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Submissions

SEEU Review aims to provide an international forum for research, analysis, and debate from a broad range of fields, such as: economics, law, public administration, education, language and linguistics, philosophy, sociology and environmental health sciences. SEEU Review will accept the following types of articles for consideration: research, position papers, white papers, and reviews.

SEEU Review seeks to publish original work that demonstrates currency and relevance to the field of study. Submitted manuscripts must not be currently under consideration for publication elsewhere, and authors must assign copyright to South East European University if the manuscript is selected for publication.

Authors should submit their articles electronically to SEEU Review in Microsoft Word format, and all manuscripts must be spell-checked and proofread prior to submission. All submissions must follow APA (American Psychological Association) style for format and references. Manuscripts should not exceed 8,000 words, including the abstract (which should be 200 to 300 words), references, and other elements. Authors are discouraged from using figures. If there is sufficient cause to include figures, authors must submit original electronic copies in EPS, TIF, or high-resolution JPG format.

The entire manuscript, including the abstract, the reference list, and any tables should be presented as A4 single-spaced typescript in 12-point Times New Roman. It should begin with a cover page, giving the title of the paper, the name(s) of the authors (s), institutional affiliation(s) and the correspondence address (and e-mail address), a suggested shorter title for running heads, and three to five keywords. Authors should also provide a 100-word biographical note. On the next page, put the article title and the abstract. All pages must be numbered.

Sections of the article should follow this order: Cover page, Abstract, Body & References.

All submissions will be requested via an open Call for Papers. The Call may be completely open or based on a specific theme, based on the decision of the Editor-In-Chief of the SEEU Review. To assure the highest standards for the publication, all manuscript submissions will be refereed through a peer review process. Additionally, all manuscripts will be subject to review for plagiarism. The preferred language for manuscripts is English, but submissions in Albanian and Macedonian may be considered under specific requests.

Copyright for articles accepted for publication in SEEU Review will be ceded to South East European University.

Manuscripts/research papers should be submitted to the Editor via review@seeu.edu.mk

Contents

| | | |
|-------------------------------------------------------------------------------------------------------------------------------------------|-----|--------------------------|
| Foreword by the Editor in Chief | 5 | Murtezan Ismaili |
| The work of the Human Rights Center | 9 | |
| Are prisoners entitled to human rights? The development of the imprisonment sentence and the treatment of prisoners in Macedonia | 11 | B. Arifi |
| Freedom of speech seen from the perspective of Article 10 of the European conventions on human rights and fundamental freedoms | 41 | L. Stojani |
| The right to education: the language issue in higher education in SEE countries | 57 | D. Farrington |
| Penal sentences during 1945-1991 in Albania | 69 | F. Sufaj & A. Shahu |
| Right to a fair trial under international Human Rights Law | 95 | J. Daci |
| Sovereignty challenged the United Kingdom's adoption of the Human Rights Act in 1998 | 111 | M. Luana |
| The global entrapment-on the phenomenon of poverty in a global context | 123 | L. Spasovska |
| Economic challenges for Macedonian economy toward European Union integration | 141 | B. Dauti & P. Pollozhani |
| The application of technology in enhancing multicultural and multilingual aspects of education: digital divide into digital opportunities | 165 | A. Abazi & B. Fetaji |
| The European Union policy in field of environment | 179 | Z. Sapuric & V. Zenki |
| The economic development against the natural life and eel | 195 | A. Dauti |
| Lidhja e Prizrenit në veprën "Lahuta e malcis" të Gjergj Fishtës | 203 | V. Bexheti |

Foreword • Hyrje • Предговор

Welcome to the sixth issue of the SEEU Review. We have devoted the greater part of this issue to the critically important subject of human rights: freedom of speech, rights of prisoners, penal sentences, right to a fair trial, right to education, etc.

This collection of papers demonstrates a widely diverse attention to human rights issues crossing the disciplines of law, political science, cultural theory, economics, and sociology. Rights issues are treated in different contexts across different substantive thematic areas using different theoretical perspectives. Human rights scholars and practitioners alike will gain valuable insights into the complexity of human rights issues and human rights arguments. I warmly welcome this initiative and its editorial team has put mechanisms in place to guarantee its future longevity and continuity.

We welcome as well the academic collaboration with staff of other universities. SEEU is an open institution, having strong and developing links with other institutions, both in the region and further afield.

Finally we wish to thank our staff for their commitment and dedication. We thank Prof. Dennis Farrington, President of the SEEU Board for his prompt and excellent advice, Mrs Diturije Ismaili for her outstanding administrative support and Ms Besa Arifi, Director of SEEU Human Rights Centre, for constant and efficient editing of reports as required.

The call for the next issue of the Review will be published at the beginning of the year, with a target date of May/ June 2009 for the seventh issue.



Mirë se erdhët në botimin e gjashtë të SEEU Review. Një pjesë të madhe të këtij botimi ia kemi kushtuar çështjeve të rëndësishme të të drejtave të njeriut si: liria e fjalës, të drejtat e të burgosurve, dënimet penale, e drejta për gjykim të paanshëm, e drejta për arsimim, etj.

Kjo përmbledhje e punimeve shkencore paraqet këndvështrime të ndryshme lidhur me çështjen e të drejtave të njeriut duke përfshirë disiplinat e drejtësisë, shkencat politike, teorinë kulturore, ekonominë dhe

sociologjinë. Çështjet e të drejtave janë trajtuar në kontekste të ndryshme përtej sferave të ndryshme tematike, të pavarura nga njëra tjetra, duke përdorur perspektiva të ndryshme teorike. Studiuesit si edhe zbatuesit e të drejtave të njeriut, do të përfitojnë njohuri të çmueshme mbi kompleksitetin e çështjes së të drejtave të njeriut. Unë e përgëzoj këtë iniciativë dhe ekipin redaktues i cili është angazhuar për të garantuar jetëgjatësinë dhe vazhdimësinë e saj.

Ne mirëpresim po ashtu edhe bashkëpunimin akademik me stafin e universiteteve të tjera. UEJL është një institucion i hapur që ka bashkëpunim të mirë me institucionet tjera, si në rajon ashtu edhe më gjerë.

Në fund, duam ta falënderojmë stafin tonë për angazhimin dhe përkushtimin. Falënderojmë Prof. Dennis Farrington, president i Bordit të UEJL-së, për këshillat e tij shtytëse dhe të shkëlqyera, Diturije Ismaili për mbështetjen e saj të jashtëzakonshme administrative dhe Besa Arifi, drejtoreshë e Qendrës për të drejtat e njeriut të UEJL-së, për redaktimin e raporteve në mënyrë të vazhdueshme dhe efikase.

Konkursi për numrin e shtatë të Revistës do të shpallet në fillim të vitit të ardhshëm, dhe do të mbyllet përafërsisht në maj/qershor të vitit 2009.



Ова е шестото издание на Научниот магазин на ЈИЕУ. Голем дел од ова издание посветивме на важните теми од областа на човековите права : слобода на говор, правата на затворениците, кривичните пресуди, правото на фер судење, правото на образование итн.

Овој збир на научни трудови демонстрираат значително различно разгледување на човековите права преминувајќи ги законските дисциплини, политичките науки , културната теорија, економијата и социологијата. Прашањата за правата се третирали во различни контексти низ различни важни тематски области користејќи различни теоретски перспективи. Специјалистите за човекови права и адвокатите ќе се здобијат со вредни проникливости од комплексноста на темите за човековите права и аргументите за човековите права. Јас срдечно ја поздравувам оваа иницијатива и уредничкиот тим кој правилно ги распореди механизмите за да осигура една долговечност и континуитет.

Ние исто така ја поздравуваме академската соработка со кадарот од другите универзитети. ЈИЕУ е отворена институција која има јаки и развојни врски со другите институции во регионот и пошироко.

На крајот, им се заблагодаруваме на нашиот кадар за нивната посветеност и ангажираност. Им се заблагодаруваме на проф. Денис Фарингтон, Претседателот на Одборот на ЈИЕУ за неговите навремени и одлични совети, г-ѓа Дитурије Исмаили за нејзината извонредна административна поддршка и г-ица Беса Арифи, Директор на Центарот за човекови права при ЈИЕУ за потребното, за константното и ефикасното уредување на извештаите.

Повикот за доставување трудови за следното издание на Научниот магазин ќе се објави на почетокот на следната година. Седмото издание на Научниот магазин се очекува да излезе од печат во мај/јуни 2009 година.

Prof. Dr. Murtezan Ismaili
Pro-Rector for Research and Quality, SEEU.
Prorektor për hulumtime dhe sigurim të cilësisë, UEJL
Проректор за истражување и квалитет при ЈИЕУ

Human Rights Centre of South East European University

The Human Rights Centre of the South East European University in Tetovo was established with the purpose of promoting studies on, introduction to, and, respect for human rights. The Founder of The Centre is the South East European University in Tetovo. The Centre represents an integral part of the SEE University. It has an interdisciplinary character and is a non-profit institution based in the SEEU Campus; therefore the SEE University assures working conditions and adequate space for The Centre.

The Centre was established in 2004 and its Statute was recently amended (In September 2007) giving the Centre wider opportunities and competences for activity in this field.

The main goal of HRC - SEEU is to contribute to, and promote the study, respect and implementation of human rights. In order to achieve these goals, the Centre tends to:

- Promote education on human rights;
- Collect literature, documents and information related to human rights;
- Promote and conduct research activities in the field of human rights at national and international level;
- Provide advisory services and give opinions on issues related to human rights to governmental institutions and non-governmental organizations;
- Translate documents and materials in the field of human rights;
- Promote the results of studies and research in the field of human rights;
- Publish and distribute materials related to human rights;
- Promote teaching in the field of human rights at all levels of education;
- Organize courses and other forms of training for developing skills of the staff in the field of human rights on its own or in cooperation with other interested institutions;
- Organize lectures, seminars, symposia and conferences on human rights at the national and international level;
- Develop cooperation with similar centers, institutions, governmental and nongovernmental organizations and other bodies active in the field of human rights.

During the academic year 2007-2008, the Human Rights Centre – SEEU organized a series of presentations connected to different fields of human rights such as a debate on the International Day of fighting Violence Against Women, and a presentation of the HRC – SEEU as well as a lecture on the situation of human rights in Macedonia marking the International Day of Human Rights. On May 6-7, 2008 this Centre organized the International Conference on Trafficking in Human Beings which was widely followed and where important conclusions were reached.

The HRC has been part of two important research projects: the first one was supported by the SEEU and dealt with Prisoners' rights, whereas the second was supported from the Austrian Government and provides a comparative analysis of the failures of democratization and human rights in Macedonia, Kosovo and Bosnia and Herzegovina. The latter project is implemented together with three other partners: The Human Rights Centre of University of Prishtina, The Human Rights Centre of the University of Sarajevo and the European Training and Research Centre for Human Rights of the University of Graz.

The HRC – SEEU collaborates closely with the three mentioned Centers for Human Rights as well as with other institutions that work in this field such as the Helsinki Committee for Human Rights in Macedonia, the OSCE and UNDP missions here, etc. It has a newly established library that provides books in this area of study for students and staff.

Are prisoners entitled to human rights? The development of the imprisonment sentence and the treatment of prisoners in Macedonia

Besa Arifi, MA

Director of Human Rights Centre – SEEU

*The degree of civilization in a society can be judged
by entering its prisons.*

Fyodor Dostoevsky

Abstract

This paper aims to present the results of the research project: “The treatment of prisoners, members of ethnic communities in two prisons in Macedonia” completed by the Human Rights Centre – SEEU. The highly criticized reality that rules in the prisons in Macedonia has been closely analyzed through the implementation of the questionnaires for the prisoners and the administrating staff. Theoretical and comparative background related to the imprisonment sentence, its historical development and prisoners’ rights movements has also been included. The purpose of this research paper is to raise the awareness of the existing problems in this field and to offer some ideas about initiating some changes in the penitentiary system in Macedonia. Some of the proposed changes are related to the strengthening of the rule of law principles that are lacking in this country, whereas the others are related to some new practices that find their successful implementation in other countries.

Abstrakt

Ky punim ka për qëllim prezentimin e rezultateve të projektit hulumtues: “Trajtimi i të burgosurve - pjesëtarë të komuniteteve në dy burgje të Maqedonisë” i realizuar nga Qendra për të Drejtat e Njeriut, UEJL. Realiteti i kritikuar zëshëm që ekziston në burgjet e Maqedonisë është analizuar me kujdes nëpërmjet implementimit të pyetësorëve për të burgosurit dhe stafin administrues të burgjeve. Punimi njëherit përfshin edhe njohuri teorkike dhe komparative lidhur me dënimin me burg, zhvillimin historik të këtij dënimi si dhe lëvizjet për të drejtat e të burgosurve. Qëllimi i këtij punimi shkencor është ngritja e vetëdijes për problemet eksistuese në këtë fushë si dhe ofrimi i disa zgjidhjeve të mundshme për inicim të ndryshimeve në sistemin penitenciar të Maqedonisë. Disa nga ndryshimet e propozuara lidhen ngushtë me përforcimin e mekanizmave të shtetit të së drejtës në këtë vend, ndërsa të tjerat janë të lidhura me praktikat që implementohen suksesshëm në disa vende tjera e që mund të shërbejnë si shembull në rastin tonë.

