason, such crimes have become very attractive for the organized crime groups and their profits have been enormous due to the trade of products infringing intellectual property rights.

As regards the other types of crimes related to the IP crime, it should be noted that smuggling of goods is usually associated with the circulation of counterfeit or copyright piracy goods within the customs borders. Under such circumstances, we notice that the customs authorities and/or judicial police officers refer the case to the Prosecution Office only in relation to the smuggling of goods and incorrectly evade the fact that the infringement of intellectual property rights constitute a criminal offence as well. Therefore, the IP crime should be also referred to the Prosecution Office in association with the smuggling of goods.

The impact of IP crimes is not only limited to the damage of private interests of IP right owners and/or the state economic activity, but a high significant risk may be posed to the health and safety of the consumers as well. Under such circumstances, we may so conclude that the criminal legislation is decisive to deter the illegal activities related to the infringement of IP rights and does also safeguard the public interest.

In this sense, criminal law plays an important retributive, preventive and educational role through the provision of the criminal offence related to the infringement of IP rights and the relevant sanctions against the perpetrators. In this view, article 61 of TRIPS Agreement requires member states to provide and apply for criminal procedures and penalties at least in cases of willful trademark counterfeiting and copyright piracy on a commercial scale. Upon ratifying this agreement, states have adopted the necessary legal provisions to criminalize the actions related to the infringement of IP rights and sanctions of imprisonment or fine have been provided in this regard.

As regards the procedural rules, it should be noticed that the prosecution of IP crimes may be generally initiated only in case a private party lodges a complaint with the competent authorities. In such cases, a strong cooperation should be established between the private party and the police officers or the Prosecution Office. The private party, which might be the IP owner or a licensee, should submit all the relevant

documents and information to the competent authorities in order to enable the latter to investigate and prosecute this criminal offence. Furthermore, the competent authorities should act rapidly to take the necessary measures for preserving evidence since it is crucial and essential for the outcome of the criminal proceedings.
Lastly, both the physical element (*actus reus*) and mental element (*mens rea*) should be satisfied in order to make a person criminally accountable for an IP crime.
This criminal offence is committed through various forms and methods related to the unauthorized production, distribution, sale, offer for sale, supply, export or import for commercial purposes of the goods protected by a copyright or an industrial property right (patents, trademarks, industrial designs, etc.).
As regards the mental state, the IP crimes are always committed willfully and for commercial purposes. If the commercial purpose is missing, as for example in the case when the same acts are committed for personal use purposes and not for commercial purposes, the author should not be held criminally liable.
Both the physical and mental elements are essential for the criminalization of an illegal conduct infringing the intellectual property rights. Thus, it might happen that a person is not held criminally liable for an IP crime due to the lack of guilt, but he/she might be still found responsible for the infringement of IP rights by a civil court.
The criminal sanctions for committing an IP crime are usually imprisonment for several years and/or monetary fines. In the majority of criminal cases, the competent judicial authorities must also necessarily impose the seizure, forfeiture and destruction of the infringing goods and of any materials or instruments related to the commission of the offence.
In addition, a close and efficient cooperation is required between the respective state authorities in all those cases when this illegal activity involves the territory of two or more countries. Also, the cooperation and assistance of the victims of IP crimes is essential to have an efficient criminal prosecution. Therefore, the victims of such crimes are recommended to act rapidly and report the infringement of their IP rights to the competent authorities as soon as possible. They may then assist and help the authorities in their investigation through the provision of information concerning the origin, delivery channels and authorized traders of the genuine goods.
In light of the above, we may conclude that criminal law plays a punitive, deterrent and educational role for both the individual and the society. The fight against economic crime, the imposition of proportional criminal sanctions against the responsible infringers and the crime prevention should constitute the main purpose of law enforcement agencies in guaranteeing and ensuring the protection of intellectual property rights.

References

Agreement on Trade-Related Aspects of Intellectual Property Rights 1994, part II-III, art. 61.
Berne Convention for the Protection of Literary and Artistic Works 1886, art. 1.
Economic crime. (2021, December 20). https://www.europol.europa.eu/crime-areas-and-statistics/crime-areas/economic-crime.
Elezi I. (2007). *E drejta penale (pjesa e posaçme)* [Criminal law (special part)]. ERIK.
Janković D. (2017). Different legal aspects of the intellectual property rights. *EU and Comparative Law Issues and Challenges (ECLIC), 1.* 143–170. https://doi.org/10.25234/eclic/6526.
Hoxha D., Kaçupi S. & Haxhia M. *E drejta penale (pjesa e përgjithshme)* [Criminal law (general

part)]. Jozef
Trade related aspects of IP rights. (2021, December 19). https://www.uspto.gov/ip-policy/patent-policy/trade-related-aspects-ip-rights.
Paris Convention for the Protection of Industrial Property 1883, art. 1.3.
Semini-Tutulani M. (2020). *Hetimi dhe ndjekja penale e veprave penale që lidhen me pronësinë intelektuale në Shqipëri: Manual për trajnimin e prokurorëve, gjyqtarëve dhe autoriteteve të tjera ligjzbatuese* [Criminal investigation and prosecution of the criminal offenses related to intellectual property in Albania: Handbook for training of the prosecutors, judges and other law enforcement agencies]. WIPO.
Universal Declaration of Human Rights 1948, art. 27.
US Department of Justice. (2017). *Prosecuting intellectual property crimes (fourth edition).* Office of Legal Education Executive Office for United States Attorneys.
US Department of Justice. (2018). *Reporting intellectual property crime – A guide for victims of copyright infringement, trademark counterfeiting and trade secret theft (third edition)*. https://www.justice.gov./criminalccips/.ccips-documents-and-reports.
White Collar Crime Center. (2004). *Intellectual Property and White-collar Crime: Report of Issues, Trends, and Problems for Future Research, National White Collar Crime Center.* US Department of Justice. https://www.ncjrs.gov/pdffiles1/nij.
World Intellectual Property Organization. (2016). *Understanding Intellectual Property (second edition)*. WIPO Publication.
World Intellectual Property Organization. (2020). *What is Intellectual Property?*. WIPO Publication.

Presentation of the era where a writer lives

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Abstract

Before presenting the biography and dealing with the work of a writer in the classroom, we make a brief and concise characterization of the social situation of the era where the writer lived and worked.
Then we present the historical-literary plan, i.e. a brief introduction of this, in short, in the presentation of historical conditions, main characteristics, forms and problems of the time, because the presentation of the writer's detailed, complete biography will be made intertwined with the main political characteristics of his time.
What is the significance of studying this biography?
It is well known that a writer leaves us as a legacy not only the literary work, but in most cases also the example of a life with strong passions and high ideals, therefore the life of many writers is of great interest to students, because the teacher through lessons explains to the students how the writer's worldview was formed, how his artistic tastes were created, what he desired with passion, to whom he devoted more in this period, which issues he liked and which he disliked. All of this highlights the power of his greatness. Every writer is a principle of sacrifice, faith and will, because through his works he treats powerful characters that leave traces as positive heroes, or as eternal monuments.

Keywords: era, writer, significance.

Introduction

First of all, we must keep in mind that in the study of biography, the method of analysis must be fully, accurately and in depth applied, which means that we should not be satisfied with additions, corrections or partial specifications, but to do a thorough analysis, so as not to diminish the objective value of the writer. A writer succeeds there where he writes, there where there is literature. It is a known fact that from one writer to another, the biography changes.
For example, in Çajupi's work we notice a patriotic character, or in Naim who develops the illuminist principle, love for the homeland, etc. When we discuss about such a polyhedral figure as Noli, it is not possible that we do not use his political activity, because analyzing Noli's figure, means to pay special attention to the patriotic activity.
The teacher can use many interesting tools. He may use, for example, to illuminate some aspects of Migjeni's biography, such as: his stay in Vraka, Puka, etc. Therefore we must dwell on those links and facts that deeply know the reality of the writer. But,

another principle is not to present these writers as only well-trained people, but to point out their behaviours and thoughts, even their "deficiencies".
In Migjeni we find traces, signs that tell us about the path he had started and could not finish, such as the deep knowledge of our northern village during the time he worked as a teacher. Here is revealed the ability to get to know different people.
Stefan Zweig in his biography of Balzac mentioned that this writer in the 30s, even though he worked 15 hours a day, found time to frequent shops, cafes in Paris, courts, etc.
During his youth, Victor Hugo followed his father Leopold-Hugo, a Bonaparte military man, who dared to take him with him to his Saint Sofia postings.
Sterjo Spase is one of those authors whose name and work are related to the history and destiny of the Albanian novel. He is a follower of the novelists of the tradition. The newer method became the basic condition in the creation of the works because the author came to literature from the bosom of printed literature where the village and the peasantry were in the foreground.
The intimate world of a writer also takes place. Here we do not only understand the love story, but also the connections with friends and folks, relatives or people who appreciate the writer. It
is important that in the study of biography their attitude towards the most important cultural-political or literary events is revealed, in short the living life of the writer is revealed, because a writer becomes immortal with his work.

What are the forms and types of the study of the biography?

We have two types of biographies: scientific and artistic biography. Artistic biography should be applied in school with a lively presentation, with appropriate style and composition, while from the content it should be scientific, containing only accurate facts. In no way should fantasy get in the way, no matter how much emotion it evokes. The main forms of biography teaching are: lecture, conversation, teacher's explanation, teacher's living sentence, etc. Therefore, in preparing for the lesson, the teacher must determine from the start the final conclusion, towards which he can lead the students. It sometimes happens that the teacher's word seems abstract, but in reality it is concrete and vivid. The teacher should not always be theoretical, but use his method, excerpts from works, memoirs, diary entries, manuscripts or portraits of the writer. But it is important to maintain the continuity of the material and the organic character of the lesson. The biography should be emotional on the part of the teacher. If we start from the whole and life analysis, more precisely from the life's phenomena and not from a particular fact, the details should be removed, but not the typical issues that keep the life and work of the writer alive.
Only by explaining some such facts, we will further clarify the biography of the writer.
Edith Durham states about Fishta that he was highly wise and he had broad cultural training and he had great plans.
Father Leonardo De Martino, an Italian-Albanian poet, was a parish priest in Trashan. He baptized the little angel with the name Zef and washed him with the water of baptism.

The literary work analysis

Its purpose and place in the process of studying the work

One of the most important stages of dealing with the work is analysis, where the goal is to discover all ideo-artistic aspects and the emotional impact of figures and pictures on students. We know that students' interest in commenting on a work or conversation is aroused. A reader who does not read books, or rather is unprepared, can not correctly understand the vital content summarized in pictures and tableaus, phenomena, events and characters. Students' interest in discussing and commenting on the work is aroused when the texts are explained and interpreted well by the subject teacher. Once there was a theory that the analysis of a literary work spoils the purpose of artistic perception and arouses boredom in the reader. No. Today things have changed, the teacher is not positioned as an autonomous and regular listener, but the opinion of the students is taken into account, even when they are wrong, and also both schematism and formalism fall nowadays.

The analysis has a principle, that there are no ready-made schemes, but the class, the type of school or the character of the course being studied must be taken into account. The principle of historicism. Literature as a historical-social science is related to time, the history of the people or the war. A writer not only draws pictures and tableaus from social life, but he also gives his appreciation. Raising and studying issues in the classroom has a positive effect on students.