Абстракт

Овој труд има за цел да ги презентира резултатите од истражниот проект “Односот кон затворениците – членови на заедниците во два затвора во Македонија”, имплементиран од Центарот за Човекови Права – УЈИЕ. Општо критикуваната реалност која владее во затворите во Македонија е анализирана преку реализирањето на прашалниците наменети за затворениците и за административниот стаф на двата затвора. Теоретските и компаративни сознанија за казната затвор, нејзиниот историски развој како и појавувањето на движењата за правата на затворениците се истотака вклучени во трудот. Целта на ова истражување е да ја подигне свеста за постоечките проблеми во ова насока како и да понуди неколку идеи за иницирање на промени во пенитенциарниот систем на Македонија. Неколку од предложените промени се поврзани со подобрувањето на владеењето на правото во ова земја додека другите се поврзуваат со неколку нови искуства докажани како успешни во другите земји а кои можат да послужат како пример во нашиот случај.

Introduction

Prisons are often characterized as houses of terror, dungeons, dark places where people suffer for the wrongs they have committed. But it is well known that the human dignity cannot afford compromises and it should be treated and respected seriously both by the individual and the state.

Having in mind the bad conditions of the prisons and jails in Macedonia which are often emphasized, closely looked at and criticized by the NGOs and international institutions here, it was decided that a separate research should be undertaken in order to affirm this problem that must find a solution with respect to the aim of this country towards the European integrations. Namely, in October 2007, the Research Counsel of SEEU approved the project proposal of the Human Rights Centre to conduct a research within two prisons in Macedonia, Idrizovo and Tetovo, in order to find out more about the treatment of the prisoners, their human rights and whether there is an evident discrimination on ethnic basis there. Beside this, the project would give a comparative and theoretical analysis of the imprisonment sentence and its development. It was supposed to be a short research project according to the proposed time frame. But in reality, as it will be explained later, it was a hard job to do since a lot of procedures had to be followed and sometimes, administrative problems occurred that made the whole research last longer than it was predicted.

During November and December 2007, the questionnaires were created by me as the project coordinator. The idea was to formulate a series of questions that will help the interviewees to systemize their answers so that their interviewers get the data that was needed in order to find out about the living conditions in the selected prisons and about their treatment there. The questionnaires were reviewed by the supervisors, Prof. Dr. Vlado Kambovski and Doc. Dr. Ismail Zejneli as experts in criminal law. Prisoners, men and women, were interviewed as well as guardians, social workers, medical workers and the administrators of the prisons. The interviews were provided and completed by the collaborators: Ermira Sulejmani, a postgraduate student in SEEU and Izeir Neziri, a postgraduate student of UKIM Skopje. Both of our interviewers were astonished by the sad and harsh reality that they found in the prisons, they were shocked by what they saw and transmitting it here, the whole research team would like to raise the awareness about this shame that lies upon this state always considering the above mentioned sentence of Dostoevsky as extremely relevant and true.

In this paper, an explanation of the imprisonment sentence will be given through looking at the historical development of this sentence until the modern times. A comparative view will also be presented, analyzing the living conditions in prisons in different states. The prisoners' rights movement will also be explained. Furthermore, the situation analyzed in the two mentioned prisons will be explained and presented. In the conclusions, some recommendations will be emphasized in order to give some ideas about ways of changing this sad situation.

The historical development of the imprisonment sentence

The imprisonment, as a separate sentence, historically developed relatively late. In fact, prisons, dungeons and other places where the criminals were kept are known and recognized from the early beginnings of the development of the notion of the state, however, until the end of 18th century, they only served “to confine criminals until corporal or capital punishment was administered¹”. As Morris stipulates, “before the eighteenth century the prison was only one part, and by no means the most essential part, of the system of punishment²”. During that time, the only purposes of the criminal law and justice were: retribution, realized through capital or corporal punishments as well as general prevention for the audience that intended to stop the others from doing crimes by publicly punishing the criminals.

Prisons of this kind were used for detention in Jerusalem in Old Testament times³, as well as in all the other ancient and medieval civilizations such as ancient Greece and Rome. Dungeons on the other hand, were used to hold prisoners; those who were not killed or left to die there often became galley slaves or faced penal transportations. In other cases debtors were often thrown into debtor's prisons, until they paid their jailers enough money in exchange for a limited degree of freedom⁴. Thus, it can easily be seen that what lacks in the nature of these institutions is the goal of rehabilitation and re-socialization that appeared later as well as the evolution of the purpose of this institutions from being only a place where prisoners

1 The explanation of the prison concept in Wikipedia, available on URL <http://en.wikipedia.org/wiki/Prison> on Aug. 25, 2008.

2 Morris & Rothman; *The Oxford History of the Prison: The Practice of Punishment in Western Society*, p. vii.

3 See the explanation of the prison concept in Wikipedia, available on URL <http://en.wikipedia.org/wiki/Prison> on Aug. 25, 2008.

4 Ibid.

are held while waiting for their sentence, to an institution where criminals serve their sentence.

Today, a prison, penitentiary, or correctional facility is a place in which individuals are physically confined or interned and usually deprived of a range of personal freedoms, while a prison system is the organizational arrangement of the provision and operation of prisons, and depending on their nature, may invoke a corrections system⁵. Another very popular concept similar to the prison is the “jail” concept, which is widely used in the everyday language. However, there is an essential legal difference between those two concepts since typically jails are intended to hold persons awaiting trials or serving sentences of less than one year, whereas prisons host prisoners serving longer sentences⁶. In these terms, regarding to the present research, the Idrizovo penitentiary institution in Skopje serves as a prison, since it hosts prisoners convicted to sentences longer than two years, while the penitentiary institution in Tetovo serves as a jail where persons convicted to less than two years serve their sentence.

This represents one of the main ways to classify and categorize the convicted persons, which is usually done with the purpose of finding a convenient rehabilitation and re-socialization program for them. But it has not been like this forever. The rehabilitation goal developed slowly during the last century whereas the retribution purpose was evident from the very beginning, as it will be explained below.

Factors that justify the appearance of the imprisonment sentence

As it was mentioned earlier, the imprisonment as a separate sentence appeared in the last years of the 18th century. The penologist Sulejmanov⁷ explains this fact through mentioning some factors that justify this fact:

1. The imprisonment sentence appears after the French Revolution when the new era of capitalism begins to develop. In this new socio-economic system the right to life and liberty and private property appeared as new and relatively unknown concepts that became available and immanent to everyone, not just to a separate category of people. This change in the system of values in the new formed organizational system made the right to freedom and liberty a very

⁵ Ibid.

⁶ Ibid.

⁷ Sulejmanov “Пенологија” (Penology). pp. 165-168.

important and immanent right and therefore according to this new system, taking away this right began to represent a serious and harsh punishment for a certain person.

2. The strong relation between the punishment system and the production policy and social relations is a second factor mentioned by Sulejmanov. Namely it is emphasized that the new era where the labor was highly needed in the newly founded capitalist society identified the prisoners as a new category of persons whose labor can be used in different ways for a very cheap price.
3. Furthermore, the new orientation of the criminal law concepts gave more importance to the humanity principle and redirected the purposes of the punishment towards the convicted person who was to be re-socialized in order to live as a common citizen, and not only to the society. This was a new and revolutionary development that appeared through the classical and anthropological-positivistic school.
4. Finally, the new type of national states with new and stronger institutions made the implementation of the imprisonment sentence much easier than earlier having in mind the simpler and economically less developed feudal system.

These are some of the factors that help understanding the reason of the appearance of this sentence through understanding the general social development and the change of the system of values that emphasized some newly recognized rights as sacred and immanent to everyone, thus making their deprivation harder than ever before.

Penitentiary systems

To conclude with the historical evolution of the imprisonment sentence, the different penitentiary systems must be explained in order to notice the redirection of the purpose of this sentence and the reorientation of this system towards the convicted persons.

The associative system or the joined imprisonment

According to the experts, this is not even a penitentiary system since there is no classification and no program for the convicted persons who used to be kept together regardless their age, sex, the crime for what they were convicted, the length of their sentence and their personal needs. It represented the most primitive way of only isolating the prisoners in a closed space where they were held away from the other people. Inside the so called prison a chaotic way of life occurred since there was not any kind of program or deprivation for the convicted persons. They were allowed to drink alcohol, gamble and do all the other things that are usually forbidden in a prison. This system was characteristic for the first years of the appearance of the imprisonment sentence especially in UK where prisoners were usually held in abandoned ships in the Thames River in very bad living conditions which caused different epidemic diseases that used to infect the other part of the population too⁸. This caused a general revolt of the illuminists of this period who asked for immediate prison reforms such as Jeremy Bentham and John Howard who are known as the fist reformers in this regard asking for a more human treatment of the prisoners and for a substantial reform where something more should be done for the convicted persons while serving their sentences instead of allowing their chaotic lives continue even worse inside the prison walls.

The cell system

a) The Pennsylvanian cell system

This is the first prison of this kind which dates from the early 1792 and was established in Philadelphia (Pennsylvania, USA) and was called The Walnut Street Prison, while later on 1828 another prison of this kind was established , the famous Cherry Hill Prison. These prisons were characteristic because they represented a totally opposite picture compared to the previously mentioned prisons of the associative system. The Pennsylvanian prisons were very carefully organized and very severe in terms of the fact that there was no communication between the prisoners: they were all separated into cells, they were never allowed to leave their cell while serving the sentence, they didn't do any kind of work, they couldn't do any kind of reading except the Bible, the cells were small and with small windows that looked at nowhere; so having all this in mind, it can be said that the only purpose of these prisons was to make the prisoners suffer for

⁸ For more information check on Sulejmanov "Пенологија" (Penology), pp 176-182 as well as Janet Semple's: Bentham's Prison: A Study of the Panopticon Penitentiary.

what they have done and repent for that through making them think and contemplate for their wrongs.

This is a very harsh type of prison and the result of all this effort was that usually the prisoners were not that tough to overcome this penalty. Numerous suicides took place since the lack of programs for work and rehabilitation, the lack of communication and the lack of getting information through reading was very hard to bear. Even though the original idea was to stop the communication between prisoners in order to stop the “criminal infection” among them, this kind of imprisoning showed as very unsuccessful since the prisoners mental life was seriously harmed as well as their physical condition, their labor remained totally unused and the punishment was in general unfair in regard of the modern standards of justice⁹.

b) The Auburn cell system

The **Auburn system**¹⁰ (also known as the **New York System**) is a penal method of the 19th century in which persons worked during the day in groups and were kept in solitary confinement at night, with enforced silence at all times. The silent system evolved during the 1820s at Auburn Prison in Auburn, N.Y., as an alternative to and modification of the Pennsylvania system of solitary confinement, which was gradually replaced by the first one. Whigs favored this system because it promised to rehabilitate criminals by teaching them personal discipline and respect for work, property, and other people. This kind of prison was established partly because of the simple fact that the Pennsylvanian system showed as very inconvenient and useless and partly because it was understood that the labor of the prisoners is to be used in a proper way. The main characteristics of this prison were that the prisoners were kept together during the day while doing their work, but they were not allowed to talk to each-other (the famous “silence rule” aiming to disallow the communication among them which would lead to sharing their experience and influencing negatively on the others), the prisoners used to wear simple clothes made from a grayish material with horizontal stripes.¹¹ A revolutionary system of transporting the convicts around the prison complex was also created. The prisoners marched in unison and had

⁹ For more information about this system read Sulejmanov “Пенологија” (Penology), pp. 182-187, as well as Stephen D. Gottfredson, Sean McConville; America's Correctional Crisis: Prison Populations and Public Policy; and Victoria R. DeRossia; Living inside Prison Walls: Adjustment Behavior.

¹⁰ Generally explained in Wikipedia, available from URL http://en.wikipedia.org/wiki/Auburn_system on Aug. 27, 2008 and in On the Penitentiary System in the United States and Its Application in France, Gustave De Beaumont, Alexis De Tocqueville.

¹¹ Ibid.

to lock their arms to the convict in front of them. The prisoners had to look to one side and were not allowed to look at the guards or the other inmates¹².

Even though the aim was to step forward with the organization of the prisons in this respect and to provide the convicts with a program that would help them do better in the everyday life, still all this proved unsuccessful since there was not yet an evident and efficient program for rehabilitation.