What is important is the unity of the content with the form where the writer represents life in strong and complex pictures as a combination of events in which people participate, or as a system of emotions or ideas that draw the inner world of the hero. Culture and art remain the two basic factors, that is, the ideo-thematic basis belongs to the content, while genders and other elements belong to the form and this includes composition, language, system of figures, etc. If we seek to study the ideo-artistic features of the work, we must keep in mind that each work has its own form which must be taken into account during the analysis. Tolstoy would say that every great artist must create his own form. Lyrical works are distinguished from dramatic and epic ones because they summarize special aspects of the human spiritual world. The analysis itself begins with the characterization of this picture and this imagination. There are some features that will definitely need to be explored in the classroom:

The set of themes;

The figure – character;

Language and style;

Language features;

Conceptual content;

By analyzing a work the teacher breaks down these aspects. The level of breadth and depth is self-evident and the lyrical parts do not have the character figure.

-The study of the theme of the work. The theme is where the writer focuses his attention or the underlying problem he poses on literary production. The basic object is the analysis that is completed in this prism, and the main idea is the solution that the author gives to this problem. To study the figure-character are related to the literary genre, although it has a general or diverse characters, such as in Eugenie Grandet, etc.

Harmonization of literary and extra-literary elements

It is well known that today's concept of treating reading in interaction and the integrative relationship with writing is a necessary concept. Recent observations regarding the impact of TV and other information technologies have shown that we rely more and more on information that shows that in addition to the three irreplaceable means are reading and writing. Regardless of what we are reading and writing, textbooks, periodicals or manuals, essays, newspapers, sketches or descriptions, people are increasingly interested in preparing themselves as best they can. So the literary elements are in harmony with the extra-literary ones. In order for reading to be useful, beyond the classroom exam, even after a few days, the reader must read for interpretation. They need to be used to read in order to know differently, or to be able to do something. The teacher should teach the students how to read, and he completes this with extracurricular reading. When the student reads a text, he has absorbed the text ideas and made them his own.

References

Aleksandër Xhuvani. "Beginnings of pedagogy", second edition, Tiranë 1937, pg 84, 94, 103.
Bardhyl Musai. "Teaching methodology", Tiranë 1996.
Gjokutaj, M., Albanian Pedagogical thinking about Albanian language teaching at school, Curriculum and school, Albanian Language and Literature -3. Tiranë, 2002.
Gjokutaj, M., Temali, S., Albanian language and communication, 2002.
Gjokutaj, M., Kazazi, Nj., Present day tendencies about Albanian language teaching, Albanian Studies, 12, 2003.

The novelties regarding the extra judicial agreements for accelerated reorganization of commercial companies under the Albanian legislation

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Abstract

In October 2016, the Albanian legislator approved the law no. 110 "On bankruptcy" entirely amending the previous legal regime. The old law no. 8901, dated 23.05.2002, although drafted according to the best practices of the time, did not respond to the needs of the Albanian market due to complicated procedures. Thus, it turned into an unsuitable instrument to be implemented by commercial companies in insolvency state. In order to explore other routes, different from forced liquidation, where one of the main problems of the amended law related to the insufficieny of the bankruptcy assets to cover the costs of the proceedings, the Albanian legislator has foreseen the possibility of reorganization of commercial companies in insolvency state by restructuring their debt as an alternative and as an opportunity to return in the market. In this context, the Council of Ministers with the decision no. 65, dated 03.02.2021 approved the regulation "On the extra judicial agreements for accelerated reorganization". The aim of this paper is to analyze the main aspects of the extra judicial agreements that the Albanian legislation offers to the debtor and creditors, on one hand, by giving the opportunity for an accelerated reorganization procedure and recovery of the commercial activities and, on the other hand, reducing the implementation costs of the bankruptcy proceedings.

Keywords: bankruptcy, reorganization, extra judicial agreement, debtor, creditors.

Introduction

In October 2016, the Albanian legislator approved the new law "On Bankruptcy", which amended the law no. 8901, dated 23.05.2002[1]. The law "On Bankruptcy" currently in force is based on the obligations arising from the Stabilization and Association Agreement and on the Recommendation of the European Union of March 2014[2] as well as the UNCITRAL model law[3] providing for a title dedicated to cross-border bankruptcy proceedings[4]. The purpose of the Albanian legislator is to provide appropriate instruments, to all entities that are in a state of insolvency, to overcome this situation in a short time and with low cost. Analysing the Albanian commercial legislation and its implementation in practice, it is evident that the entities that want to conduct commercial activities with the status of a trader or to establish a company can easily enter the market, in a short time and without cost. Meanwhile, if a company

[1] Law no. 8091 dated 23.05.2002 "*On bankruptcy*" amended by law no. 9919, dated 19.5.2008 and law no. 10137, dated 11.05.2009, that replaced the previous bankruptcy law no. 8017, dated 25.10.1995 "*On bankruptcy proceedings*". All these changes and efforts, although realized according to the model of the German law of 1994, adapted to the Albanian reality, did not have the expected impact and did not find implementation.

[2] https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32014H0135&from=EN.

[3] Uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/1997-model-law-insol-2013-guide-enactment-e.pdf.

[4] See section 10 of the Law "On Bankruptcy", Articles 170-201.

wants to end its business activity, even through voluntary liquidation procedures in a state of solvency[5], the whole procedure to exit the market is complicated and lengthy, and in some cases it may take years. The already abrogated bankruptcy law, although drafted as an appropriate instrument to allow commercial entities exit the market, did not achieve its purpose because it was not implemented and was considered too complex and unsuitable to save commercial activity[6].

In this context, the Albanian legislator, in response to the need of commercial entities to be provided with an effective instrument to overcome the financial crisis, approved the law no. 110/2016 "On Bankruptcy". This law aims to collectively settle the debtor's obligations, through the reorganization of the commercial activity or through the liquidation of all debtors' assets[7]. The clear separation of reorganization proceedings from those of liquidation, as well as the new mechanisms provided for the first time in this law, aim to increase the business opportunities in difficult financial situation to restructure the debt and return to normality[8]. The law not only makes a more systematic adjustment between reorganization and liquidation but also enables the implementation of new mechanisms such as debt restructuring for regular income consumers or the possibility of signing extra judicial agreements between the debtor and creditors with the aim to reorganize and accelerate the restruction of the debt. These mechanisms highlight the fact that insolvency proceedings should not be seen as a punishment for insolvent entities, that are in this state not because of their will, but as an opportunity to overcome this unforeseen situation. Any honest debtor, who has strictly fulfilled his obligations, through the insolvency proceedings, is given the opportunity to be discharged from the remaining obligations.

Another important aspect clearly regulated by the law regards the preference order of the creditors and the clear division between the creditors of insolvency proceedings [9] and other creditors[10] completely avoiding the application of the rules stipulated in Article 605 of the Albanian Civil Code, as unsuitable to be used during bankruptcy proceedings[11].

The group of entities subject to bankruptcy law deserves a separate discussion. Article 11 of the abrogated law provided that the bankruptcy procedure could be opened for the assets of any natural or legal person and for joint venture companies, which find regulation in the Albanian Civil Code. Meanwhile, Article 12 excluded from the scope of application central and local state entities, state-owned companies, public entities operating in strategically defined sectors and commercial entities operating in the financial market, such as investment banks or other regulated financial institutions, regulated by a special law or that operate in sectors defined as strategic. The current law "On Bankruptcy" not only preserves the group of entities over which its effects are extended, but also expands it further[12]. The expansion of the group of entities subject to bankruptcy law, as under the article 7 of Law no. 110/2016, is a positive

[5] Article 190-205 regarding the procedures for the ordinary solvent liquidation.

[6] Relacioni Për projektligjin "Për falimentimin" in https://drejtesia.gov.al.

[7] Article 2, Law no. 110/2016 "On Bankruptcy".

[8] For more on this argument see Guide_ENG% 20VERSION_2021.pdf, Introduction to the Albanian bankruptcy system, p. 8.

[9] Article 34 of the Law "On Bankruptcy".

[10] Article 35, Idem.

[11] Relacioni Për projektligjin "Për falimentimin" in https://drejtesia.gov.al, p. 7.

[12] Article 7 of the Law "On Bankruptcy".

step in terms of commercial activities carried out with public funds, but on the other hand, it is a lost opportunity not exempting from the effects of this law the small and the family entrepreneurs. One of the main reasons why the previous regime was not implemented relates to the group of subjects. The Albanian economy is still an unconsolidated market economy based mainly on small family business, which lacks not only the financial ability to cope with the costs of complicated insolvency proceedings but also education on how to do business. Especially for the small trader, which operates in the field of agriculture, livestock, forestry and similar activities as regulated under article 2 of the Albanian law "On entrepreneurs and companies" it would be more appropriate to apply similar rules to the Italian regime that excludes this category from the application of bankruptcy law by providing for a differentiated regulation[13]. This is an argument that deserves a separate discussion but for the purpose of this paper it is simply underlined.

The law "On Bankruptcy" has also brought novelties in terms of the role of the supervisory or bankruptcy administrator and third parties, who can be appointed as members of the creditors'committee, in the capacity of representatives of a public authority, when the debtor operates in the public interest sector supervised by him, etc.

Although several years have passed since the adoption of the new bankruptcy regime, still the case law at the Albanian courts is limited for the purpose of assessing the effects of the new provisions[14]. It is important to see the practical application of the law and its bylaws and how they will be implemented by the judges of the commercial section of the Court.

1. *A general overview of the bylaws adopted to implement the bankruptcy regime*

Although the law "On Bankruptcy", was adopted in 2016, it took several years to adopt the bylaws necessary to the effective application of the new legal regime. On 19.9.2018 it was approved the decision no. 542 of the Council of Ministers "On the organization and functioning of the National Bankruptcy Agency"[15] as a public legal entity, operating under the Ministry of Justice. The main duty of this institution is the supervision of the activity of the administrator of insolvency proceedings[16]. The agency has full competence to certify and supervise the administrators as well as to verify the strict implementation of their duties in accordance with the law[17]. For this purpose, the agency through periodic controls and verification of the information provided by bankruptcy administrators has a primary role in implementing bankruptcy proceedings with accuracy and transparency[18].

Meanwhile, with the decision no. 733, dated 13.11.2019 "On the approval of national standards for the administraton of bankruptcy assets"[19], the rules and procedures to be followed by the administrators of insolvency proceedings during their activity

[13] For more information see article 2083 fo the Italian Civil Code and Article 1 Bankruptcy Laws as amended in 25.11.2021 in www.brocardi.it/legge-fallimentare/titolo-i/art1.html.

[14] According to statistics published by the Tirana Judicial District Court, 17 cases have been tried and currently 8 cases on bankruptcy are being processed, in http://www.gjykatatirana.gov.al/.

[15] https://drejtësia.gov.al/ep-content/uploads/2019/03/VKM-nr.-542-date-19.9.2018.pdf.

[16] Article 3 of the decision no. 542, dated 19.9.2018.

[17] Article 14, idem.

[18] Article 15, idem.