The progressive penitentiary system

The progressive system can be originally found in different countries such as UK or Ireland. But for the first time, this system was used in the prison colony of Norfolk Island by the revolutionary administrator Alexander Maconochie. He is known as the inventor of the progressive system that was used during his administration and consisted of earning points by the prisoners through their good behavior in order to receive privileges and to be settled in a less controlled place of the prison. This is very much the logic of the modern prisons also: while serving their sentence, the prisoners go from phase to phase facing first of all a typical retributive period where they are isolated and suffer for their wrongs, to continue afterwards with the second period of joined work with the other prisoners and with re-socialization programs that aim to give the convicts opportunities to work on their qualification, whereas the third phase consists of replacing the convicted person to an open sector of the prison with less control and better living conditions with more privileges, and the last phase consists of releasing on parole of the prisoner. This means that the progressive system, just like the name suggests, consists of an evolutionary progress of the convicted persons which is preparing them step by step for their life in freedom. This system is recognized in numerous Western countries and represents the form of the penitentiary system in Macedonia as well.

* * *

From the above mentioned facts, we can conclude that the purpose of the imprisonment sentence has changed during centuries from its appearance until modern times. Today it is impossible to think of this sentence as only a retribution or punishment for the convicts. The rehabilitation and re-socialization aims have been identified as the most important once and this is why developed countries work a lot in programs that tend to give the

¹² Ibid.

prisoners appropriate education and qualification so that they can find another way of dealing with the everyday problems apart from criminality. As it was mentioned earlier, the whole criminal law and procedure is now oriented towards the accused and the convicted person, at least when it comes to the written rules, however the reality might be different.

The contemporary prisons in different countries

It is interesting to mention some of the characteristics of the prisons in modern countries that are generally considered as substantial¹³. According to them, amongst the facilities that prisons may have are:

A main entrance, which may be known as the 'gatelodge' or 'sally port' (stemming from old castle nomenclature)

A chapel, mosque or other religious facility, which will often house chaplaincy offices and facilities for counseling of individuals or groups

An 'education facility', often including a library, providing adult education or continuing education opportunities

A *gym* or an *exercise yard*, a fenced, usually open-air-area which prisoners may use for recreational and exercise purposes

A healthcare facility or hospital

A segregation unit (also called a 'block' or 'isolation cell'), used to separate unruly, dangerous, or vulnerable prisoners from the general population, also sometimes used as punishment (such as solitary confinement)

A section of *vulnerable prisoners* (VPs), or *protective Custody* (PC) units, used to accommodate prisoners classified as vulnerable, such as sex offenders, former police officers, informants, and those that have gotten into debt or trouble with other prisoners

A section of *safe cells*, used to keep prisoners under constant visual observation, for example when considered at risk of suicide

A visiting area, where prisoners may be allowed restricted contact with relatives, friends, lawyers, or other people

A death row in some prisons, a section for criminals awaiting execution in countries that apply the death penalty

¹³ Check the article on Prisons in Wikipedia, available from URL: <http://en.wikipedia.org/wiki/Prison> on Aug. 28, 2008.

A staff accommodation area, where staff and guards live in the prison, typical of historical prisons

A service/facilities area housing support facilities like kitchens

Industrial or agricultural plants operated with convict labor

A recreational area containing a TV and pool table

Although it may seem that a hotel accommodation facilities are being explained, especially if the poor living conditions characteristic for the prisons in Macedonia are taken into consideration; this explains the modern concept that the prisoners should be treated as normal people and should be given all the facilities to enjoy a normal life which is isolated from the others and which has a special regime with special purposes to change the way of life of the people while depriving them from their freedom as their most important right.

A comparative view of the imprisonment sentence

The imprisonment system and practice differs in countries all over the world. In order to compare some of the experiences regarding this issue and to identify the needs of the imprisonment system in Macedonia, the practices of USA, UK, France, Turkey and Japan will be explained below.

a) USA

Prisons in the United States are operated under strict authority of both the federal and state governments as incarceration is a concurrent power under the Constitution of the United States. Imprisonment is one of the main forms of punishment for the commission of felony offenses in the United States. Less serious offenders, including those convicted of misdemeanor offenses, may be sentenced to a short term in a local jail or with alternative forms of sanctions such as community corrections (halfway house), probation, and/or restitution. In the United States, prisons are operated at various levels of security, ranging from minimum-security prisons that mainly house non-violent offenders to Super-max facilities that house well-known criminals and terrorists such as -Terry Nichols, Theodore Kaczynski, Eric Rudolph, Zacarias Moussaoui, and Richard Reid. The United States has the highest documented incarceration rate, and total documented prison population in the world. As of year-end 2006, a record 7.2 million people were behind bars, on probation or on parole. Of the total, 2.2 million were

incarcerated. More than 1 in 100 American adults were incarcerated at the start of 2008. The People's Republic of China ranks second with 1.5 million, despite having over four times the population of the US¹⁴. The main problems with the prisons in USA are the overpopulation and the effectiveness of the system. It is also known that because of the existence of the capital punishment, the popular experience with the “death rows” is one of the major problems of the American imprisonment system. Namely, it is well known that persons convicted to death usually wait very long for the execution of their sentence and this is often criticized as a serious breach of the principles of humanity. Another problem with the US prisons is that the state administration sometimes considers that “enemy combatants do not have a right to habeas corpus - a hearing before a judge¹⁵.” This is especially evident when it comes to the treatment of the Guantanamo prisoners, a view rejected many times from the USA Supreme Court.

b) UK

The United Kingdom has three distinct legal systems with a separate prison system in each. England and Wales has one of the highest rates of incarceration in Western Europe, with Scotland close behind: In 2006 an average of 148 people in every 100,000 were in prison, just ahead of Scotland with 139 per 100,000. Different from other countries; UK, USA and some other developed countries have created reformed programs of prisons where private contractors have been involved. Namely in UK, currently there are seven prisons that have been designed, constructed, managed and financed (so-called DCMF prisons) privately. There are two further prisons that were built with public money but are managed privately. Two more DCMF prisons, in Bronzefield (HM Prison) at Ashford and Peterborough, have recently been opened. Private prisons are subject to scrutiny by Her Majesty's Chief Inspector of Prisons in a similar manner to prisons run by the public Prison Service¹⁶.

14 For extensive information on this issue check the article Incarceration in the United States, available from URL: http://en.wikipedia.org/wiki/Prisons_in_the_United_States, on Aug. 28 2008, as well as Understanding Prisons: Key Issues in Policy and Practice, Andrew Coyle, pp. 42-46.

15 Savage, David G., Supreme Court again says Guantanamo prisoners should have rights, Los Angeles Times, Friday, June 13, 2008, available from URL: <http://articles.latimes.com/2008/jun/13/nation/na-scotus13>, on August 28, 2008.

16 Check the article on Her Majesty's Prison Service in Wikipedia, available from URL: <http://en.wikipedia.org/wiki/Prison> on Aug. 28, 2008.

c) Germany

The **prisons in Germany** are run solely by the federal states, although governed by a federal law. The aim of prison confinement in Germany is two-fold: emphasis is placed on enabling prisoners to lead a life of "social responsibility free of crime" upon release, but society is also to be protected from further acts of crime by the guilty. As a rule, pretrial confinement is conducted at a facility close to the public prosecutor's office that is prosecuting the case. Criminals who have never been imprisoned (or were imprisoned for a maximum of three months) are generally assigned to prisons for first-time offenders (*Erstvollzug*). Recidivists are assigned to so-called regular imprisonment (*Regelvollzug*). People who receive long sentences are imprisoned at a maximum security prison (*Langstrafenanstalt*). Special institutions are also provided for female and juvenile prisoners and for those with special health or psychiatric needs¹⁷.

d) Turkey

Prisons in Turkey are classified as closed, semi-open and open prisons. Closed prisons are separated into different kinds according to its structure and the number of the prisoners held. Examples are A type, B type, E type and F type. F types are the ones in which high penalty prisoners are held. Most which are being built today are L types that are for low penalty prisoners¹⁸. Turkish prisons have often been criticized for the treatment of the political detainees of Kurdish origin and this has been subject to different reactions considering this issue. Mainly the critics invoke to the use of torture and cruel treatment of the detainees and the prisoners¹⁹.

e) Japan

The Penal system of Japan (including prisons) is part of the criminal justice system of Japan. It is intended to re-socialize, reform, and rehabilitate offenders²⁰. According to the Ministry of Justice, the government's responsibility for social order does not end with imprisoning an offender, but

17 Ibid. Prisons in Germany.

18 Ibid. Prisons in Turkey.

19 For more information read the article Torture and Prisons in Turkey, Translated and compiled by Miranda Watson, available from URL: <http://www.kurdistan.org/Prisons/watson.html>, on Aug. 28, 2008

20 Check the article on Penal System in Japan in Wikipedia, available from URL: <http://en.wikipedia.org/wiki/Prison> on Aug. 28, 2008.

also extends to aftercare treatment and to non-institutional treatment to substitute for or supplement prison terms.

A large number of those given suspended sentences are released to the supervision of volunteer officers under the guidance of professional probation officers. Adults are usually placed on probation for a fixed period, and juveniles are placed on probation until they reach the age of twenty.

Amnesty international has cited Japan for abuse of inmates by guards for infractions of prison rules. This abuse is in the form of beatings, solitary confinement, overcrowding in small cells, "Minor solitary confinement" ("keiheikin") which forces inmates to be interned in tiny cells kneeling or crossed legged, often for months, and restraintment with handcuffs for prolonged periods of time²¹.

Prisoners' rights movements

Today, it is evident that problems exist in every part of the world regarding the treatment of the prisoners. Therefore, different movements for prisoners' rights appear which are mostly based on the principle that prisoners, even though they are deprived of liberty, are still entitled to basic human rights. Advocates for prisoners' rights argue that they are often deprived of very basic human rights, with the cooperation of the prison authorities. Alleged violations often include²²:

Prison authorities turning a blind eye to assault or rape of prisoners, failing to take sufficient steps to protect prisoners from assault or rape, or even allegedly arranging for prisoners to be assaulted or raped by other inmates as a form of punishment

Providing insufficient treatment for serious medical conditions (which is widely reported in both of the prisons where we committed our research, Idrizovo and Tetovo)

Refusing freedom of expression, to read materials, and communicate (particularly in cases of foreign languages in prisons, highly evident in both our cases)

Punishing prisoners who raise complaints about bad conditions

²¹ Ibid.

²² Check the article on prisoners' rights available from URL: http://en.wikipedia.org/wiki/Prisoners%27_rights , on Sept. 5, 2008 and The Rights of Prisoners: The Basic ACLU Guide to Prisoners' Rights, David Rudovsky, Alvin J. Bronstein, Edward I. Koren, Julia D. Cade, pp. 1-12.

Taking away prisoners' rights to sue prison officials or governments for maltreatment, or to receive compensation for injuries caused by the negligence of prison authorities.

Depriving inmates of freedom of religion.

Blockading inmates rights to legal materials and access to the courts.

Not properly feeding and clothing the prisoner.

Some in the prisoners' rights movement also advocate:

Conjugal visitation (extended visits during which an inmate of a prison is permitted to spend several hours or days in private, usually with a legal spouse)

Education for inmates (**Prison education**, also known as **Correctional Education**, involves vocational training or academic education supplied to prisoners as part of their rehabilitation and preparation for life outside prison.)

Increasing the wages for workers who are employed within prisons (which is a very important act for the workers in the prisons where we did our research since the working conditions there are very bad and not at all motivating.

International documents that provide for prisoners rights and their human treatment

There are two kinds of international documents that provide for prisoners' rights:

The first group includes the documents that provide for human rights in general and which include prisoners rights also, such as: The Universal Declaration for Human Rights, International Covenant for Civil and Political Rights, International Convention for Elimination of all forms of Discrimination, Convention Against Torture and other Cruel, Inhuman or Degrading punishment or treatment, Convention on the Elimination of all forms of Discrimination Against Women, Convention on the Rights of the Child, the Rome Statute of the International Criminal Court as well as The Four Geneva Conventions – All these documents provide for human treatment of the prisoners, respect for their physical and mental integrity and dignity as well as opportunities for re-socialization considering these as basic human rights.

The second group includes documents that deal particularly with prisoners' rights and their treatment in the institutions of administration of justice: Standard Minimum Rules for the Treatment of Prisoners, Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, United Nations Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines), United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules"), United Nations Rules for the Protection of Juveniles Deprived of their Liberty, Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, Principles of Medical Ethics relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, etc. – These documents provide particularly for a decent treatment of the prisoners and for specific rights for them.

According to this, it can be easily seen that there is a very strong international legal basis for a proper treatment of the prisoners, and according to that, the reality that will be explained below is a serious violation of all these mentioned principles.

Prisons in Macedonia

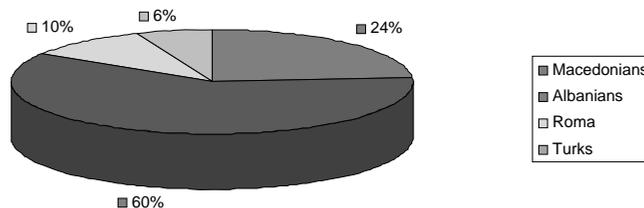
The situation with the prisons in Macedonia is deeply concerning as it will be seen from our interviews and the visits into two prisons here. According to the laws, the prisoners have all the needed opportunities for rehabilitation and re-socialization. Namely, the national Criminal Code and the Law on Criminal Procedure, and above all the Law on Execution of the Sanctions provide for a progressive system that aims to re-socialize the prisoners and make them able to live in a normal society. On the other hand, Macedonia has ratified all the above mentioned international documents that provide for prisoners' rights. However, as it has been stressed before, Macedonia has problems implementing the rule of law principles since there is a huge gap between the good laws and their real implementation. Below, the situation on prisons of Tetovo and Idrizovo will be explained in details.

The prison in Tetovo

The prison in Tetovo is of a half-open character where persons convicted for sentences shorter than two years imprisonment serve their sentences. Also, persons detained by the order of the court of first instance in Tetovo are kept here. It is a relatively small prison with a capacity of 70 persons. It is not overpopulated as in the case of Idrizovo prison which will be explained later. It has 24 rooms with 4-8 prisoners inside.

Our colleague, Ermira Suljemani who implemented the interview with the convicts in this prison explained that she was able to interview 50 of them since the others were either engaged in the work that they are doing as a part of their re-socialization program or they were released in permission to visit their families. The following lines explain the situation in this prison:

The ethnic structure of the interviewed prisoners in the prison in Tetovo



“The first thing that became clear from the interviews was the difference between the answers of the staff workers and those of the prisoners, which were almost contrary to each other. Although Tetovo prison is not as ruined and as horrible as Idrizovo, from what I have seen when I was a student, however, it still has a lot of things to make better.

First of all considering the hygiene: In all the prison there is an unbearable smell that pursues a person for days after he has finished the visit into it. The prisoners complained that they do not have means to maintain their personal hygiene let alone the hygiene of the cell. They receive everything from their homes and the institution offers nothing to them in order to maintain the hygiene.

Another complaint was the claiming that there is discrimination among the prisoners when it comes to getting the privileges such as permission to go out of the prison for 7, 24 or 48 hours. The prisoners claimed that it happened very often that some prisoners who do not fulfill the conditions for getting these privileges to get them and others that fulfill the conditions not to get them. They also claimed that the corruption in the prison is very evident stating that “if you have money, than you get all

your rights, if not; you just stay here and do what they say". Another very concerning fact was that the doctor visited the prisoners only once a week, and when there is a need for more common visits, it is usually not possible. They especially complained that when there are influential diseases, the ill persons are not isolated in separate rooms, what makes the disease spread very quickly among the other prisoners.

Another problem is the lack of facilities to practice the religion into the prison. The Muslim prisoners were not given the possibility to wash themselves before prayers in a separate place, instead, they use the amount of the drinking water that they get during the day to do this ritual, and evidently it is far from enough. The Christian prisoners also complained that there was never a Sunday prayer organized and they all asked for better conditions to practice their religion.

The rooms were quite small, but the prisoners had a sporting hall where they played football, table tennis, chess or other games. They also had a public phone from where they called their families.

From what I could see there, it cannot be said that there is discrimination on ethnical or religious grounds, especially not in these times when many of the employed persons are of Albanian ethnicity, however, serious corruption and violation of human rights can be identified through social discrimination and through disrespectful treatment of the convicts."

As it can be seen from the short fragment from the report the situation in this prison is not precisely as it should be, but there are no serious problems of high importance. Compared to what will be explained below, it seems much better. Problems that come from the inappropriate classification of the prisoners are not so evident in Tetovo prison since the convicts serve shorter sentences there and they are not persons identified as highly dangerous.

The prison in Idrizovo

Idrizovo is the only prison for longer sentences in Macedonia. Prisons in the other cities serve for keeping persons who serve sentences up to one year imprisonment, while in Idrizovo persons convicted to sentences longer than one year serve their sentence. In other words, if this is compared to the legal difference between prisons and jails, it can be said that Idrizovo is a prison in the full meaning of the word, while the other cities have jails for the detention of accused persons and persons serving shorter sentences.

Idrizovo is located near Skopje and represents the oldest prison in Macedonia, firstly built in 1906 in the time of the Ottoman Empire, and enlarged in 1947/48²³. It can be understood that it is the biggest prison in

²³ Beqiri, Mitasin, "Organizimi dhe gjendja e institucioneve penitenciare ne Republikën e Maqedonise", Tetove, 2007, pp. 55.

Macedonia. It has a fully closed sector, a half-open sector and an open sector as well as a sector for the female prisoners. First, it has served to keep only the political prisoners, and this practice has always been present, although afterwards it has served for keeping other prisoners convicted for more serious crimes sentenced to more than one year imprisonment. For the purpose of this project, it was important for us to have the explanation of someone who already served the sentence there. We decided that this person would be Mr. Rufi Osmani who was a political prisoner in 1997 serving the sentence of 20 months imprisonment for several crimes against the state as they are called (Organizing acts against the constitutional regulation of the state, non-implementation of the decision of the Constitutional Court, Provocation of interethnic hatred, etc.) He told us that he served the sentence firstly in self confinement (while he was in detention), and afterwards in a pavilion with 5 or 6 other prisoners convicted for murder, drug abuse, rape and theft. A really strange classification, honestly! He explained that the living and working conditions were horrible without enough light in the cells and without enough food. He also emphasized that the medical treatment was very poor and negligent while the attitude of the doctors was pretty offending. He also stressed that there were no books in Albanian language in the library and the offered books were very old and uninteresting. He particularly explained that the treatment in the investigative prison in Shutka (Skopje) where he served the detention was even worse since during the entire night you could hear the screaming of the detained persons who were brutally beaten and tortured by the police. Here is his more fulfilling statement:

“The living conditions as well as the hygiene and the food in the detention jail Shutka and in Idrizovo prison are scandalous. The classification was done without any criteria according to the crimes for which the persons served their sentence, and this has had tragic consequences for numerous prisoners. The personal safety did not exist since I was sharing the cell with murderers, rapists, maniacs and drug-addicts, and thanks to God I did not suffer physically, but I have been suffering from psychological stresses that I was able to overcome due to the strong character. The discrimination on ethnic and religious basis was more then evident in every segment of the prison life from the very initial acceptance, placement and food, engagement in work activities, privileges, visits, medical treatment and decreasing of the punishment. The prisons in Macedonia with all their equipment and performances in essence tend to destroy a person’s integrity and they do not offer any alternatives for rehabilitation, repent or re-socialization. The freedom is a spiritual category and it was worth to sacrifice it for an ideal that the prison was never able to put in doubt.”

The Idrizovo prison has a capacity for 850 persons, but it is always overpopulated since according to the statistics, on December 2003 there were 1023 registered prisoners²⁴. It has seven sectors²⁵:

- The acceptance sector
- The closed sector
- The half-open sector
- The sector for narcotic addicts
- The sector for chronically ill persons
- The open sector and
- The women sector

From the interview of Mr. Mitasin Beqiri, the vice-director of this prison and lecturer at SEEU, we understood that the Idrizovo prison uses the Irish progressive system in the programs dedicated to the convicts, although from what we saw inside there, these programs remain only a theory and usually do not get implemented in the practice.

When this project was started, it was necessary to get a permission from the Directory for Execution of the Sanctions (a body of the Ministry of Justice of RM) in order to enter the prisons and do the planned interviews there. The Ministry acted very quickly and allowed the visit through an official document. Furthermore, we had to talk to the Directors of both of the prisons to schedule the days of the interviews. There were no problems in the prison in Tetovo. The Director, Nuriman Tefiki, allowed our assistant Ermira Sulejmani to enter the prison and to take all the needed time to do the interviews.

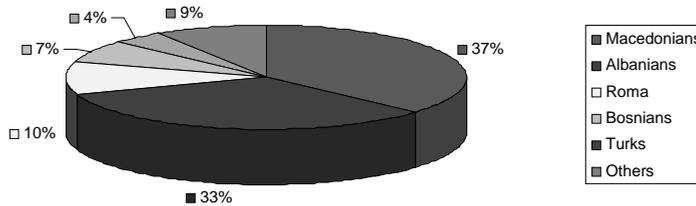
On the other hand, the problems in Idrizovo started from the beginning. The Director did not allow our assistant, Izeir Neziri, to do the interviews claiming that the questions were too provocative and confidential information was required by them. I was never able to understand how it is possible that a question like “Is there enough light in the cells for reading or working?” can ask for confidential information or can be provocative! However, we had to ask for a secondary permission from the Ministry in order to continue with the project. Luckily, the Ministry approved our request, and this time the Director agreed. In all this matter, the vice-director, Mitasin Beqiri, whose work we have used as a reference while writing this contribution, helped us a great deal to overcome the administrative difficulties in our work.

²⁴ Ibid.

²⁵ Ibid.

Once our assistant entered in the prison, we understood the reason why some persons were trying to avoid opening these doors that seemed to lead us to Dante's Hell.

The ethnic structure of 98 interviewed prisoners in Idrizovo



Many times this prison has been referred to as one of the worst prisons taking into consideration the poor living conditions there. Our colleague Izeir Neziri, who implemented the research part in Idrizovo explained that the living conditions in this place are horrible and a person gets traumatized only for being there a couple of hours, let alone serving a longer sentence there. In the next pages, the full report from three weeks visit in Idrizovo, written by Mr. Neziri is included:

“According to the Law on the execution of sanctions, the purpose of one of the penal sanctions – the imprisonment sentence, is the re-socialization namely enabling of the convicts to re-build a life entering the human society with better possibilities for an independent life according to the law. When I agreed to work in this project coordinated by the Human Rights Centre of SEEU, I already expected a very bad picture from what I was going to see in prison, but I did not expect that the picture would be so terrifying.

The Penitentiary Correction Centre “Idrizovo”. That is the name of the legal institution where the re-socialization of the convicts takes place. According to what I saw there inside, I definitely think that this institution should be renamed only as the Penitentiary Centre “Idrizovo” since I did not see any traces of correction and re-socialization. From the very beginning of the project, I had an impression that what I will see inside of those walls will not be good at all. In the meeting with the director of PCC “Idrizovo” I had a feeling of a tendency to postpone the whole work, since I was not welcomed properly and although we had a clear permission from the Ministry of Justice, there was a tendency to make a secondary selection of the questions that were to be posed to the staff and the prisoners, as well as limitations in terms of the number of the prisoners that were going to be interviewed and the number of days on which the

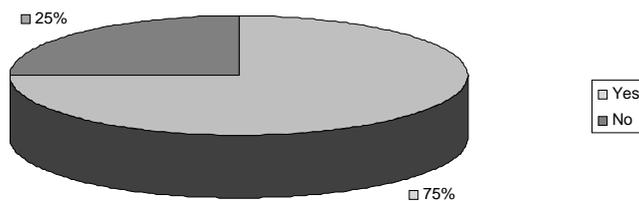
project was supposed to last although according to the permission from the Ministry, there were no such limitations.

According to the agreement with the Director, I was supposed to implement the questionnaire with the employed staff in the prison. The working conditions and facilities for their work were far from acceptable: old rooms with a lot of humidity and an unpleasant smell. The offices were small so in approximately 9m² there were three workers with inappropriate lightening and very bad working conditions. Furthermore, according to the information I received, their salary is far from satisfying. According to all this, the interest and motivation for the work and for doing something with the convicts was minimal. Posing the questions from the questionnaire I concluded that a part of them do not recognize some rules and documents related to their work since they had difficulties answering some of the questions. There were some persons in older age who were more experienced and were very objective while explaining the situation there, while some others were much more careful.

But the real hell began when I entered the closed sector of the prison in the building (if it can be called a building at all) where the convicts were settled. The moment a person enters inside, a terrible smell that provokes vomiting can be felt and getting used to it takes a long time since during the whole project, I could not get used to it. Even for weeks after, I still had that feeling that I'm going to vomit whenever I thought about that smell. There was humidity everywhere. But that was not all of it. I was still in the "new part" of the prison, while the old part looked more like a ruining which if nothing is done, one day will transform into a massive grave for those people inside it. I saw destroyed walls, destroyed paths in the upper floors without security rails. The rooms were a disaster and in some of them there was a huge amount of water right in the middle of it. In rooms of 20m² 15 prisoners were staying in two level beds. The rooms were very, very dirty as it could be seen in the low light inside there. It is only one part of the new building that looks a kind of normal that is usually shown in the media whereas the other part that looks really horrible is never shown. I would not see it either if it weren't for some kind guardians who gave me the permission to enter inside there.