[19] Repealed the decision no. 124, dated 6.2.2013, of the Council of Ministers, "On the approval of national standards for the administration of the bankruptcy measure".

is now regulated in detail. This decision is important because through the standard forms, as provided under this decision, all the information related to the bankruptcy assets is standardized and is an important step to verify and evaluate the work of administrators.
With the decision no. 705, dated 09.09.2020 "On the criteria for determining the remuneration of the administrators of the bankruptcy proceedings", the rules and the criteria on how to calculate the administrators' remuneration during the fulfillment of their duties, amending this way the decision no. 197, dated 13.04.2007, are established [20]. This is an important decision because after a long time the amount of remuneration of the bankruptcy administrator was re-evaluated and adjusted to the current standards.
Finally, with the decision of the Council of Ministers no. 65, dated 03.02.2021, the regulation "On extra-judicial agreements for accelerated reorganization" concluded between the insolvent debtor and its creditors before the commencement of bankruptcy proceedings was approved.

2. *The extra-judicial agreements for accelerated reorganization*

The new legal regime on bankruptcy has provided new mechanisms aimed at restoring the commercial activity of the debtor in financial difficulties. One of these mechanisms is the extra-judicial agreement signed between the debtor and his creditors, in the framework of the implementation of accelerated reorganization procedures[21]. The agreement should be signed by the parties before the commencement of bankruptcy proceedings and aims to create appropriate conditions for the debtor to continue his commercial activity by implementing different measures defined and approved in the agreement. The implementation of these measures will be overseen by the signatory creditors themselves[22].
The procedure for signing the extra-judicial agreement begins with the submission of a written request to negotiate. The request can be submitted by the debtor himself or by several creditors. The bylaw requires only proof of delivery of a written request, without specifying the relevant modalities for its delivery, thus allowing any form of communication, by post or email. The debtor and the creditors determine through negotiation the date and place of the commencement of the proceedings[23]. Meanwhile, other creditors may join this procedure, as long as the agreement between the parties has not been signed[24].
The debtor has the obligation to provide complete and accurate information about his financial state, the causes that have led him to insolvency, the complete list of creditors and their credits. Also, the debtor has the obligation to submit financial forecasts and the report of financial statements during the period of implementation

[20] https://kryeministria.al/newsroom/vendime-te-miratuara-ne-mbijjen-e-keshillit-te-ministrave-date-9-shtator-2020/
[21] Article 79 and articles 122-134 of law no. 110/2016 "On bankruptcy".
[22] Article 2 point 2 of Decision no. 65, dated 03.02.2021, on the approval of the regulation "On extra-judicial agreements for accelerated reorganization ".
[23] Article 5 of Decision no. 65, dated 03.02.2021, on the approval of the regulation "On extra-judicial agreements for accelerated reorganization".
[24] In case more than 10 creditors participate in the negotiation procedure, they have the right to appoint a creditors' committee to represent them during the negotiation procedures. The composition of the negotiation committee is done in accordance with Article 7 of the regulation.

of the agreement, in case the parties reach the agreement[25].
The agreement should contain the modality of restructuring the debtor's liabilities by determining whether the debt maturity period will be extended, or the amount owed by the debtor to the creditors will be reduced or existing arrears will be replaced by new liabilities with later maturity date, etc. Article 9 of the regulation "On extra-judicial agreements for accelerated reorganization" leaves room to the parties to determine the measures that they consider appropriate as long as the debtor is allowed to continue its commercial activities for a period not less than 6 months.
If an agreement is reached between the parties, it must be notarized for validity purpose[26]. It is important to note that the agreement is binding only on creditors who have voted for its approval and who are parties to the agreement[27]. Also, the clauses of this agreement remain in force and are applicable even in the event of initiation of bankruptcy proceedings against the debtor.

3.1 Some considerations regarding extra-judicial agreements for accelerated reorganization
Although under article 79 point 4 letter ç) of law no. 110/2016 "On Bankruptcy" it is established that the regulation "On the extra-judicial agreements for the accelerated reorganization" had to be approved within 6 months from the entry into force of the law, this was realized only in February 2021 and despite the time taken for its approval, there are some ambiguities that arise from the literal interpretation of it clauses.
Signing the extra-judicial agreements in the framework of the accelerated reorganization requires at least the presumption of the debtor's insolvency status and the initiation of bankruptcy proceedings[28]. This means that the debtor[29] or creditor[30] should have addressed the Court with a request to initiate bankruptcy proceedings. The initiatation of bankruptcy proceeding presupposes the existence of the state of insolvency, although it is understandable that the Court will take its time to assess the effective existence of this state, and consequently it will decide on the request to accept or reject the bankruptcy request. This way of interpreting the regulation is reinforced by the Article 123 of the law that regulates the initiation of the accelerated reorganization proceedure by requiring the debtor to be in an unavoidable insolvency state[31]. If for various reasons the agreement is not realized, what will happen? Will the judge start the liquidation procedure or the general rules for the reorganization can still be implemented and what is the role of the supervisory administrator?
The role of the Court in the extra-judicial agreement is not cleary defined in this regulation. For the purpose of validity of the expedited reorganization agreement, the regulation only requires that the agreement be notarized, while it is silent regarding

[25] Article 3 of Decision no. 65, dated 03.02.2021, on the approval of the regulation "On extra-judicial agreements for accelerated reorganization ".
[26] Article 8, point 1 Decision no. 65, dated 03.02.2021, on the approval of the regulation "On extra-judicial agreements for accelerated reorganization ".
[27] Article 8 point 2, idem.
[28] The term "Bankruptcy Court" in the law refers to the Commercial Section at the Court of the Judicial Districts of the place where the debtor's seat or residence is located.
[29] Article 14 of the Law on Bankruptcy.
[30] Article 16 idem.
[31] Article 123 point 2 stipulates that: A debtor is considered in an unavoidable insolvency situation, when it is objectively predictable that he will not be able to repay the obligations on time in a period of 6 months or less.

the modalities of notification and the involvement of the bankruptcy court or the supervising bankruptcy administrator.
The announcement of the accelerated reorganization is the competence of the Court. Moreover, the initiation of this proceeding suspends all executions on the debtor's assets that are necessary for the normal continuation of commercial activities. In addition, concluded contracts can be executed and new contracts may be concluded, but the debtor's assets cannot be added or removed during the accelerated reorganization procedure[32], which may directly affect the measures envisaged to be implemented under the approved reorganization agreement.

3. *Final remarks*

The law "On Bankruptcy" and its bylaws are above all procedural acts. Therefore, ambiguities that leave room for different interpretations should be avoided, since this would directly affect the effective implementation of extra-judicial agreements for accelerated reorganization. On this regard, it becomes necessary to coordinate the provisions of this regulation with articles 122-134 of the law, regulating the accelerated reorganization procedure, especially about the role of the Court, in order to avoid that this instrument remains only on paper.
Courts have a crucial role to play in interpreting the law and establishing case law. It remains to be seen in practice how these agreements will be implemented. It is very important, however, that judges of the ommercial section of District Courts provide information to the parties involved by orienting them towards instruments aimed at the reorganization of commercial activity and only when that is not possible, to move towards liquidation proceedings.

References

Hyrje në sistemin shqiptar të falimentimit, IFC Guideline, 2021, in Guide_ENG% 20VERSION_2021.pdf.
R.C.C. Cuming, Y. Baranes, Manuali mbi ligjin shqiptar për falimentimin, ed. "Maluka", Tirana 2013, ISBN 978-9928-134-31-8.
Relacioni Për projektligjin "Për falimentimin" in https://drejtesia.gov.al/wp-content/uploads/2017/11/Relacioni_PER_FALIMENTIMIN.pdf.
Italian Bankruptcy Laws as amended in 25.11.2021 in www.brocardi.it/legge-fallimentare/titolo-i/art1.html.
https://eur-lex.europa.eu/legalcontent/EN/TXT/HTML/?uri=CELEX:32014H0135&f rom=EN.
Uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/1997-model-law-insol-2013-guide-enactment-e.pdf.
https://kryeministria.al/newsroom/vendime-te-miratuara-ne-mbijjen-e-keshillit-te-ministrave-date-9-shtator-2020/.
https://drejtësia.gov.al/ep-content/uploads/2019/03/VKM-nr.-542-date-19.9.2018.pdf
http://www.gjykatatirana.gov.al/.

[32] Article 126, Law "On Bankruptcy".

Historical treatment of Public procurement in Albania after the 90s until today

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Abstract

In fact, this material focuses on a historical overview of the law for Public prosecutions in Albania after the 90s until today.
Procurement is a complex process, regulated by a large number of legal norms scattered in various laws and guidelines.
The field of procurement is quite dynamic and has presented the need for frequent changes of laws and other bylaws, these are dictated by other legal changes related to this field.
Albanian Law on Public Procurement, since the first approval in 1995 of law no. 7971, dated 26.07.1995. 'On public procurement', in Albania, has been changed several times until 2020. These continuous changes in legislation have been necessary given the EU directives, and the necessity of adopting legal acts in the field of Public Procurement. Since 1995, the system has continuously evolved, complemented and improved through institutional and legislative changes and adaptations by implementing a number of reforms in order to make public procurement more efficient and transparent and in line with the requirements, basic procurement guidelines and EU best practices.
The purpose of this law is to ensure the most efficient, transparent and fair way of using public funds, public resources and all other funds and resources of contracting authorities in Albania. This law determines the conditions and rules that will be applied, the procedures to be followed, the rights to be respected and the obligations to be fulfilled by the persons, economic operators, enterprises, contracting authorities, work concessionaires and public bodies that develop, are involved, participate or are interested in procurement activities or that such resources are included or related to the funds.

Keywords: Historical treatment, Public procurement, Albania.

Introduction

Procurement is a complex process, regulated by a large number of legal norms prevalent in various laws and guidelines. The field of procurement is quite dynamic and presents the need for frequent changes of laws and other bylaws.
Topic Since its inception, the system has evolved, complemented and continuously improved through institutional, legislative and systematic changes and adaptations by implementing a series of reforms to make public procurement more efficient and transparent and in line with the requirements, basic procurement guidelines. and EU best practices.
Publik Public procurement in general is a new field and activity that is presented in contemporary countries, especially in countries which have had trends of rapid development from the planned economy to the market economy.

Introducing public procurement is an immanent need for governments of modern and contemporary states, because every government is a big buyer of goods, services and performance.
Ha The field of public procurement in Albania is a very important field in the management and spending of public money.
The term public procurement in the Republic of Albania was not used during the years of the communist system, for the very conditions of the centralized and state-controlled economy and no kind of private enterprise was allowed.
In the years 90-95, the first bylaws that regulated the public procurement system in Albania were drafted, which coincided with the approval of law no. 7971, dated 26.07.1995. 'On public procurement', in Albania, a law which underwent a series of changes, which were dictated both by the constant changes of economic conditions in Albania and by the problems encountered by the practical implementation of this law.
In the context of the approximation of Albanian legislation with those of the European Union countries, it was necessary to adopt a law that would comply with EU standards. In these conditions, the new law no. 9643 "On public procurement" which was approved by the Albanian Parliament on November 20, 2006 and entered into force on January 1, 2007, a law that has repealed law no. 7971, dated 26.07.1995 'On public procurement', as amended and relevant bylaws In addition to the law, DCMs have been issued for the approval of public procurement regulations.
Decision of the Council of Ministers no. 659, dated 03.10.2007 "On the approval of public procurement rules by electronic means" brought as a novelty for the first time in the history of the public procurement system in Albania the necessary, functional and legal requirements for conducting procurement procedures with electronic tools.
After the decision no. 659, dated 03.10.2007 "On the approval of public procurement rules by electronic means" The Council of Ministers has approved Decision no. 914, dated 29.12.2014 "On the Approval of Public Procurement Rules", meanwhile, the relevant authorities, such as the Public Procurement Agency, have issued new instructions for the facilitation and rigorous implementation of the law on public procurement.
Law no. 162/2020 "On Public Procurement" this law aims to improve the regulatory framework of public procurement in Albania and has been approved due to recommendations from various international organizations.
Decision of the Council of Ministers no. 659, dated 03.10.2007 "On the approval of public procurement rules by electronic means" brought as a novelty for the first time in the history of the public procurement system in Albania the necessary, functional and legal requirements for conducting procurement procedures with electronic tools.
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Since these laws in implementation have had problems which have been dealt with judicially by court decisions by administrative courts. After these problems and suggestions of the International institutions, it became necessary to draft a new law

which would be in unison with the various K.Pr.A. As above, Law no. 162/2020 "On Public Procurement".
Law no. 162/2020 "On Public Procurement" this recently adopted law aims to improve the regulatory framework of public procurement in Albania and has been adopted due to recommendations from various international organizations.
Meanwhile, the drafting and approval of this law has been done with the assistance of international organizations, including the provisions of the code of administrative procedures.
Approximation of Albanian legislation with that of the EU, through transposition or adaptation of specific directives, which cover the procurement procedures in the classical sector, sectoral and administrative review directives;
Improving the current regulatory framework;
Facilitate the participation of economic operators in procurement procedures;
Avoiding procrastination of the procurement process, due to the length of the administrative appeal process;
Adherence to the principles of social and environmental protection;
Ease of procurement of social services and other specific services;
Increase performance in the implementation of contracts, by strengthening the monitoring of this process.
This law aims to protect legal certainty, economic freedom, equality before the law, as well as the need for efficiency in the planning and use of budget funds through public procurement. In the analysis of this law, in addition to the suggestions of international institutions, the adoption of the new Code of Administrative Procedures in 2015, which necessarily required changes in the existing law, also influenced.

Public procurement - The definition

Public procurement is the process of selection by the Contracting Authorities, through a public competition process, of economic operators with whom it will enter into a public contract for the provision of a good, service or work (construction), against payment from public funds.
Basic elements of a procurement procedure
Contracting Authority (CA);
Public fund (from state budget) available;
The need of the Contracting Authority for a job, good or service.
Public procurement.
The parties in a procurement process
Contracting Authority that has available public funds to be procured and to enter into a public contract;
Economic Operators who offer in the market the undertaking of one or several works, the supply of goods or services.
Contracting Authority
Constitutional institutions, other central institutions, independent central institutions and central government units;
Public procurement.
Each entity:
established to pursue a general interest of a non-economic or commercial nature;

with legal personality;
funded mainly by the state, regional or local authorities or other public entities or administered by them or with a managerial or supervisory board, where more than half of their members are appointed by the state, regional or local authorities, or by entities other public.
Organizations formed by one or more of these authorities, or by one or more of these public bodies.
Economic operator
any natural, legal, or public entity or group of persons and / or such bodies that offer on the market the undertaking of one or more works, the supply of goods or services; in the public procurement process economic operators can be:
- bidder (an economic operator that submits a bid in a public procurement;
- candidates (an economic operator seeking to be invited to a restricted, or negotiated) procedure.

Public procurement.

Public fund
Any monetary value of the State Budget, designated for use in public procurement;
Any monetary value of the local budget, designated for use in public procurement;
Public contracts
If all the conditions for the implementation of a procurement procedure are met, its conclusion would be reached in the conclusion of a public contract.
"Public contracts" are contracts with remuneration, concluded through the exchange of written communication, between one or more economic operators and one or more contracting authorities, whose object is the performance of works, supply of goods and services, in accordance with this law.

Public procurement.

Scope of application
Procurement rules apply to all public contracts entered into by the Contracting Authorities, except as provided by law.
Selection of winners of public contracts, in case their implementation requires special security measures, in accordance with the laws and bylaws, in force, or in case such a thing is dictated by the essential interests of the state.
Like any science, scientific discipline and this law has its own principles by which it conducts public procurement activity.
The principles of public procurement were adapted to the principles of Administrative Procedure. After all the procedures of an administrative process are done according to K. Pr.Admin. Principles of public procurement.
Non-discrimination;
Equal treatment;
Transparency in the procurement process;
Proportionality
Fair competition;
Cost efficiency;
Legality, objectivity.
Non-discrimination
All participants, regardless of their nationality, should be treated in the same way;
Both direct and indirect discrimination are prohibited;

National preferences are not allowed.
Equal treatment
Equal treatment is the foundation of public procurement;
All candidates / bidders are treated in the same way, for the same situations;
The contracting authority remains impartial and fair to all participants.
Change with the principle of discrimination
This principle requires that identical situations be treated equally, or that different situations not be treated equally;
It does not depend on the nationality of economic operators (as in the principle of non-discrimination), but relies on the idea of justice for individuals;
Thus different treatment of two economic operators from the same state would be unequal treatment, but not discrimination;
The Danish Bridge case
Demand for the use of a domestic good - discrimination
Possibility to change a technical specification only for one of the economic operators - unequal treatment
Change with the principle of discrimination
While discrimination in a given context produces unequal treatment, unequal treatment does not always lead to discrimination….
Transparent
All public procurement information is published / made available;
Tender documents are easily found;
The criteria for announcing the winning contract (and the manner of their implementation) are published in advance;
Transparency II
The opening of bids is public;
Decisions on each procurement procedure are notified to all bidders;
The results of the procedures are published.

Proportionality
Qualification requirements such as:
- technical requirements;
- professional; AND
- financial

in proportion to the object and value of the contract;
Fair competition
Responsibility in the procurement process generates trust in the business;
Fair, open, unrestricted competition in a transparent environment, based on equal treatment brings cost efficiency;
The fairer and greater the competition, the better the offers;
Professionalism in performing public procurement procedures;
Good planning in time and quantity;
Overall objective - savings in public spending, lower costs in public administration.
Legality / Objectivity
Only PPL procedures apply;
Only objective criteria are allowed;
Subjectivity / arbitrariness is forbidden;

Accountability, Integrity and Accountability;
Review - correction mechanism.

Conclusions

The Albanian state and governing policies during these years, have made continuous efforts to improve this law with the standards of legislation of European Union countries by linking the implementation of this law, for public procurement, and the economic and social conditions of our country.
Although in these laws were as novelty the principles of public procurement Non-discrimination, Equal treatment, Transparency in the procurement process, Proportionality, Fair competition, Cost efficiency, Legitimacy, objectivity.
In the field of public procurement, it is necessary to strengthen the system of responsibility for violations of rules by procurement officers and economic operators as provided by Law no. 162/2020 "On Public Procurement"
Implementation of the instructions and DCM of the K.Ministers I think will have a positive impact on a successful procurement.

References

Analysis of legal acts on public procurement in the Republic of Albania.
Decision of the Council of Ministers no. 659, dated 03.10.2007 "On the approval of public procurement rules by electronic means".
decision no. 659, dated 03.10.2007 "On the approval of public procurement rules by electronic means".
Decision no. 914, dated 29.12.2014 "On the Approval of Public Procurement Rules".
Law no. 162/2020 "On Public Procurement".
Code of Administrative Procedures of the Republic of Albania.

Education and educational competences in an open democratic society

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Abstract

Currently, Albania, our homeland, is involved in the integration processes for membership in the European Union. European integration processes should first of all be understood as processes: achieving standards, adaptation and legal, structural, curricular improvements, etc. The Albanian education system is also part of these processes. The education system, especially in recent years, has been and continues to be part of programs and political, academic, scientific and educational programs and projects of the dominant actors of Albanian society for its reform and adaptation to the education systems of European societies, within Albania's ambitions for integration and membership.
The teacher is the main actor of the educational process. It is necessary for the teacher to redefine his position in this constantly changing and integrating society, to empower and acquire new competencies.
Among the main competencies we mention:
A. Initial teacher education.
B. Teacher training
C. The profession of teacher and lifelong learning.
D. Teacher, participant in projects and mobility within the education system.
E. The teacher as a contributor to others and a collaborator with others.
F. Teacher as a user of technology, information and new knowledge.
I think it is very interesting to discuss and research on re-dimensioning the position of teachers regarding the competencies of educating democratic citizens that they should gain in this period of reforms and European integration. The idea of the study is: Today's children can learn better if teachers focus more on activating their strengths than on identifying their weaknesses. Students should be evaluated not only on the basis of the results achieved, but, above all, on the basis of the capacity to fully address life situations.

Keywords: educational competencies, initial education, integration processes, legal improvements, reform period, teacher qualification.

Introduction

The idea to undertake this study arose from discussions conducted in February 2014 with some of my doctoral colleagues. The discussions held on the reform in higher education by the leaders of the working group of this reform served as the beginning of the discussions. Discussions continue to be present at school, in leisure time, etc. In these presentations for discussion the following educational issues:
1. The teacher should focus on reinforcing the strengths (Most Developed Intelligence).
2. The teacher should focus on reducing the weak points (Most underdeveloped Intelligence).
Students should be assessed:
a. On the basis of the results achieved.
b. On the basis of capacity to handle and resolve life situations.

Theoretical basis

The discussions did not arise in vain, without having a real basis, they arose on the basis of the state of the education system and the conclusions presented by the Pisa program of the World Bank in Albania. According to the researcher from Albania, P.Karameta: "Our education system fails to prepare creative people who lead the development, just as it fails to form citizens with democratic tendencies ... This requires that reforms and innovations reshape educational practices in pre-university education , the higher and the system of lifelong learning about a new perspective, according to which "education to identify and develop the potential of each individual, as a prerequisite for the formation of man who knows how to act." (Karameta, P. Mapo-online. 10/02/2012).

During the last years, numerous legal, structural, curricular, human-professional resources, school infrastructure, technological, etc. are being undertaken in our education system. It is necessary for the education system and especially the teacher as part of it to become part of a great movement for the realization of the Common European Principles on the competences and qualifications of teachers (Progress towards Education and Training. Brussels 21.01.2004). I am aware that reflecting on the educational competencies of the XXI century and studying the optimal ways for their realization in educational institutions may require numerous studies. "An individual may have a learning disability or learning disability. Early detection and intervention are key to preventing a learning disability from adversely affecting a student in the classroom" (Logsdon,A. 2019. 1).However I think this study can help however little in the great need for reflection and concentration. At the beginning of this century the world has moved by leaps and bounds. Teaching is also undergoing transformations. Increasingly, student-centered teaching is being talked about and implemented. Despite their methods and designations one thing I believe is clear: the teacher continues to be in the position of leader, leader, organizer, performer, controller and evaluator.