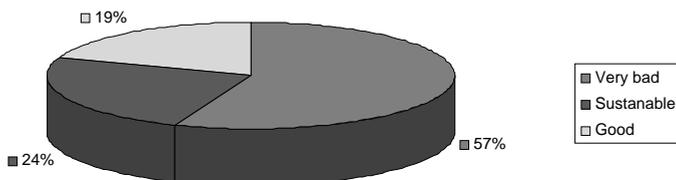
Numerous provisions of the Law on execution of sanctions did not find any implementation there. From what I saw there and from what was told to me by the prisoners, there was not at all enough light in the cells for normal reading and work.

Is there enough light in the cells for reading and working



The sanitary facilities are worrying; there are no facilities to maintain personal hygiene. When asked about the quality of the food, most of the interviewees answered that they don't eat from what is being served to them in the prison but they receive food from their relatives outside. There is sufficient drinking water but not qualitative.

The situation with the sanitary parts of the prison



I have to emphasize that some of the prisoners were frightened since there was always one guardian present during the interview, but in some cases, when the interview was realized face to face with the prisoner and without the presence of the guardian, they felt freer to discuss their problems.

The situation with the health maintenance was especially worrying. Although there is a medical sector that is supposed to take care for the prisoners' health, the hygiene and the quality of the consumed food and water, it didn't function almost at all. There were two employed doctors but besides my insisting to interview them, it was told to me that it is not safe to go to the ambulance and therefore they cannot allow me to go and do the interview.

There are no regular doctor visits, and if there are any, they take place very rarely. If someone gets sick, then he has to register and get a number and wait a couple of days in the line. This explains the fact that only during this project 5 or 6 deaths took part. In one case, an interviewee who was feeling very bad, had fever and looked very red in the face begged me to intervene for him to get a medical visit since he was really feeling very bad. There were a large number of persons who had documentation for their illness and some of them who were obviously very ill did not receive appropriate medical treatment. There were cases where prisoners, in accordance with the Law, asked for medical treatment that they themselves would pay for, but all the procedures got stuck somewhere in the folders and the problems continued. I encountered a convict that had some papers documenting his mental illness, thus I cannot understand what was he doing there since it is well known that mentally ill persons don't serve their sentences in prisons but in special institutions for mental diseases.

When it comes to the discipline measures according to the Law on execution of the sanctions in cases when a discipline rule is violated by the prisoners, the impression is that the mostly used penalty is solitary confinement and deprivation from benefits. According to the information from the prisoners, there is a frequent use of violence especially different humiliations and sometimes beating. It was especially strange that

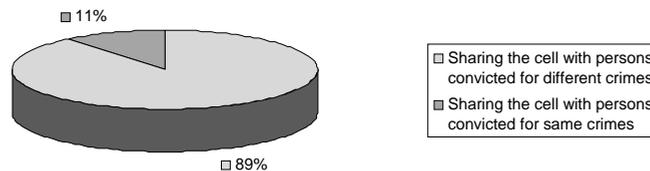
the supervisors were not intimidated while admitting that they use force against the prisoners and that sometimes they were punished for misuse of force, the very common phrase was "it is better if I hit him then he hitting me."

Some of the employed persons do not behave humanly and with respect towards the personal integrity of the convicts.

When it comes to the requests directed to the presidency of the prison, in most of the cases they do not receive any answer at all, although according to the law, they should receive an answer within 8 days.

Also, it happens very often that the requests for changing of the treatment (or replacing the person from one to another sector due to the fact that the prison provides for the above mentioned progressive system at least theoretically) to what they have right according to the law, usually get stuck on their way, and some of the employees and most of the prisoners claim that all the privileges and other requests find an answer only if there are enough financial means to bribe the responsible persons. Everyone told us that the corruption is a must in this institution. They usually say that without money you are no one in the real world, inside there, without money, you are less then no one.

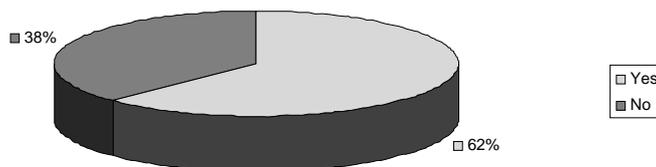
The classification of the prisoners regarding the type of the crimes



Regarding the work that the prisoners should do according to the re-socialization program, there are very few employment places so there is a huge lack of possibilities for work. There is a high need for working places, since if they do work, they receive some privileges and engagements and they also should receive some amounts of money, but that is rarely paid to them. This is extremely problematic since it is well known that including the prisoners in a proper job gives them higher opportunities for re-socialization and makes them use their time more reasonably and of course, it can be seen as a possibility to decrease the criminal infection among prisoners. Namely, because of the fact that the prison is overcrowded, there is not a proper classification of the prisoners according to the crime they are sentenced for, so murderers, rapists, an other serious criminals stay together with persons who committed traffic crimes. There is not a special place for foreign prisoners, which is requested by the law, thus, there was a foreign person who committed a less serious traffic crime that was in the same cell with murders and rapists.

In reference to the individual and group treatment of the prisoners, the employees themselves admitted that it is not possible since the number of the employed persons is very low compared to the number of the prisoners and this causes serious damages to the process of the treatment of the prisoners.

According to the employees, are there any possibilities for individual treatment of the prisoners?



Speaking of the library and the offered literature, the library is very poor with very old books from the previous regime that doesn't cause any interest to the prisoners to read. And what is more important, there are no books in other languages of the nationalities that live in Macedonia, except for books in Serbian language that are a relic from the ex-Yugoslavia.

The conclusion would be that in PCC Idrizovo there are almost no conditions and facilities for the implementation of re-socialization programs, thus the sentence served there has mainly a retributive character. Of course, people might say that those persons deserve this because of what they have done. However, the question is how certainly we can claim that the sentences are fully deserved and just, and is our judicial system as perfect not to make any mistakes and not to condemn innocent people? This is why the state organs should answer to the question how much PCC Idrizovo really fulfills the purposes mentioned in the Law on execution of sanctions."

It is sad and frustrating to read these lines since although it is well known that a person should think before committing a crime that the punishment waiting for him is harsh, but still, treating prisoners as animals and not as human beings is obviously very far from human rights standards that this country is trying to reach. This maybe explains the reason for the common deaths in this prison as well as the reason for different hunger strikes and other reactions of the prisoners. Namely, precisely these days, Idrizovo prisoners of the closed sector have been involved in a great mutiny that was

widely showed in the news.²⁶ Only a week before the prisoners entered in a hunger strike complaining for the bad living conditions in the prison²⁷.

From the words of the administrators of the prison, it is impossible to find out what really happens inside there, since they claim that everything is relatively fine. But in fact, it is not. The above mentioned facts that were seen closely during this project tell us that this institution will have crucial problems in the future too. I cannot think of any other words that would describe that situation better then the following verses of Oscar Wilde:

*“Vile deeds like poison weeds bloom well in prison air,
It is only what is good in man that wastes and withers there.”*

Conclusions

What we see in prisons is the true face of a state and its society; the dark face that makes you feel the shame of an unsuccessful story, full of wasted lives, full of destruction. The state institutions should give an opportunity to these people to chose if they still want to go further and do better things in their lives or if they decide to continue their previous pursuance for destruction. The idea is that the state institutions should offer this possibility of choice.

Currently, what our state’s institutions offer for prisoners is only violation of their rights and destruction of their personality, as some of our interviewees explained. The only prison in Macedonia for serious convictions which should have the most serious role in the re-socialization and rehabilitation of these persons only punishes them very harshly for what they have done. Punishing people that have caused harm to others and the society is a legal thing to do, and it is regulated by national and international documents. However, these documents provide also for prisoners’ rights for minimum standards for a normal life. These standards cannot be met in conditions explained above. Everyone is aware of the depravation of freedom and other values that prisoners are deprived from. But the right to life, and human dignity (physical and psychological), the right to medical care, the right not to be discriminated against, the right to access to justice, remain crucial and immanent for them no matter what they have done.

²⁶ “Mutiny in Idrizovo Prison”, by Predrag Petrovic, available from URL: <http://www.a1.com.mk/vesti/default.aspx?VestID=97182> , on Sept. 5, 2008.

²⁷ “Hunger strike in Idrizovo Prison”, by Predrag Petrovic, available from URL: <http://www.a1.com.mk/vesti/default.aspx?VestID=96794> , on Aug. 8, 2008.

I have always been convinced that the articles of the laws in Macedonia that explain the purposes of a punishment (retribution, general and special prevention and re-socialization) are not enough for a fair and just system of justice. I always claim that the rights of the victim should be included in these purposes. However, in a reality like this, where even the most important rights and purposes clearly stated in the laws of a country are so obviously violated, I end up with deep concerns that further reforms of the laws of this country aiming towards a just legal system are simply impossible.

To sum up, the administrators of justice in general and of the prisons, especially those of Idrizovo in Skopje, should have the following in mind:

The appropriate classification of the prisoners is immanent and not only required by law but also by every re-socialization program. It is simply unacceptable that prisoners for different kinds of crimes stay together and influence each other or cause serious damages to other prisoners' personality,

The educational programs must be reactivated in prison so that the convicts receive an appropriate treatment and fulfill their time in order to do something during their stay there. The choice is immanent; the state must offer a choice to this category of people instead of leaving them hopeless.

The idea of including private contractors in building new prisons can be interesting and helpful to overcome this prison crisis that seems to persecute this state forever.

Problems with prisons and prison population are very evident in other countries as well. The well known "Prison Crisis" concept provides that alternatives of prison must be implemented in order to protect first time convicts for small crimes not to enter this vicious circle since it has been concluded that short imprisoning sentences do more harm than well to the convicts. Therefore, alternative measures like community service and electronic control have been introduced elsewhere as well as in our country. But they remain beneficiary as I said only for first time convicts for small crimes. For more serious crimes the imprisonment remains the most important sentence. Therefore a rapid and immanent reform of prisons is needed especially in our country.

It also should be emphasized that many people think that in order to have less populated prisons we must have largely populated schools and a good educational system. However, the situation in the prisons in Macedonia must change, whether as a result of the tendency to integrate in EU, or as a change

of the general mentality (which is almost impossible). This change is immanent because the prisons here have lost every single human characteristic, and they do not serve for the aims they are created by the law in the first place.

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Freedom of speech seen from the perspective of article 10 of the European convention on human rights and fundamental freedom

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Abstract

The article includes some very important conclusions of the European Court of Human Rights regarding the interpretation of the article 10 of the European Convention on Human Rights and Fundamental Freedoms, which protects the right to freedom of expression. On the other hand, under the ECHR practice, this article protects not only information or thoughts considered as positive or neutral, but also those who concerns, shocks or insult. In this perspective, according to the ECHR, the limits of criticism concerning politicians should be wider than for citizens, because the politicians are more publically exposed. Concerning the insult, the article analyzes the freedom of expression in relation to the honour of individual, which constitutes a legitimate aim very often used by national authorities as justification for limiting the freedom of expression. Concerning defamation, it is very important the distinction made by ECHR between facts (information) and evaluating considerations (thoughts and opinions). In this perspective, article 10 protects also thoughts, critics or speculations, which may not be proofed to be true, but are made in good faith. In such cases, actions made in good faith shall not be subject to any process of proofing. Regarding criminal sanctions, even when they consist in fines relatively small, the ECHR has opposed them by arguing that they could play the role an understood censure. While applying graver sanctions for criminal offences against high official is considered by the ECHR to violate the principle of equality before the law.

Abstrakt

Artikulli, nisur edhe nga praktika e Gjykatës së Strassburgut, përfshin disa konkluzione lidhur me interpretimin e nenit 10-të të Konventës Europiane për të Drejtat e Njeriut, nen i cili mbron lirinë e shprehjes. Kështu, ky nen mbron jo vetëm informacionin ose mendimet, që konsiderohen si pozitive apo neutrale, por edhe ato që shqetësojnë, trondisin apo fyejnë. Në këtë kuadër, sipas Gjykatës së Strassburgut, kufijtë e kritikizmit duhet të jenë më të gjerë për politikanët sesa për qytetarët, sepse ata janë publikisht më të ekspozuar. Përsa i përket fyerjes, artikulli trajton lirinë e shprehjes edhe në raport me nderin e tjetrit, i cilin përbën qëllimin legjitim më shpesh të përdorur nga autoritetet kombëtare për të kufizuar lirinë e shprehjes, nëpërmjet penalizimit të fyerjes dhe shpifjes. Lidhur me shpifjen, rëndësi merr dallimi që ka bërë Gjykata midis fakteve (informacioneve) dhe gjykimeve vlerësuese (mendimeve, opinioneve). Kështu, nga neni 10-të janë të mbrojtura edhe mendimet, kritikata apo spekulimet, të cilat mund të mos provohen si të vërteta, por që janë bërë në mirëbesim (qëllimi i mirë) dhe në këto raste ky mirëbesim nuk duhet t'i nënshtrohet ndonjë kushti për t'u provuar. Përsa i përket sanksioneve penale, edhe kur ato kanë konsistuar në gjoba relativisht të vogla, Gjykata i ka kundërshtuar, duke qenë se ato mund të luanin rolin e një çensure të nënkuptuar. Kurse, sanksionet më të rënda ndaj zyrtarëve të lartë i ka konsideruar si shkelje të parimit të barazisë para ligjit.

Апстракт

Оваа статија вклучува некои многу важни заклучоци од Европскиот суд за човекови права кои се однесуваат на интерпретацијата на Член 10 од Европската повелба за човековите права и основните слободи, член кој го брани правото на слобода во изразувањето. Од друга страна пак овој член не само што ги брани информациите или мислењата, кои се сметаат за позитивни или неутрални, туку и оние кои ги вклучуваат и потресите или навредите. Во овој аспект според Европскиот Суд за човекови права, границите на критицизмот треба да бидат пошироки за политичарите отколку за граѓаните, затоа што политичарите се повеќе јавно експонирани. Во однос на навредата, овој член ја анализира слободата на изразувањето во однос на честа на индивидуата која претставува легитимна цел која често се употребува од страна на националните авторитети како

оправдување за ограничување на слободата на изразување. Во однос на клеветењето многу важна улога има разликата која ја наведува Европскиот суд за човекови права помеѓу фактите (информациите) и оценувањето на размислувањата (мисли и мислења). Во оваа насока со Членот 10 се бранат и мислењата, критиките и шпекулациите кои не може да се докажат дека се вистинити туку дека се направени со добра намера. Во овие случаи кога дејствијата се направени со добра намера нема да бидат предмет на процесот на докажување. Во однос на кривичните санкции, дури и кога тие се сочинуваат од релативно мали казни, Судот се спротивставува бидејќи тие можат да играат улога на една цензура. Додека применувањето на поголеми санкции за кривични прекршоци против високите функционери од страна на Европскиот суд за човекови права се третираат како прекршок на принципот на еднаквост пред законот.

Introduction

If we insult someone, principally the fundamental right of expression and that of human dignity (respecting their honor) clash with one another. Thus, justice must reach a decision about the most legitimate in respective cases. In this context, the paper seen from the perspective of Strassbourg Court treats as its first issue the meaning of “freedom of speech”, according to the first paragraph of article 10 of the European Convention of Human Rights. The second issue deals with conditions and criteria under which this freedom is restricted; the third issue, moreover, treats people’s honor and reputation as one of these reasons, therefore it becomes the object of defense against the offences of insult and defamation.

Article 10

1. Every person has the right of expression, which includes the freedom of opinion and the freedom to receive and give information or opinions, without the interference of public authorities and with no restrictions. This article does not prohibit States to establish an authorizing regime for the radio broadcast, for the cinema or television.

2. Exercising these freedoms, which might have obligations and responsibilities, might be subject to some formalities, conditions, restrictions or sanctions provided by law, which in a democratic society are indispensable measures for national security, territorial integrity or public security, to protect public order and to prevent crimes, to preserve health and moral well being, to protect the dignity or the rights of the other, to prevent the dissemination of confidential information or to guarantee the authority and impartiality of the judicial system.

The meaning of freedom of speech

Freedom of speech is one of the bases of a democratic society, one of the conditions for its progress and for the development of the individual (*Handyside vs. United Kingdom*, 1976). Freedom of opinion includes the negative freedom of not being obliged to communicate your opinions.

Article 10 protects not only the information or opinions, which are considered as positive or neutral, but also those, which insult, shock or embarrass (*Vogt vs. Germany*, 1995). In this perspective, article 10 of the Convention, justifies also information or insulting thoughts. With information, the Convention refers to real expressions, which related exactly with the insult. (Article 120/1, Criminal Code of the Republic of Albania). With thoughts, the Convention refers to opinions which constitute an insult (Article 119/, Criminal Code of the Republic of Albania). It is necessary to make clear that even the defamation constitutes an action which insults a person, harming in this way his honour, but in this case we should understand words which harm the social honour of the individual, by delivering real humiliating sayings against third persons.

Exercising the freedom of providing information and opinions in full, gives way to the free critic of the government, the latter is the basic indicator of a democratic state. This is the case when insults against a public official on duty is justifies (Article 239/1, Criminal Code of the Republic of Albania). The same would apply also for insults made against judges (Article 318, Criminal Code of the Republic of Albania), which cannot be classified as something different, but as an insult against a public official on duty in the justice system.

It is the right of the press to provide information and opinions on political issues, as well as in other areas of public interest. It is not only the press,

which has a duty to provide such information and opinions, but the public as well has the right to receive them (*Lingens vs. Austria*, 1986).

Artistic creations are also considered by the Strasbourg Court as a major contribution to the exchange of ideas and opinions, because art helps to form a public opinion as well as to express it, furthermore, the public is faced with the main issues of the day (*Muller vs. Switzerland*, Appeal.no.10737/84, Commission Report of 8 October 1986).

Since freedom of expression refers to both the provision of information and opinions, the distinction that the Court has drawn between facts (information) and evaluative judgments (thoughts, opinions) is of an importance: While opinions are subjective attitudes and evaluations for an event or situation and are not perceived as evidence to be true or untrue, facts, upon which opinions are based, can be proved as true or untrue. Therefore, along with the information or the data that can be verified, opinions, critics, speculations, which cannot be proved as true, are also protected by article 10. The distinction between opinions and the prohibition of the request for evidence in relation to such opinions is essential in the national legal systems, which foresee this condition for the offence of “insult.” Even in relation to the facts, the Court has recognized the protection on a good faith basis, providing some space to the media, where mistakes are to be tolerated. In this context, the good faith (trust) should not be subject to any condition for evidence and this freedom of the press takes significance in the publication of “gossips” or claims that cannot be proved by the journalists (*Thorgeirson vs. Iceland*, 1992).

Restrictions and conditions

Damaging someone’s honor and reputation should not be always considered as a criminal offence and to provide legal basis for legal reactions. Similarly, public critic that can put at risk the judicial authority (see above, p.2) should not be condemned any time such critics occur. Otherwise, this would lead to a hierarchy of rights and values, thus, placing the freedom of speech at the bottom of the list, for example, after the right to honor and moral dignity, or to public order etc. Moreover, such a hierarchy would not comply with all the international treaties, which foresee an equality of rights and do not allow permanent restrictions for the application of one right, because this would mean denying the right in question.

The list of possible interferences (formalities, conditions, restrictions, sanctions) in exercising the right of expression is quite wide and there are no predetermined restrictions. Similar interferences could be: punishments (fines or imprisonment) (*Barford vs. Germany*, 1989; *Lingens vs. Austria*, 1986; *Dalban vs. Rumania*, 1999), court decision to pay the civil damages (*Muller vs. Switzerland*, 1988), prohibiting publications (*Sunday Times (2) vs. United Kingdom*, 1991; *Observer and Guardian vs. United Kingdom*, 1991), confiscating publications (*Handyside vs. United Kingdom*, 1976; *Muller vs. Switzerland*, 1988), declining the issuance of the license to broadcast (*Autronic AG vs. Switzerland*, 1990), prohibiting the exercise of the journalist profession, court orders to find the source of information of the journalists, and imposing sanctions when they do not apply this (*Goodvin vs. United Kingdom*, 1996) etc.

Among this wide range of interferences (restrictions), after “censoring before the publication”, “criminal punishment” would probably be the most dangerous one to this right. The Court has challenged even those cases when criminal sanctions have been in the form of fines relatively in small amounts, as they might have been an implied censure. In a case where the journalist had been fined, the Court had stated: “Although the sanction imposed on the author did not prevent it, in the strict meaning of the word, as it is self expressed, speech would still be subject to such censure, which could probably discourage the author to make similar critics in the future... In the framework of political debate, a similar sanction will quite likely not allow the journalist to contribute to the public debate on issues affecting community life (*Lingens vs. Austria* 1986; *Barthold vs. Germany*, 1995).

Likewise, fines and court expenses could be some kind of interference in the right of expression, when its sum might affect existential elements, such as financial survival of the damaged party (*Open Door and Dublin Well Woman Centre vs. Ireland*, 1992). Civil punishments (with or without criminal punishments) given for damages to the dignity of the honor of the others, could also be some kind of interference in exercising the right of expression (*Tolstoy Miloslavsky vs. United Kingdom*, 1995). European Court stated in the case of *Tolstoy Miloslavsky*: “... this does not mean that the jury was free to impose any fine deemed as appropriate; the fine regarding the damage of defamation should bear a reasonable proportional relation to the caused damage of reputation.”

The order of the court to find documents and sources of the journalists, along with the punishment when such an order is refused, is still considered by the Court as an interference in exercising the right of expression. In the

case of Goodvin, the Court noticed that such measures interfere undisputedly in the freedom of press and decided in journalist's favor.

Based on the second paragraph, national authorities can interfere in exercising the right of expression, when three conditions are altogether met:

1. the interference is provided by law,
2. its aim is to protect one or more of the interests and values foreseen in this paragraph
3. the interference is necessary in a democratic society

Domestic courts should follow these three conditions, when they examine and take decisions regarding cases that include somehow the freedom of expression. The court has accepted in rare cases that the rules of customary law or principles of international law should be the basis for the interference in the freedom of expression.

When a legal provision is required to be applied, which might in some way interfere in the freedom of expression, domestic courts should identify the value of the interest protected by the respective provision, and they should check whether this interest or value is one of those mentioned in the second paragraph of article 10. The courts may apply that provision for the individual in question, only when there is a positive answer. For example, a criminal offence or criminal procedure against a journalist accused for damaging the reputation or the honor of someone should have the legitimate purpose of protecting the reputation or the honor of others. However, the courts should ensure that the interest to be protected is real and not just an uncertain possibility. Problems of this kind might emerge in cases of insult or defamation against high officials (including the president of the country, ministers, MPs etc) or officials (including police officers, prosecutors, and all other public officials). While the decision to punish a person who has insulted or defamed against a person belonging to one of the two above mentioned categories, can be justified with the need to protect "the reputation or the rights of others", a greater sanction than the one prescribed for insult or defamation against an ordinary person would not be justified. Greater sanctions for defamation against high officials contradict the principles of equality before the law. Moreover, these high sanctions would implicitly protect more than just the rights of these individuals performing such duties. They would protect abstract notions such as, "state authority," or "state prestige," which are not found in the provisions of the second paragraph. Furthermore, values such as "the image and the honor of the

country or government”, “the image and the honor of the nation,” “state symbols”, “image of public authorities”, are not mentioned in the second paragraph, thus, are not legitimate reasons to restrict the freedom of expression. Criticizing officials and institutions that exercise their authority is a fundamental right and a duty of the media, of ordinary individuals, and of the society in general. For example, destroying a state symbol or a degrading act against it (Article 268, Criminal Code of the Republic of Albania) could be an objection and critic to some political decisions of the government. Such an objection and critic should be free since it is the only way to debate openly on mistakes and to find a solution to them.

In order to make a decision in compliance with the third condition, domestic courts should apply the principle of proportionality, answering the question: “Was the aim in proportion to the means used?” The “aim” in this equation is one of some of the values or interests foreseen in the second paragraph, whereas the “means” is the concrete measure, which is approved or applied for an individual that exercises the right of expression. For example, a “means” might be the criminal punishment for insult or defamation. In order to prove that this interference was “necessary in a democratic society” domestic courts and the European Court should verify if there was a “social imperative necessity”, which has required that special restriction on exercising the freedom of expression. In this perspective, “defamation of the republic and its symbols” (article 268) it is true that protects a formal honour, but defamation of these symbols which constitute the identity of a state could be a threat to social peace in a country; therefore this criminal contravention is classified under the section of criminal offences against public order and security. That’s why in these cases we should carefully analyze the proportionality between the freedom of expression and public security, which represents one of the reason for the limitation of the freedom of expression foreseen in the paragraph 2 of the article 10 of the Convention.

In the case *DI vs. Germany*, a researcher (a historian) denied the existence of gas chambers in Auschwitz, declaring that they were false and built in the first days after the war and German taxpayers had paid 16 billion DM for these lies.

The researcher was sanctioned by the domestic courts. The Government was justified in front of the Commission for this fine by giving the argument of interest to protect “national security and territorial integrity”, “the reputation and other people’s rights”, as well as “preserving public order and prevention of crime”. Applying the principle of proportionality, the Commission stated “Public interests for the preservation of public order and

prevention of crime among German people, due to the insulting behavior against Jewish, and the condition to protect the reputation and their rights in a democratic society are more valuable than the researcher's freedom to disseminate publications, where the gas suffocation of Jewish by the Nazis regime is denied." The Commission in the cases Honsik and Oschensberger, where researchers denied the existence of Holocaust as well and incited racial hatred, reached similar conclusions too.

"The protection of public order and prevention of crime" was balanced with the "critic against the government from its opponents" in the Castells case. The Court concluded that the freedom of expression should strongly be protected on behalf of the political opposition.