The nature of work has changed and continues to change. Changing the form of work and the needs for the competencies and skills of the century also needs to change the conception of the effective teaching that students need to prepare for life and its products. What is required of students is not just memorizing knowledge and information but education should focus on how to teach students how to learn in order to manage constant demands and changes. But what are some of the key educational competencies of the 21st century?

Historical context

Educational competencies of the XXI century.

The educational competencies of the 21st century in my opinion can be categorized into:

1. Basic values possessed by man as a member of society.
2. Professional skills.
3. Training for life, career and entrepreneurship.

In the first category we can mention those values that are related to human character such as:

- Self-awareness.
- Self-management.
- Responsible decisionmaking.
- Relationship management.
- Social awareness.

In the second category: Professional skills we mention:
I. Communication and information skills.
II. Civic education, ability to accept cultural and religious diversity and awareness of globalization (Civic literacy, cross-cultural skills and global awareness).
III. Critical and creative thinking.
In the third category: Life, career and entrepreneurship training includes:
• Ability to believe in oneself.
• Lifelong independent learning skills.
• Ability to be an active contributor.
• Ability to be an active citizen and engaged in the problems of social, political, economic life, etc.
Teaching is the activity that can strongly contribute to the recognition and realization of these competencies.
Teaching is a planned and organized activity, it is an act of teaching led by the teacher. It plans and organizes the development of the teaching and learning process, which takes place in the processes of: pre-action, interaction with students in learning and post-action that aims to analyze and evaluate the teaching work developed. "Essential characteristics of teaching:
• Teaching is a series of systematic planned events.
• Teaching is a process that communicates ideas, concepts, laws and habits.
• Teaching takes into account individual and environmental factors related to the learner.
"Effective teaching enables all students to understand and master the essence of the content of the teaching material" (Zekaj, XH. 2018, p. 7).
Through teaching, the teacher facilitates the process of student learning through the implementation of various and appropriate learning strategies with forms, methods, which make the role of student and teacher change where the student becomes the main actor (student-centered learning) and not a simple spectator.
A school is not judged by its beauty but by the results its students achieve. The beauty of the school is brought by the variety of students involved in it. Students are different from each other, everyone has special requirements, everyone perceives, everyone listens, everyone speaks, everyone thinks, everyone learns differently from each other, so everyone should be given the opportunity! Today when we talk about educational competencies we take into account or take into account the individual potentials and abilities of students, which makes it possible to help all students regardless of the difficulties they have.In the educational curriculum based on the competencies that the student should acquire in pre-university education in the Republic of Albania we read: "Pre-university education creates conditions and opportunities for students to: build and develop knowledge, skills, attitudes and values that requires a democratic society; to develop independently and comprehensively; contribute to construction and well-being and Albanian society and face the challenges of life in a constructive way" (Institute for Educational Development, Albania, 2017. 7). Since the ways of

students' learning are figuratively speaking, they are as different as their appearance, we say that the educational competencies of teachers in open democratic societies are also of great importance. As part of the development of the theory of multiple intelligences, Gardner writes that "intelligence quotient (IQ) should not be measured as an absolute figure like: weight, height or blood pressure. It is a mistake to assume that KI is a single fixed whole, which can be measured through a test. "It does not matter how smart you are, but it does matter what you are smart about. We all have the ability to solve problems of different kinds." (Howard Gardner. 2003. The Structure of the Mind). According to the theory of multiple intelligences, it is necessary for the teacher to recognize and promote in a wider space the talents and abilities of students, which means that teachers, in addition to recognizing the difficulties that students have in learning and efforts to 'facilitate them, they should also focus on students' talents. "The teacher enables learning for all students through his interaction with students and students with each other, using effective communication techniques, learning strategies that actively engage students in the learning process and orient, guide him in time to achieve the quality of the result "(Zekaj, Xh. 2018, p. 113). For the role and re-dimensioning of the personality of the teacher and pedagogue, Prof. Peshkëpia writes: "He guides the student or even the student in the process of obtaining information, so that with his help he is prepared and able to elaborate and solve any complicated problems of his school and life activity". (Peshkëpia, V. 2012, p, 18). I believe that every day more and more we are encountering phenomena, events and phenomena that come emphasizing the diverse emergence of human society. Social diversity comes to the fore. "Conflict and diversity are probably the most important characteristics of the societies in which children grow up today." (Mufti, J. 2013. 403). Perhaps, we who lived in a collectivist society three decades ago feel much more today's social diversity in general and school diversity in particular. Given the differences and diversity among students in the US, renowned researcher Carol Ann Tomlinson instructs: "When building a new teaching, the teacher can adapt the content, the process and the product." (Tomlinson, A, Carol. 1999. p. 24). Commenting on the implementation of differentiated teaching in heterogeneous classrooms, Tomlinson points out: "In differentiated teaching, teachers need to use the flexibility of time, a range of learning strategies, and partner with their students on what is taught, what we will learn, and how to teach them" (Tomlinson, A. Carol, 1999. f, 9). In this article I will mention a statement of mine published in a previous publication: "The classroom is a heterogeneous community, composed of individuals with different knowledge, culture, skills and experiences in learning. Given this reality, the teacher must serve all students, regardless of skills and different levels of learning" (Vrapi, A. 2015, 3). Regarding the fact where the teacher should focus, let us also quote this: "The knowledge that the child has formed is closely related to vital issues". (Karajani,P., DineJ. and Hila, K. 2004. p. 32).Regarding the dilemmas of today's students Wilson emphasizes:"Students will likely be hesitant to take risks outside of their areas of expertise, out of fear of being wrong and judged. Educators can overcome this student hesitation by fostering a positive, respectful environment within their learning spaces (Wilson, 2018).In the same line for a new educational endeavor the researcher Mitchell, J. states: "As a teacher, the author will often try new lesson plan, while engaging in honest dialogue with students about the fact it is a new lesson and it may not be perfect: this simple action shows the teacher is not

afraid to fail, which will set the tone for the whole class" (Mitchell,J. 2021. 2).
The above theories and authors make our vision for the problem presented at the beginning of this article clearer.
Then let's go back to the discussions on the problem I mentioned.

Laying out the problem
As I mentioned at the beginning of this article, the need to conduct this study arose from the discussion with colleagues on defining as primary one of the issues:
1. The teacher should focus on reinforcing the strengths (Most Developed Intelligence).
2. The teacher should focus on reducing the weak points (Most underdeveloped Intelligence).
Students should be assessed:
A. On the basis of the results achieved.
B. On the basis of capacity to handle and resolve life situations.

Purpose of the study
The purpose of this study is:
1) To identify where we need to intervene for education and educational competencies at the beginning of this century.
2) Where should teaching focus on the realization of learning competencies?
3) What should we evaluate in the student in order to realize the educational competencies of the XXI century?
4) To propose forms and working methods for the realization of educational competencies of the XXI century.

Variable
Teaching focused on developed intelligence and educational competencies.
Independent variable: Teaching focused on developed intelligence.
Dependent variable: Educational competence.
Research question. Does the improvement of intelligence-focused teaching lead to the realization of educational competencies?

Hypothesis
Ho: Educational competencies are realized without the need to focus teaching on developed intelligence.
H1: Educational competencies should focus on improving teaching in developed intelligence.

Methodology

For the development of the study, discussions, debates and surveys were conducted with school teachers: "Ptoleme Xhuvani", "DhaskalTodri", "Ali Myftiu", "Inkus", Papër, Broshkë, Pajunof Elbasan district, Albania.
The study was conducted in February-March 2018, all these schools in the municipality of Elbasan. The study included 82 teachers from the above schools. For the teacher survey there was no preference in the selection but this method was followed: Those teachers were included in the surveys who entered the teachers' room during the

long break that day I was present in each school. So put another way the champion was with teachers who accidentally entered the teacher's hall that day. This random sampling method was followed in each school.Study findings.
Through the survey the teachers were asked a questionnaire with the following questions:
1. The teacher should focus on strengthening the strengths (Most developed intelligence) or
2. The teacher should focus on reducing the weak points (Most underdeveloped Intelligence).
The results of the answers were:

A	Teacher should focus on reinforcing strengths (Most Developed Intelligence).	54
B	The teacher should focus on reducing the weak points (Most underdeveloped Intelligence).	23
C	Teachers who did not list any of the alternatives.	3
D	Teachers who did not participate in the survey.	2
E	Total Teacher.	82

As for the next question: Students should be evaluated:
A. On the basis of the results achieved or
B. On the basis of capacity to handle and resolve life situations.
The results of the answers were:

A	On the basis of the results achieved.	33
B	On the basis of capacities to handle and resolve life situations.	45
C	Teachers who did not mark any of the alternatives.	2
D	Teachers who did not participate in the survey.	2
E	Total Teacher.	82

Data analysis and discussions

From the answers and the diagrams constructed it is noticed that:
1. Regarding the first question from 82 teachers with whom the sample was formed as we mentioned above it turned out that 3 teachers did not circle any of the alternatives while 2 teachers were not involved at all, did not want to participate in the survey.
2. In the first question, it was noticed that out of 80 teachers that were included in the survey 54 teachers or 66% circled that we should focus on strengthening the points strong, i.e. to the most developed intelligence. This does not mean that other types of intelligence should be neglected. It also means teaching needs to be invested to further empower that more developed intelligence.
4. The teacher should activate and motivate the student to strengthen the intelligence that he has more developed.
5. Regarding the second question from 82 teachers with whom the sample was formed, it turned out that 2 teachers did not circle any of the alternatives while 2 teachers did not want to participate in the survey.
6. In the survey for the second question which had to do with assessment, specifically:

whether students should be assessed on the basis of their achievements or on the basis of capacities (competencies) to deal with and resolve life situations, it was noted that by 82 teachers included in the survey 33 teachers or 41% answered that we should evaluate students on the basis of achievements and 45 teachers or 55% circled the exact alternative that evaluation should be based on the formation of competencies to deal with and resolve life situations.
7. Pupils and students should be evaluated much more on the basis of capacities to address and solve life and school problems.
8. The teacher should not be satisfied with the control and evaluation of the knowledge acquired by the student but above all on the potentials that the student presents in the realization of knowledge in everyday life.

Conclusions

Regarding the educational competencies of teachers should:
1. Continue to develop the capacity of teachers to lead learning on the basis of 21st century educational competencies.
2. The portfolio of teachers should include the results achieved in the development of students' educational competencies and subjects.
3. Teachers should conduct studies on the results that students achieve in the competency-based curriculum.
4. Clear definition of knowledge, skills, habits and values that students should acquire in the curriculum based on competencies based on several years of experience of its application.
5. Reformulation of the substantive structure of pre-university education in order to reflect the educational strategies for the development and evaluation of educational competencies of the XXI century.