Mr. Castells accused the government for failing in investigating the murders in Basque population. He accused the government for being involved in those crimes. Mr. Castell declared, "The government could be behind these acts, the party of the government and its staff. We know that they will use atrocity even more, as a political instrument, attacking Basque dissidents and eliminating them...". Mr. Castells was accused for insulting the government.

Analyzing the condition whether government's interference was "necessary in a democratic society" the Court stated, "While freedom of expression is important to anyone, to a representative elected by the people is especially important. He represents his electorate, draws attention to their concerns, and protects their interests. Mr. Castells did not express his opinion from the Senate, as he could as well have done without being afraid of the sanctions; however, he chose to do it in a periodical magazine. Nevertheless, this does not mean that he lost his right to criticize the government. In a democratic society, actions or non-actions of the government should be subject to a scrutinized analysis, not only by the legislative and judicial authorities, but also by the press and public opinion". Then, the Court reminded that the accusations submitted by the researcher against the government were of a great interest to public opinion (as it was proved by the sale of all the copies of that edition).

As a conclusion, all domestic courts should understand that although breaking public order is in principle legally punished, judges should evaluate the conflict of interests and should apply the principle of proportionality, when making decisions, if the punishment for exercising the freedom of expression "is necessary in a democratic society."

The case *De Haes and Gijssels*, brought to Court the necessity to balance the interest of “protecting the reputation and the rights of judicial members” with the interest of “protecting freedom of press”.

Journalists had criticized judges of the Appeal Court by using taunting terms in five researching articles, about a divorce case, where they had decided that both children of the divorced family should live their father. The father, a well-known notary had been previously accused by his wife and her parents for sexually abusing both children. During the period of divorce, the investigation against the notary was closed without any incrimination. Three judges and a prosecutor indicted both journalists and the newspaper, asking for civil damages for the defamatory statements. Civil courts declared that both journalists had strongly suspected in the impartiality of the judges and had written that they had intentionally taken the wrong decision, due to their close political relations to the notary.

The Court accepted in principle that judicial members should enjoy public reliability and they should be protected against any overwhelming attacks, which lack a factual basis. Then the Court examined the articles and noticed that many details were given, including opinions of experts, which proved that the journalists had carried out a professional research before they informed the public about the case in question. The articles were part of a wide public debate on incest and on the way that the judicial had decided about the case. The court by giving more importance to the right of the public to be informed on an issue of public interest, decided that the decision of domestic courts was not “necessary in a democratic society” thus, article 10 was violated.

Another important declaration of the Court with regard to this case, referred to the value of the decision on the acquittal, in favor to the notary. Stating once more that the administration of justice is an issue of public interest, the Court confirmed that court decisions should be subject to public control. The fact that the authorities took a judicial decision for the moment was not an obstacle to journalistic investigation, to the critic of the facts and to a final decision. Public debate on judicial decisions, along with critics to judicial conclusions cannot be prohibited. An irrevocable writ should not be in itself an evidence to demonstrate that the media is lying, if it offered information and different viewpoints from those of the court decisions.

In principle, defamation in press against a judge is often found in debates on malfunctioning of the judicial system or in the context of suspicion on the independence or impartiality of judges. Such issues are always important to the society and should not be let out of public debate, especially in a state

experiencing periods of transition toward an independent and efficient judicial authority. Certainly, if these critics aim mainly at insulting or defaming against judicial members, without contributing to public debate on administration of justice, the protection provided in the framework of freedom of expression could be narrower.

Freedom of expression and the reputation

The protection of “reputation and the rights of others” is so far the “legitimate aim” most often used by national authorities to restrict freedom of expression. The Court has developed quite a wide legal practice by ensuring the highest protection for the freedom of expression, and especially for the protection of the press in its mission as the provider of information and a public guard. The privileged place reserved to media comes because of Court viewpoint for the essential role of the political expression in a democratic society as regard to the election process as well as daily problems of public interest.

In relation to language, the Court has accepted harsh and severe criticism as well as mundane expressions used figuratively, since the latter has the advantage of attracting the attention to issues under discussion.

With regard to the case *Lingens*, the Court had to balance the freedom of press with the reputation of a high official, based on the principle of proportionality. The critics were focused on the political movement of the Austrian Chancellor, who had entered into coalition with a party, led by a person of a Nazi background. Chancellor’s behavior was deemed as “immoral”, “un-dignifying” and showed “low opportunism”. Domestic courts stated that the journalist could not prove his claim as true concerning the “low opportunism”. Analyzing the condition, whether the interference in the freedom of expression was “necessary in a democratic society”, the Court developed some very important principles supporting the viewpoint that politicians should be more tolerant of media critics. The Court explained their reason “... the freedom of political debate is the cornerstone of the concept of a democratic society. The limits of an acceptable criticism should be wider for a politician than for a private individual, because different from the last, the former is inevitably more exposed.” The Court did not rule out the protection of the reputation of politicians, but it also stated that in these cases the conditions for such a defense should be compared to the interest of free discussion about political issues.

The decision of the Austrian courts concerning the protection of “evidence burden” was proclaimed as wrong by the European Court. The Court emphasized the distinction between “facts” and “judgment of values”, taking into consideration that the truth of “the judgment of values” is an impossible task. While the existence of facts can be proved, the truth of the judgment of values cannot be subject to evidence. The request to prove the truth of the judgment of values infringes the freedom of opinion itself. The Court observed that the facts upon which Mr. Lingens had based his judgment of values were not only incontestable but his action was also in good faith.

Similarly, in the case *Dalban*, the Court stated, “it would have been unacceptable for a journalist to be allowed to express judgments of critical values, unless he could prove their truth”.

This distinction is important not only for making the formal distinction between insult and defamation, but has also a practical importance for situations when saying represents an opinion, regardless of the fact that is based in a real context. Therefore, in these cases there should be no limitation to the freedom of expression and shall not be subject to any process of proofing. Furthermore, in the case *Schwabe*, the Commission referring to the evident linguistic restrictions stressed, “In a contribution no matter how modest it may be to a debate on the standpoints of politicians and their political morale, not every word should be considered, in order to exclude any chance of misunderstanding.”

Giving more space to the freedom of press in the case *Dalban*, the Court stated “Journalistic freedom covers even possible controversies up to a degree that may even lead to provocation.”

Following the principles of the Court, any domestic law that would protect politicians and in general all high officials (such as the president, the prime minister, ministers, members of parliament etc.) with special or higher sanctions against insults or defamation especially made by the press would contradict article 10. If there are such provisions and if requested by the politicians, domestic courts must refuse their application. Otherwise, courts may rely on those provisions for mere insult and defamation.

In the Criminal Code of the Republic of Albania, for the insult to a public official on duty (Article 239) and the insult to judges (Article 318) is foreseen a graver sanction than the simple insult (Article 119). The same is valid also for the simple insult (article 120) in comparison with the insult against the President of the Republic (Article 241, Criminal Code of the Republic of

Albania). Moreover, the latter is not classified not a criminal contravention, but as a crime. In addition, where the honor and reputation of politicians contradict the freedom of press, domestic courts should apply quite carefully the “principle of proportionality” and they should decide whether the punishment of the journalist should be a necessary measure for a democratic society. Likewise, where domestic law prescribes the “protection of the burden of evidence” in the cases of insulting opinions, domestic courts should abstain from the request for this evidence.

Protection in good faith should be accepted for defamations, which are mainly related to the facts. If during the time of the publication, the journalist had sufficient reasons to believe that a special part of the information were true, he should not be sanctioned. The news can be an amenity that disappears very soon and to delay his publication, even for a short period, can remove all the value and the interest (*Sunday Times (2) vs. United Kingdom, 1991*). Therefore, a journalist should be asked to make the necessary verifications and to accept in good faith the truth of the news. The argument regarding this element has to do with the lack of the journalist’s intent to defame against the alleged damaged party. As long as the journalist believes that, the information is true such intent is absent thus; the journalist standpoint cannot be sanctioned based on the provisions that prohibit intentional defamation foreseen in the criminal legislation.

In other words, even in the case of expressing untrue sayings, but which at the moment of expression they are not know to be untrue, the author shall not have criminal responsibility for demotion (is not in knowledge of untrue) nor for insult in form of gossiping, because by believing that sayings are true (acting in good faith) he does not want to insult the victim by saying something undeserved and humiliating.

Domestic courts should not apply any more criminal punishments, especially imprisonment, because such punishments endanger the essence of the freedom of expression and function as censure for all media, preventing press from playing its role as a public guard.

Conclusions

1. Article 10 of the Convention protects even offensive opinions, giving way to political criticism and defense on public interest.

2. Article 10 protects even statements that might not be proved as true, but they have been stated in good faith and for the protection of a legitimate interest. These statements should not be subject to the condition of being proved before the court.
3. Limiting imprisonment or even removing it as a punishment (leaving in effect only the fine), due to the restriction of freedom of speech such an important element for the democracy of a country and public debate.
4. Higher sanctions for insult against high public authorities (or against judges) compared to those of ordinary people, contradict the principle of equality before the law.
5. Acceptable limitations concerning critics against politicians should be wider than those of ordinary citizens, since the former are more exposed and a more important aspect of public debate.
6. Freedom of expression should not take a priori a priority over the individual honor (or vice versa), as this would lead to an illegitimate hierarchy of fundamental values.
7. Punishment for insult (or defamation) in order to protect the honor of the damaged party is legitimate under the fulfillment of three conditions: a) punishment is provided by law b) punishment aims at protecting one of the legitimate interests foreseen in paragraph two of Article 10 of the Convention c) punishment (restricting freedom of expression) was necessary in the respective case.

The list of cases adjudicated by the European Court of Human Rights used for this paper

1. Autronic AG vs. Switzerland, 1990.
2. Barthold vs. Germany, 1995.
3. Barford vs. Germany, 1989;
4. Dalban vs. Rumania, 1999.
5. Goodvin vs. United Kingdom, 1996.
6. Handyside vs. United Kingdom, 1976;
7. Lingens vs. Austria, 1986;
8. Muller vs. Switzerland, Apl. nr.10737/84, Commission Report of 8 October 1986.
9. Sunday Times (2) vs. United Kingdom, 1991;
10. Observer and Guardian vs. United Kingdom, 1991.
11. Oberschlick vs. Austria, 1991.
12. Open Door and Dublin Well Woman Centre vs. Ireland, 1992.
13. Tolstoy Miloslavsky vs. United Kingdom, 1995.
14. Thorgeirson vs. Iceland, 1992.
15. Vogt vs. Germany, 1995.

Legislating for higher education in SEE countries: the language question

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Abstract

The position of languages in the higher education legislation of the Republic of Macedonia is discussed in relation to international obligations and compared with that of Kosovo and Bosnia-Herzegovina. The SEEU policy of 'flexible use of languages' is explained and the author posits the eventual use of English as a language of teaching, at least in certain fields and levels of teaching and above, and research, while maintaining the use of local languages.

Abstrakt

Pozita e gjuhëve në legjislacionin e arsimit të lartë të Republikës së Maqedonisë është diskutuar në relacion me obligimet ndërkombëtare dhe është krahasuar me pozitën në Kosovë dhe Bosnje-Hercegovinë. Politika e UEJL-së për 'përdorim fleksibil të gjuhëve' është sqaruar dhe autori e pozicionon përdorimin eventual të gjuhës angleze si gjuhë për mësimdhënie, së paku në disa lëmi dhe niveleve të mësimdhënies e më lartë, përfshirë edhe hulumtimin, por gjithnjë duke e ruajtur përdorimin e gjuhëve lokale.

Апстракт

Во овој труд се дискутира позицијата на јазиците во законодавството на високото образование во Република Македонија во однос на меѓународните обврски во споредба со Косово и Босна-Херцеговина. Исто така се објаснува политиката на ЈИЕУ за

„флексибилна употреба на јазици” и авторот ја поставува евентуалната употреба на англискиот како наставен јазик, барем во одредени области и нивоа на настава и истражување додека во исто време задржувајќи ја употребата на локалните јазици.

Introduction

Work on drafting new higher education laws and university statutes in Central and East European countries and Central Asia has been in progress since the fall of communism and socialism at the turn of the 1990's, notably under the auspices of the Legislative Reform Programme for Higher Education and Research (LRP).²⁸ All the legal systems of the countries concerned are based on civil law, with constitutions and education legislation. Some constitutions are more specific than others about higher education or topics related to it such as the issue of language of instruction. This issue bedevils the successful reform and integration of higher education institutions in SEE countries since although the main state languages except Albanian share common roots and are mutually comprehensible, there are deeply-engrained historical and cultural obstacles to achieving consensus on language use. This is not of course only a problem in the SEE region. The list of 141 European minority languages prepared by Sabhal Mòr Ostaig, part of the UHI Millennium Institute, is indicative of a wider European issue.²⁹ Even where as in the United Kingdom there is no constitution, legislation which it would be politically impossible to repeal is illustrated by the Welsh Language Act 1993 and although there is no legislation as such, the encouragement given to higher education in Scots Gaelic at Sabhal Mòr Ostaig provides an interesting model for 'minority language' instruction by consensus.