References

Chaskin, R, J; Rauner, D, M. (1995). Teaching themes of care. Bloomington. Phi Delta.
Gardner, H. (2003). Uneducated mind. (Translation) ISP. Tirana.
Gender, F. (1998). Student and group. Elbasan. Sejko
Llambiri, S. (2001). The secret abandonment of Tirana. UNICEF Albania
Musai, B. (1999). Educational psychology. Pegi.Tirana.
Myftiu, J (2013). Educational psychology. Dija-Poradeci.Elbasan.
Karajani, P.; Dine,J.and Hila, K. (2004) Didactics of Pre-Mathematical Concepts. Tirana.
Institute for Educational Development (2017).Competence-based curriculum. Tirana. Albania.
Peshkëpia, V (2012). Teaching and learning, their relations with European integration. Tirana. Fan Noli.
Peshkëpia, V (2012). The Bologna Process and some developments in our higher education. Fan Noli.Tirana.
Joint Report of the Council of Europe and the European Commission: Progress towards Education and Training. Brussels 21.01.2004.
Soutter, R, C. (1995). Standing up to youth violence. Bloomington. Phi Delta.
Tomlinson, A, Carol. (1999).The Differentiated Classroom: Responding to the Needs of All Learners. Alexandria. USA.
Vrapi, A. (July 2015) "Advice for Career in Relation with Multiple Intelligences" Academic Star."Journal of Modern Education Review, Volume 5, Number 7, USA.

Zekaj, Xh. (2018) Teaching methodology and curricula at AMU. “Julvin 2” Tirana.
Internet resources.
1. http:/www.ohchr.org/EN/UDHR/Documents/UDHR_Translations/aln.pdf.Declaration of Human Rights. (Last seen on 23.02.2018).
2. http://www.unicef.org/tfyrmacedonia/.pdf.Declaration of the Rights of the Child. (Last seen on 23.02.2018).
3. Logsdon, A. 2019.https://www.verywellfamily.com/what-are-specific-learning-disabilities-2162888. (Last seen on 23.02.2021).
4. Redlo, J. M. (2021) Barriers in Teaching the Four C’s of 21 st century Competencies https://books.google.com/books?id=ub25BQAAQBAJ&printsec=frontcover&dq=21st+century+educational+competencies&hl=sq&sa=X&ved=2ahUKEwiUvLfRwOn0AhWRC-wKHdjOCM4Q6AF6BAgDEAI. (Last seen on 12.12.2021).
5. Wilson, T. (2018) the giver: Getting students out of their confort zone. English in Texas, 48(1), 20-24 15. https://eric.ed.gov/?id=EJ1262624 (Last seen on 23.11.2021).

International law and policy issues reflected in maritime incidents in light of Ergonomics perspective

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Abstract

The most important law and policy issues relevant to maritime incidents viewed from an ergonomics perspective, are those emanated from the representative of the ergonomic element in the international legal framework i.e. the International Ship and Port Security Code (2002) ISPS, the requirements of which influence the seafarers' performance due to the increased workload on-board ships in spite of constantly low manning levels. These supplementary burdens coupled with the seafarers' isolation and absence of entertainment caused by the new security measures are the impetus for a substantial increased level of fatigue, stress, health problems and subsequently, reduced task performance among seafarers. The identification of these inadequacies, ambiguities, inefficiencies and burdensome elements of the international maritime security regime contributes towards the potential improvements of the maritime law and policy within the global security framework. It is in the purpose of the authors is this article to discuss and analyse these legal issues of the international maritime law and to recommend possible legislative amendments in order to improve the overall performance and efficiency of the seafarers working on-board ships, preventing from occurring as a result potential accidents or incidents in the maritime industry.

Keywords: Maritime law, maritime ergonomics, law of the sea, maritime industry, legal amendments, maritime incidents, ISPS Code (2002), UNCLOS (1982), SUA Convention (1988).

Introduction

An ergonomics perception of a certain maritime incident involves an examination of law and policy issues as it influences or affects the working environment on-board ships, the design of shipboard tasks and organizations, and the management of risks arising threats to maritime security and safety. It involves a synchronised approach using law and ergonomics, with the common denominator - influencing the human performance on-board (Mejia, 2007). Macro-ergonomics studies on maritime security as a subspecialty of ergonomics have a tendency to focus on the international regulations as they affect health and security issues in transportation industry. Considering a potential maritime incident or accident, the International Convention for the Suppression of Unlawful Acts against the Safety of Navigation (SUA), 1988, and its amendments of 2005; the International Convention for the Safety of Life at Sea (SOLAS) XI-2 and ISPS Code; and the UN Convention on the Law of the Sea (UNCLOS) with the Articles 100-108, and 110 are considered the relevant international security instruments dealing with this issue. Bearing in mind the far-reaching presence of shipping industry and the perceived irregularity of most

important accidents, shipping might be generally considered to be a secure and safe industry. Although according to International Maritime Organization (IMO), the inclination over the past decades is characterized by a reduction in severe maritime accidents, the degree of damage caused by a major shipping accident intensifies the public consideration regarding those accidents, and negatively effects the perceived maritime safety and security (O'Neil, 2001).

In this respect, the ISPS Code symbolises the ergonomics component of the international legal regime mainly for maritime security since it is resultant of a progressively seafarer-focussed process at IMO, and is regarded as by a systems method to maritime security management (Rasmussen and Svendung, 2000). An evaluation of the ISPS Code, hence, viewed from an ergonomics perspective, is critical for averting unlawful acts during a potential maritime incident, from happening in the future. The legal debates for the Code concentrated mostly on the technical subsystem – the design of which outlines the tasks to be executed – and less consideration was given to the workforce subsystem – the design of which regulates the ways the tasks are achieved. The rapid timeline in adopting and implementing the Code could not allow for an evaluation of potential consequences on human element. However, it is obvious that the Code has been established to influence the way seafarers work on vessels (Mejia & Mukherjee, 2004).

Implementation of maritime ergonomics on-board ships

In general terms, ergonomics is defined as the "theoretical and fundamental understanding of human behavior and performance in purposeful interacting sociotechnical systems, and the application of that understanding to design of interactions in the context of real settings" (Wilson, 2000, p.557). The International Ergonomics Association (2004), describes ergonomics as the scientific discipline concerned with the understanding of interaction among humans and other elements of a system, and the profession that applies theory, principles, data and methods to design in order to optimize human well-being and overall system performance. Additionally, according to Proctor and Van Zandt (1994), the study of human behavioral and biological characteristics that influence the efficiency with which a human can interact with the inanimate components of a human-machine system is defined as ergonomics. IMO's Maritime Safety Committee Circulation 878: "The interim guidelines for the application of Human Element Analyzing Process (HEAP) to the IMO Rule-Making Process", describes ergonomics as the scientific discipline where the design of equipment is analyzed with the seafarer's features when operating such electronic, mechanical and navigational systems, with the objective of succeeding high level of effectiveness in the work-station. Same definition underlines that the intention of ergonomics is to attain uniform design, plans and arrangement using ergonomics, education and training (IMO, 1999). Due to the negative impact towards the standard traditional maritime norms, regulations, practices and customs, the application of ergonomics in the maritime and shipping industry initially was considered controversial and lacked support among seafarer's community. Nevertheless, currently the establishment of a maritime ergonomics culture is commonly accepted and its application and implementation on the marine

and navigational electronic systems' design on-board ships is legally and practically well defined (Helm, 2008). Ergonomics' design contributions on shipping's safety, security and efficiency consequently is positively perceived not only by the maritime community but from the public opinion as well. Ship-owning companies and IMO consider shipping or maritime ergonomics nowadays an essential and obligatory element and factor within the shipping industry. Maritime ergonomics facilitates, assists and makes more efficient the human-machine interactions on-board ships and electronic system interface, making best use of the seafarer's competences, diminishing professional restrictions, as well as supporting seafarer's safety, security and its overall prospects. Consequently, ergonomics can be responsible for significant feedback after equipping the ship with innovative technology, which would lead to further improve future systems (Wilson, 2000).

Fatigue factor is generally perceived as the main contributing cause towards the human element's performance in sea-ports and on-board ships. In this regard, most definitions of fatigue factor at sea reveals the concept of human's reduced capability as a fundamental element of the definition. Several legal documents by the IMO have outlined the fact that seafarer's fatigue factor is progressively being acknowledged as a main issue in maritime accidents (IMO MSC/Circ.565). Seafarer's fatigue may endangers vessel, passenger, and ship's crew safety and security when it guides to seafarer's error and miscalculation contributing to incidents/accidents. The impact that seafarer's error has towards maritime incidents/accidents has been highlighted by numerous study documents and guidelines by IMO (IMO: MSC 71/ INF.8). Accordingly, it is generally accepted that seafarer's error contributes towards 80 percent of maritime casualties in the context of accidents or incidents (O'Neil 2001). In this respect, the main reason to consider in relations to seafarer's error when designing the human-machine interaction, i.e. the science of ergonomics, is to diminish to the minimum possible the probability of seafarer's error, which often is triggered by human fatigue onboard ships and is considered a maritime safety or security issue. The adoption of a maritime security and safety policy, which embraces human factors, ergonomics designs, supervision and structural programs towards the establishment of maritime safety and security policy, classifies work performance, and evaluates procedure and professional maritime security and safety, is critical in averting seafarer's error (Card et al, 2005). Nevertheless, the effects of the ergonomics' technology integration with the seafarer may not provide sometimes the required safety and efficiency standard, mainly when electronic systems are projected and integrated not taken under consideration seafarer's knowledge, physical properties and professional instructions (Rowley, 2006; Dekker, 2006). Therefore, efficiently planned and executed management and organizational arrangements will potentially foster, control, and monitor a work environment that successfully measures and addresses threat factors on-board ships (Card et al, 2005).

Ergonomics creates and incorporates facts from the human sciences to harmonize occupations, structures, products, and settings to the physical and conceptual human's capacities and restrictions with the final aim of promoting human's health, security, safety, and performance (SO/TC 159/SC 1/WG 1, 1997). Within the context of maritime shipping, the science of ergonomics contributes towards the production of equipments, electronic systems, and general mechanical designs that will support safe, secure and efficient seafarer's performance on-board. With regard to vessel's

bridge, the science of ergonomics reflects the consistent comprehension of the officer of the watch's standard characteristics interacting with the vessel's navigational electronic equipments, taken under consideration the electronic devices that interface with the officer (Mejia, 2007). Ergonomics contribution in vessel's designs, maritime constructions, and electronic systems is mirrored in many studies and legal documents. These documents and norms emphasize the design methods, procedures, functions and norms for succeeding electronic and mechanical equipment's designs on-board ships that are well-matched with seafarers. The officer of the watch's normal features on-board ships demonstrates a potential issues in the international maritime sector because merchant ships are operated by officers from diverse countries, cultures, ethics, standards and languages (Squire, 2005). Likewise, the new constructed vessel's bridges are not each time planned, projected and designed taken under consideration the full application of maritime ergonomics and since modernizing electronic and navigational systems with updated equipment is a standard procedure as well as new diverse devices' marques are interacting with the humans working on-board, the seafarer has to embrace the new technology and get synchronized to the dissimilar human-machine interactions (Rowley et al, 2006). In light of these considerations, the ergonomics' designs, projections and plans on-board ships are of great importance. Ergonomics designs deal with design compatibility, reliability and efficiently of human-machine interaction. Equally, the intercommunications deal with systems/ component's preservation, performance and process. With respect to ship's working environment, these factors involve the design of electronic equipments and marine structures including radars, electronic charts, steering system, global maritime distress safety system components, safety and security measures, abandon ship safety measures, seafarer's performance, compartments and stairs on-board, and inclusive workstation procedures (Moray, 2000). The electronic, engineering and mechanical equipment's production, planning, projects, procedure, design and coordination on-board ships ought to be compatible with the collective, mental, and physical of seafarer's proficiencies and restrictions. On-board shipping design is associated with the seafarer-structure interaction, comprising the workstation's physical design and procedures, and its impact on seafarer's wellbeing and operation. (Card et al, 2005)

Maritime law issues associated with Ergonomics

The ISPS Code purpose, as amongst main legal instruments of the maritime legal regime, is to bring together a global agenda comprising collaboration among contracting states, government structures, national management and the shipping/port industries to identify/evaluate security risks introducing precautionary procedures against security incidents impacting vessels or port services utilized in global trade, which it needs to attain by instituting corresponding roles and accountabilities of all factors involved, at the state and world-wide levels, for safeguarding maritime security (IMO-ISPS Code, 2003, p. iii). The Code arranges for exhaustive measures concerning legal requirements such as the Declaration of Security, Ship Security Assessments, Ships Security Plans, Port Facility Security Assessments, Port Facility Security Plans dealing with security awareness. Along with mandatory regulatory norms that threaten non-compliant ships with arrest or prohibiting from entering ports, the Code has been adopted to create a security culture and to effect the

seafarers' operation on board vessels (Mukherjee and Mejia, 2005), compelling as a result the seafarer's performance in a *modus operandi* which aims the security level's enhancement on-board ships (Rasmussen and Svendung, 2000).
In light of these considerations, it may be submitted that the Code's security norms may be introducing additional liability on the present restricted assets of ships, burdening crew members with amplified responsibilities not taken into account respectively increases in ship crew members (Schroder, Mejia & Wood, 2006). Thus, it is becoming impractical for the crew to carry out their requested security duties together with the normal tasks diligently, efficiently and consciously (ITF, 2007). Further decisive aspects such as seafarer's isolation and privation of social life, which may exacerbate more the circumstances, have as well augmented because of the stringent application of the security measures vis-à-vis seafarer's leave in various ports (Schroder, Mejia & Wood, 2006). These added assignments and measures may lead to problems and consequences for the seafarer's, for instance amplified level of exhaustion, anxiety, well-being issues, as well as reduced efficiency on-board. In this regard, this is a principal matter, since the extreme amount of work on board is the central cause for accidents (Ordemann at al, 1993) and probably incidents. In a case of a potential maritime incident, the ISPS Code may activate the adoption of maritime security laws in states which may be linked in an incident or accident, which then may be applied as foundation for the adoption of security strategies and application agendas for the potential implicated shipping companies. These national security rules and policies together with reduced staffing level on-board may influence the seafarers' performance which may harm as a consequence their alertness (Moray, 2000). The crew member diminution and the augmented amount of work on-may cause a concentration of liabilities on the experts on-board who formerly were accountable for specific jobs, sanctioning thus the lack of expert-knowledge of the seafarer for emergency circumstances – a critical component for safety and security on-board (Deha, 2004).
Mukherjee and Mejia (2005) maintain that ISPS Code may be regarded as a macro-ergonomic process towards the transformation of seafarer's behaviour within the framework of a traditional labour culture on-board. Accordingly, for the entire maritime security legal regime to be compatible, there must be a connection amid the criminal violations expressed in SUA Convention and the norms stipulated in the Code, adopted towards the deterrence and alleviation of the threats connected with those violations The Code is considered practical and procedural and may be associated to its fundamental equivalent in the SUA Convention (Mejia & Akselsson, 2007). It is extensively accepted that protection of crew members in view of maritime security, embodied by SUA Convention, is the communal denominator amongst maritime security and ergonomics, which may be to a degree reproduced in ISPS Code. Thus, ISPS in addition to SOLAS Convention, may possibly originate its legal rationality as a statutory regime from SUA Convention too. One time the maritime legal regime's constituent structures, taking into account ergonomics as well, are regulated and organized, LOS Convention as the oceans' constitution might be legally modified to include as an essential principle, the prevention of numerous illegal acts and their procedural and practical components (Hendrick, 2002).
Opposing to UNCLOS (1982) and SUA Convention (1988), which encompasses maritime criminal law provisions, the ISPS questionably in concerned with ergonomics,

i.e., it attempts to influence the seafarers' performance through elaborate regulatory procedures as precautionary measures in relation to combating criminal offences that pose a threat to maritime security (Mukherjee and Mejia, 2005). The additional maritime legal instruments adopted by the International Maritime Organization such as UNCLOS and SUA although does not represent directly the ergonomics side of the maritime industry they are legally related and interlinked with the ISPS Code, which deals with this important matter. The article 101 of UNCLOS which outlines the acts of piracy is considered problematic element since the requirement for the act to be committed on the high seas or outside the jurisdiction of any state because the absolute majority of the acts of piracy occur within the national waters of coastal states and not on the high seas. In this respect, practically all states could suggest that piracy cannot be regarded as such as defined in the article 101 of UNCLOS (1982). On the other hand, there are opinions that the SUA Convention may correct the legal issues created by Article 101 since piracy can be listed under this Convention as an illegal activity without regard to where it is committed (Beckman, 2002). Bearing in mind that SUA and ISPS Code, which deals with maritime ergonomics, should be in legally interlinked, it is important to comprehend whether the definition of criminal acts, particularly the acts of piracy are efficiently reflected in the SUA Convention (Moray, 2000) Nevertheless, the inadequacy of SUA list of definitions is that not all criminal offences are addressed (Rasmussen and Svendung, 2000), which in turn may create obstacles towards the ergonomics efficiency reflected in the implementation of the ISPS Code.

The obsolete classifications of the piracy in the maritime law caused by the adoption of the contemporary regime of maritime zones may be among the leading causes which might allow the potential offenders to avert coastal states' judicial system, which have ratified UNCLOS (Mejia & Akselsson, 2007). The prerequisite for a piracy activity to take place on the international waters prejudices Article 101 of UNCLOS since the mainstream of attacks take place in waters within the jurisdiction of states. This issue might lead to a discrepancy in the situation of an incident wherever the act of piracy may not have similar description in national or domestic law (Schroder, Mejia & Wood, 2006). Considering this case, the difficulty remains that since a potential incident may be confronted with an alleged act of piracy, it is unavoidably confronted with the concern of defining what legal norms might implemented. Some piracy incidents emphasizes this problem, since it demonstrates how outdated or non-existent national laws on piracy may be, and how criminals may avoid conviction without difficulty (Moray, 2000). Similar significant issues are also mirrored in the legal regime of SUA, which is designed against maritime terrorism and other unlawful acts. The legal instrument's designation denotes to illegal acts but not offers a common character to the felonies it categorizes; it suggests to fight maritime terrorism but nevertheless is unsuccessful to explain it, leaving brutal crimes taking place in coastal sea areas without definition (Rasmussen and Svendung, 2000; Mejia, 2007).

Conclusions

Consequently, the most significant law and policy concerns relevant to a maritime incident or accident regarded from an ergonomics perception, are those originated

from the representative of the ergonomic component in the international legal framework i.e. the ISPS Code, the requirements of which influence the seafarers' performance due to the amplified workload on-board ships in spite of constantly low manning levels. These additional responsibilities together with the seafarers' isolation and absence of social life instigated by the novel security norms might be the incentive for a significant increased level of tiredness, anxiety, well-being complications, and consequently, reduced task performance among crew members. Addressing these legal issues, vagueness, inadequacies and onerous components of the international maritime security regime contributes towards the potential amendments of the relevant maritime law provisions. Furthermore, the structural responsibilities' reassessment of crew members essential in adopting a combined methodology so to circumvent technical requirements' replications caused from ISPS Code standards, may possibly decrease the general amount of work of the seafarers.

As the ISPS is a procedural and practical code regulating maritime terrorism activities thought might be given to interrelate this legal instrument to its essential complement dealing with same legal issues, i.e., SUA Convention. Correspondingly, the adoption and development of cooperation strategies, security conferences, and logistic assistance by international organizations such as UN and IMO may assist towards the enhancement and further competent collaboration and arrangements between states suffering by maritime piracy and violent crimes activity. The coastal states that have ratified and implement these international maritime legal instruments might as well take under consideration to assess, amend or improve their relevant maritime laws reflecting these offences to make certain the security measures' effectiveness and success on their flag ships.

References

Beckman, R.C (2002). Combating Piracy and Armed Robbery Against Ships in Southeast Asia: The Way Forward, *Ocean Development and International Law*, Vol. 33, Nos 3-4.

Card, J.C, Baker, C.C, McSweeney K.P & McCafferty, D.B (2005). *Human Factors in Classification and Certification.* 2005 SNAME Marine Technology Conference & Expo., Society of Naval Architects and Marine Engineers (SNAME). , American Bureau of Shipping, ABS Plaza, 16855 Northchase Drive, Houston, Texas, 77060-6006, USA

Deha, I. (2004). Ship Security System Requirements for Ship Management Companies. *Brodo Gradnja, 52 (2)*, 125-131

Dekker, S. (2006). The field guide to understanding human error. Aldershot England ;Burlington VT: Ashgate.

International Transport Workers' Federation. (2007). *Access Denied: Implementing the ISPS Code–ITF questionnaire*. Retrieved June 20, 2008 from World Wide Web:http://www.itfglobal.org/files/seealsodocs/ENG/6216/accessdenied.pdf

International Maritime Organization MSC/Circ.565 *Fatigue as a contributory factor in Marine Accidents. International Maritime Organization:* 1999.

International Maritime Organization (2003), *International Ship and Port Facility Security Code*, IMO Publication, London.

Hendrick, H.W. (2002). An overview of macroergonomics, p 1-24, in H.W. Hendrick & B.M. Kleiner (eds). *Macroergonomics: theory, methods and applications*. Mawhaw, New Jersey, USA: Lawrence Erlbaum Associates.

Helm, J. (2008). *Bridge design. Ghost Ship to Port!* Nonstop, 2, 45-46.
Kahveci, E. (2007, September/October). The maritime security code three years on. *The Sea,* pp. 4-5
Mejia, M. Q. (2007). *Law and ergonomics in maritime security,* Doctoral Thesis, Lund University, Lund, Sweden
Mejia, M. Q. (2007b). Developing the concept of a security culture on board ships. In M. Q. Mejia, J.J. Xu (Eds.). *Coastal Zone Piracy and Other Unlawful Acts at Sea* (pp.157-169). Malmo: WMU Publications
Mejia, M. Q. (2002). Defining maritime violence and maritime security. In P.K. Mukherjee, M.Q. Mejia, G.M. Gauci (eds), *Maritime violence and other security issues at sea,* Proceeding on the Symposium on Maritime violence and Other Security Issues at Sea, August 2002, World Maritime University, Malmo, Sweden
Mejia, M. Q. & Akselsson, R. (2007). *'AcciMapping' Maritime Security Incidents: a Pilot Study.* Law and ergonomics in maritime security, M. Mejia Doctoral Thesis, Lund University, Lund, Sweden
Mejia, M. Q. & Mukherjee, P. K. (2004). Issues of law and ergonomics in maritime security. *Journal of International Maritime Law,* 12(3): 170-191
Mejia, M. Q. & Mukherjee, P. K. (2006). The SUA Convention 2005: a critical evaluation of its effectiveness in suppressing maritime criminal acts. *Journal of International Maritime Law,* 10(4): 316-326.
Moray, N. (2000). *Culture, politics and ergonomics. Ergonomics,* 43(7): 858-868
MSC 69/INF.16. Report on the Investigation into Near Misses. International Maritime Organization: Author.
Ordemann, F., Prieser, C., Cuo, C. at al. (1993). *EC Project MASIS, Euret Program Theme 2.4. Human Factors in the Man/Machine System for the European Fleet.* Bremen: Institute of Shipping Economics and Logistics.
O'Neil, William A. The human element in shipping. Keynote Address, Biennial Symposium of the Seafarers International Research Centre, Cardiff, Wales, 29 June 2001
Schroder, J. U., Mejia, M. Q. & Wood, A. (2006). *Human element (HE) implications of the implementation of the International Ship and Port Facility Security (ISPS) Code.* In Maritime Transport III 2006 (pp. 861-870). Barcelona: Technical University of Catalona.
Squire, D. (2005, January 15). The human element in shipping. Retrieved July 1, 2008, from the World Wide Web: http://www.he-alert.com/documents/published/he00350.pd
Rasmussen, J & Svendung, I (2000). *Proactive Risk Management in a Dynamic Society, Graphic Representation of Accident Scenarious*, Karlstadt, Sweden: Raddningsverket
Rowley, I., Williams, R., Barnett, M., Pekcan, C., Gatfield, D., Northcott, L., Crick J. (2006). *Development of guidance for the mitigation of human error in automated shipborne maritime systems.* Retrieved June 6, 2018, from the World Wide Web: http://www.mcga.gov.uk/c4mca/research_report_545.pdf.
Proctor, R. W & Van Zandt, T (1994), *Human Factors in Simple and Complex Systems*, Needham Heights, Mass: Allyn and Bacon, pp. 2 & 449-500.
Wilson, J. R. (2000). *Fundamentals of ergonomics in theory and practice*. Applied Ergonomics, 31, 557-567.

Motivation and Social Media are important part of Business Activity

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Abstract

Motivation is the word derived from the word 'motive' which means needs, desires, wants or drives within the individuals. It is the process of stimulating people to actions to accomplish the goals. In the work goal context, the psychological factors stimulating the people's behaviour can be - desire for money.
Social networking sites (e.g., Facebook, LinkedIn, Google+) are one of six types of social media tools identified by Kaplan and Haenlein on the basis of the degree of self-presentation and self-disclosure required, the degree of intimacy and the immediacy of the medium, and finally the amount and the type of information that can be transmitted in a given time (described as media richness). The remaining five categories include collaborative projects (e.g., Wikipedia, Google Docs), blogs and micro-blogs (e.g., WordPress, Blogger, Twitter), content communities (e.g., YouTube), virtual game worlds (e.g., World of Warcraft), and virtual social worlds (e.g., Second Life). In the majority of the organisations interviewed, all of the staff did not have access to social media for business purposes. Several reasons were identified for this and included other work requirements preventing staff from actively participating in social media use. Other suggestions were reluctance of staff to use social media for fear of saying something inappropriate about the business and lack of familiarity with social media in some staff members.
This paper aims to give a clear description of the terms and concepts of social media and motivation in organization and also aims to identify factors that affect the motivation of employees in public administration from the perspective of Expectancy Theory of Vroom. Motivation and social media are a hypothetical construct that is used to explain behavior and it should not be equivalent to it.

Keywords: Social media, Motivation, Public Administration, Expectancy Theory.

1. Introduction

Motivation is what explains why people or animals initiate, continue or terminate a certain behavior at a particular time. Motivational states are commonly understood as forces acting within the agent that create a disposition to engage in goal-directed behavior. It is often held that different mental states compete with each other and that only the strongest state determines behavior. This means that we can be motivated to do something without actually doing it. The paradigmatic mental state providing motivation is desire. But various other states, such as beliefs about what one ought to do or intentions, may also provide motivation.
Various competing theories have been proposed concerning the content of motivational states. They are known as *content theories* and aim to describe what goals usually or always motivate people. Abraham Maslow's hierarchy of needs and the ERG theory, for example, posit that humans have certain needs, which are responsible for motivation. Some of these needs, like for food and water, are more basic than

other needs, such as for respect from others. On this view, the higher needs can only provide motivation once the lower needs have been fulfilled. Behaviorist theories try to explain behavior solely in terms of the relation between the situation and external, observable behavior without explicit reference to conscious mental states.
Motivation may be either *intrinsic*, if the activity is desired because it is inherently interesting or enjoyable, or *extrinsic*, if the agent's goal is an external reward distinct from the activity itself. It has been argued that intrinsic motivation has more beneficial outcomes than extrinsic motivation. Motivational states can also be categorized according to whether the agent is fully aware of why he acts the way he does or not, referred to as conscious and unconscious motivation. Motivation is closely related to practical rationality. A central idea in this field is that we should be motivated to perform an action if we believe that we should perform it. Failing to fulfill this requirement results in cases of irrationality, known as akrasia or weakness of the will, in which there is a discrepancy between our beliefs about what we should do and our actions.
Most of the businesses in the survey made use of analytics tools to track whether social media resulted in conversions to customers. However, three of the businesses described the difficulty of effectively monitoring how social media interaction converts to value for the business. Motivation and social media, being at the same time very complex and contradictory, is probably one of the managements of which much has been written because a working environment with a high motivation staff is alive, energetic, collaborative, and flexible where everyone finds pleasure to work there. A demotivated working environment is drab and listless, full of conflicts, characterized by abstention and low productivity and is uncomfortable (J. Carlopio at al 2008) [1]. The study of motivation and its role in the dynamics of each activity is increased continuously in recent years and currently motivational issues today have regained the attention of various scholars, both in theoretical and in practical terms. These gained experiences have stimulated intensively the development of different motivational theories. This means that currently most of today's researchers and researches on motivation conclude that in this regard there are enough gaps and deficiencies, which must be repaired.

2. Social media and marketing

Marketers target influential people on social media who are recognised as being opinion leaders and opinion-formers to send messages to their target audiences and amplify the impact of their message. A social media post by an opinion leader can have a much greater impact (via the forwarding of the post or "liking" of the post) than a social media post by a regular user. Marketers have come to the understanding that "consumers are more prone to believe in other individuals" who they trust (Sepp, Liljander, & Gummerus, 2011) [2].Use of social media platforms and websites to promote a product or service is very important in market economy. Most of these social media platforms have their own built-in data analytics tools, which enable companies to track the progress, success, and engagement of ad campaigns. Companies address a range stakeholder through social media marketing including current and potential customers, current and potential employees, journalists, bloggers, and the general public. On a strategic level, social media marketing includes the management of the implementation of a marketing campaign, governance

3.Data collection

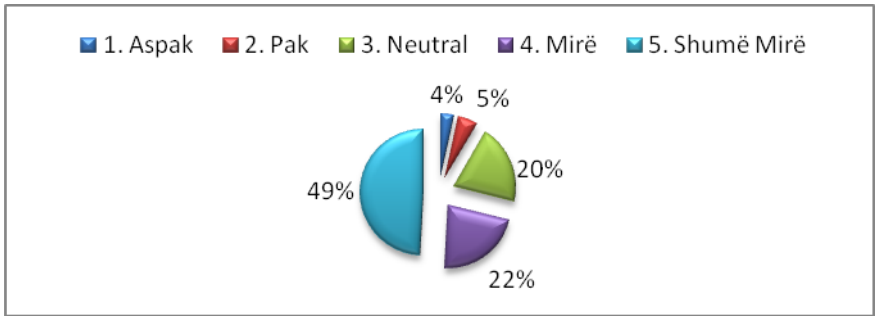
The paper was conducted in both institutions, such as the Institute of Health Care Insurance and the Treasury Department of Tirana, in Tirana city. Entrance to these institutions was mediated through the authorization and permission of the director of the relevant institution and then the procedures were eased in order to establish contact with the employees of these institutions.The method of data collection has been through face to face interviews in order to complete the questionnaires and in some cases the questionnaire was left to be filled by employees themselves. Firstly, to the employees were explained the purpose of the study and the fact that it is anonymous, as well as its rights to stop at every moment that he didn't want to continue and as well to ask for any confusion that may have. After this explanation, to employees were asked the approval for participating in this study. After the approval has been preceded with the completion of the questionnaire, which lasted about 15-20 minutes. In some cases the questionnaire was left to be filled in work environments and is taken in a second time after it was completed. At the same time in this case the necessary explanation is given to unclear questions. At the beginning of each questionnaire, employees were explained about the purpose of the relevant questionnaire, referring to his instructions, and the way in which to respond which varied according to the survey.

4. Analysis of the third section of the questionnaire (Measurement of motivation of employees in the organization)

The third section of the questionnaire has as its goals to measure the motivation of the employees in the organization. The third section is divided into three issues: 1. Connection: Efforts – Performance, 2. Connection: Performance - Reward and 3. Realization of expectations.

5. Expectancy (E): Effort ⚜ Performance (E⚜P).

Graph 1: If you work hard, are you able to achieve maximum performance?



Based on the analysis made to the data of this question resulted those 2 persons or 4% of respondents answered *No*, 3 persons or 5% of the respondents answered *a little*, 12 individuals or 20% of the respondents answered neutral, 13 individuals or 22% of the respondents answered *good* and 29 individuals or 49% of the respondents answered *very good*. From these data it appears that the majority of respondents 49% or 29 individuals stated that, if they work harder, they have the potential to reach a maximum performance at work.

6. Conclusions

Popular social media such as Facebook, Twitter, LinkedIn, and other social networks can provide marketers with a hard number of how large their audience is nevertheless a large audience may not always translate into a large sales volume [3].
Social networking websites are based on building virtual communities, that allow consumers to express their needs, wants and values, online. Social media marketing then connects these consumers and audiences to businesses that share the same needs, wants, and values. Through social networking sites, companies can keep in touch with individual followers. The purpose of this paper was based on contemporary literature in the field of motivation, to build a picture of the reality regarding the motivation of employees in public administration, according to the Expectancy Theory of Vroom, and to see which factors affect motivation of employees in the public sector.
At the end of this work, we are able to realize that motivating employees is a very important element, which has a direct influence on the economic success of the companies, but not only that, it also improves the emotional and psychological state of employees making them more willing to work and to improve their performance. Also, we are able to identify some of the techniques of motivation, as well as factors that make it necessary the employee motivation. Motivation, being at the same time very complex and contradictory, is probably one of the management issues of which much has been written because a working environment with a high motivation staff is alive, energetic, collaborative, and flexible where everyone finds pleasure to work there. A demotivated working environment is drab and listless, full of conflicts, characterized by abstention and low productivity and is uncomfortable (J. Carlopio at al 2008) [4]. The study of motivation and its role in the dynamics of each activity is increased continuously in recent years and currently motivational issues today have regained the attention of various scholars, both in theoretical and in practical terms.

References

Carlopio, J. *at al* (2008). Developing management skills: A comprehensive guide for leaders. Bond Business School Publications.
Sepp, Liljander, & Gummerus, (2011) Strategies for Increasing Motivation.
Eric, J. (2004). Strategies for Increasing Motivation. *Nicros*.
Carlopio, J. *at al* (2008).Motivation and management skills.