After some introductory remarks on language problems in the SEE region, the paper will concentrate on the language policies of the Republic of Macedonia and how the South East European University (SEEU) has managed to adopt a modern 'flexible use of languages' policy designed to equip students to meet the needs of the modern employment market. It shows how over time it may be possible to resolve some of the difficulties, at least in Macedonia, by switching to a curriculum based on a steady

²⁸ Legislative Reform Programme in Higher Education and Research 1991-2000: Final Report Strasbourg: Council of Europe CC-HER (2000) 40.

²⁹ <http://www.smo.uhi.ac.uk/saoghal/mion-chanain/en/>.

acquisition of English as a common medium of international business, trade and academia.

Integrated...

This refers to consideration of the whole life cycle of products covering all stages from the mining of raw materials to the production, distribution, use, recycling and/or recovery and final disposal as well as to a broad approach integrating various instruments to achieve the goal of greening of products on the basis of co-operation with stakeholders.

From a stakeholder perspective, if their decisions influence the environmental impact of products somewhere else in the product life cycle, upstream or downstream, they must be aware of and take responsibility for the consequences of their actions. From a policy perspective, policy initiatives focusing on particular life cycle stages must not merely shift environmental burdens to another stage. Life cycle thinking needs to be promoted throughout the economy, as part of all decisions on products along with other criteria such as functionality, health and safety.

Problems in the SEE region – Kosovo and Bosnia & Herzegovina

The problems in SEE countries are illustrated by the situations in Kosovo and Bosnia & Herzegovina. In Kosovo, Article 4.4(b) of the Constitutional Framework for Provisional Self-Government and UNMIK Regulation 2001/9 provide that Communities and their members shall have the right to receive education in their own language. This is repeated in Article 59 of the Constitution of the Republic of Kosovo which entered into force in June 2008. UNMIK Regulation 2003/14 on higher education, still in force, prohibits discrimination in access, etc on ground of language. However, in practice, higher education at the recognised public university, Prishtina, which prior to 1991 was bilingual, is delivered only in the Albanian language, which is the language spoken by the great majority of present inhabitants. A separate Serbian language university has been created in the northern part of the UNMIK-administered territory, which as of September 2008 remains in effect outside the control of the newly-formed Republic of Kosovo and the EU mission formed to replace UNMIK. This means that

there is no common language between the two universities and no opportunities for collaboration or mobility, a problem unlikely to be resolved until the ‘final’ status of Kosovo is itself resolved. Foreign language training is part of the curriculum but it is difficult to envisage this being developed in poorly-funded state institutions. Kosovo until recently had over twenty private higher education institutions created since Regulation 2003/14 provided for licensing: some of these concentrated on teaching in English. However the government of the Republic has prohibited enrolment of new students in September 2008 pending accreditation processes, in all but one institution, the American University.

In Bosnia-Herzegovina the preparation of a Framework Law for higher education was held up, in part, because of questions related to language. The Constitution of Bosnia and Herzegovina enshrines the basic constitutional principles and goals in view of the functioning of Bosnia and Herzegovina as well as a catalogue of human rights and fundamental freedoms, all of which represent the constitutional guidelines or limitations for the exercise of responsibilities of Bosnia and Herzegovina and of its Entities. Article III (1) of the Constitution of BiH does not list education as a responsibility of the Institutions of Bosnia & Herzegovina. Article III (3) a) provides that all governmental functions and powers not expressly assigned to the Institutions of Bosnia & Herzegovina shall be those of the Entities. Therefore, the Constitution of BiH assigns a competence over education to the Entities. However, it has been held by the Constitutional Court of BiH in its Partial Decision no. U 5/98–II of 19 February 2000 (hereinafter “*Partial Decision II*”) that Article II (3) of the Constitution of BiH gives to the Institutions of BiH a general competence to regulate all matters enumerated in the catalogue of human rights which cannot exclusively be left to the Entities since the protection has to be granted to “all persons within the territory of BiH”. It has therefore been argued that considering that Article II (3) 1) of the Constitution of BiH enshrines the right to education and considering that Article 2 of the First Protocol to the European Convention on Human Rights guarantees that no person shall be denied the right to education and that the provisions of the said protocol are directly applicable in Bosnia and Herzegovina pursuant to Article II (2) of the Constitution of BiH, the Institutions of BiH have a constitutional basis to regulate matters related to education in accordance with the findings of the Constitutional Court of BiH in the *Partial Decision II* case.

The Framework Law finally adopted in 2007 generally aims at providing each citizen of Bosnia and Herzegovina with equal access to higher education, and is designed to enable the equal and uniform representation of

all universities in BiH and abroad, the recognition of foreign qualifications in BiH as well as the recognition abroad of diplomas obtained in BiH: these objectives are generally related to the right to education guaranteed to all BiH citizens under the Constitution of BiH. Different attempts were made at various stages in the lengthy drafting process to satisfy the wishes of users of different, although closely-related languages, (Serbian- which can be written in two scripts, Latin and Cyrillic -, Croatian and Bosnian) to use one official language of administration while allowing the use of the others in teaching and research, so promoting equality and mobility, and for making some kind of financial provision to cover the additional costs of doing so. With the removal of most of the financing provisions from the adopted law, as they would require constitutional change to implement, such provisions are unnecessary. However, the issue have now resurfaced and a new EU-funded project has been tasked with developing the financing provisions. As yet there is no attempt in the legislation to promote the use of English, although the Law does contain licensing provisions for private institutions.

The position in the Republic of Macedonia

The Republic of Macedonia (recognised by EU and UN as FYROM, hereafter referred to as Macedonia), has a population according to the 2002 census of just over 2m, of which about 65% have stated Macedonian ethnicity, 25% Albanian, ca. 4% Turkish, ca. 3% Roma and 3% others.³⁰ Use of 'mother tongue' language follows the same general pattern. In pursuance of the theme 'no one shall be discriminated against by any public authority on the ground of language,' the principal issue, therefore, is to try to provide equal rights in access to education to citizens speaking two entirely different languages: the official state language Macedonian (a language of the South Slavonic group written in the Cyrillic alphabet) and Albanian (a unique Indo-European language written in a modified Latin alphabet.) In practice most urban and many rural-based citizens with Albanian mother tongue also speak Macedonian, having learned it compulsorily at school, but relatively few of Macedonian mother-tongue speak Albanian. The western regions of Macedonia dominated by Albanian-speakers have close historical, family and related ties to Albanian-dominated Kosovo which between 1991 and the conclusion of the conflict in 1999 was officially dominated by the Serbian language. Macedonian-speakers on the other hand often have close links with Serbia and Montenegro or with Bulgaria: the Macedonian language has

³⁰ CIA World Factbook 2005: Macedonia.

many similarities with the other South Slavonic languages Serbian (and Croatian and Bosnian) and Bulgarian but none with Albanian.

Prior to 2000, higher education in Macedonia was delivered exclusively in the Macedonian language, apart from a small teacher-training section in Albanian. The South East European University (SEEU) was a politically-negotiated international response to demands for recognised higher education in Albanian. It set out to help to solve the problem of under-representation of Albanian-language students in higher education in Macedonia while being open to students from all ethnic groups. Macedonia's international obligations allowed the OSCE and the Council of Europe to argue successfully for a change in state policy which allowed SEEU to open. In 1988, prior to the independence of Macedonia, the Parliamentary Assembly of the Council of Europe adopted Recommendation 1353(1988) on access of minorities to higher education: as is well known this says that education is a fundamental human right and therefore (sic) access to all levels, including higher education, should be equally available to all permanent residents of the states signatory to the European Cultural Convention (ECC). Macedonia acceded to the ECC in 1995, ratifying the separate European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) in 1997. The 1988 Recommendation says that member states with minorities should avoid prescribing the exclusive use of the official language. It also recognises the fundamental liberty to engage in higher education activities and to establish institutions for that purpose. Such institutions, it says, should be officially supported once their satisfactory quality has been established – on a non-discriminatory and fair basis – and a genuine demand has been demonstrated; language should not be a criterion for recognising institutions or qualifications. Also, broadly, members of the European Higher Education and Research Areas are voluntarily committed to bring some degree of uniformity to the higher education systems of the wider Europe while maintaining diversity of approach. They aim, through changes to legislation or otherwise, to create a framework of comparable and compatible qualifications seeking to describe them in terms of workload, level, learning outcomes, competences and profiles. The uniformity of approach is intended to increase opportunities for student mobility, the European Union target of at least 20% of students by 2010 considered achievable given the emphasis on common language learning within the Common European Framework (CEF) to be discussed later, usually English.

Albanian fits the definition of a regional or minority language in the European Charter for Regional or Minority Languages (ECRML) (1992),

which entered into force in 1998. ECRML was signed by Macedonia in 1996 but by 2008 had not been ratified so the state is at the time of writing not obliged by the Charter's terms to promote and protect the use of Albanian in education. However, Macedonia ratified in 1998 the more comprehensive Framework Convention for the Protection of National Minorities (FCPNM) (1995), which obliges Parties to promote equal opportunities for access to education at all levels for persons belonging to national minorities. Parties are obliged, within the framework of their education system, to recognise that persons belonging to national minorities have the right to set up and manage their own private educational and training establishments, not in itself entailing any financial obligation for the state.

The Constitution of Macedonia states that parents have the right and responsibility to ensure their children's education (Art. 4); that all citizens have an equal right to education; and that basic education is compulsory and free (Art. 44). Private education institutions may be established at all levels except basic education (Art. 45). The Constitution was amended following the 'Ohrid' Framework Agreement of August 2001. Article 7(6) of the Constitution provides that 'In the units of local self-government where at least 20 % of the population speaks a particular language, that language and its alphabet shall be used as an official language in addition to the Macedonian language and the Cyrillic alphabet. With respect to languages spoken by less than 20% of the population of a unit of local self-government, the local authorities shall decide on their use in public bodies.' Article 48(4) of the Constitution provides that 'Members of communities have the right to instruction in their language in primary and secondary education, as determined by law. In schools where education is carried out in another language, the Macedonian language is also studied.' Among other changes in legislation to accommodate this provision, changes in the higher education law in 2003 permitted publicly-funded institutions to offer courses taught in the Albanian as well as in the Macedonian language. Prior to that, only private (i.e. non-state founded) institutions could do so, which was a cause of major concern in the country. The revised Article 95 of the Law on Higher Education, which is effectively replicated in Article 103 of the Law on Higher Education 2008 which repeals the earlier Laws, provided:

1. The Macedonian language is a language of instruction in the higher education institutions. In accordance with this Law and the Statute of the higher educational institution, in order to express, nurture and develop their identity and other peculiarities, the members of the communities shall have the right to acquire their education in the

State higher education institutions, through certain study programmes in the language of the community, different than the Macedonian language. The State will provide financing for higher education in the language that is used by at least 20% of the population in the Republic of Macedonia.

2. Teaching at the private education institutions may be done in the languages of the members of the communities that are not in majority or in some of the world languages. When the language of instruction is a language of the members of the communities that are not in majority or a world language, the Macedonian language is studied as a separate subject and Macedonian will be used as language of instruction in at least two other subjects.
3. Elementary education as well as the education in the didactical and methodical subjects for secondary school teachers may be held in the languages of members of other communities that are not in majority in the Republic of Macedonia. The lectures in the institutions of higher education can be held in one of the world languages for certain study programmes of foreign languages, for parts of study programmes in which professors-guests from abroad take part and study programmes for which the lectures are held in the Macedonian language and in accordance with paragraph 2 of this Article. The institutions of higher education may offer that the lectures for the complete study programme are held in Macedonian language and in one of the world languages in parallel.
4. In the private institutions of higher education, the lectures can be held in the languages of members of the communities, which are not majority in the Republic of Macedonia or in foreign languages. When the lectures are held in the languages of members of the communities that are not majority in the Republic of Macedonia or in foreign language, the Macedonian language shall be studied as a separate subject and the lectures shall be held in Macedonian at least for another two subjects.
5. When the lectures are held in the languages of members of the communities that are not majority in the Republic of Macedonia, in accordance with paragraphs 2, 3 and 4 of this Article, the Macedonian language shall be studied as a separate subject and the lectures shall be held in Macedonian language and at least other two subjects of the study programme will be studied in Macedonian. The subjects shall be determined with the statute of the institution of

higher education, which will determine the fund of lectures, determined in the Rules of norms and standards for establishing the institution of higher education and realizing the activity of higher education.

6. In the state institutions of higher education, as part of determining the conditions at the competition for enrolment of students in the first year of studies, the universities shall provide equitable representation of citizens, who belong to the communities that

are minorities in the Republic of Macedonia through an additional quota, determined by the Government of the Republic of Macedonia.’

Taking advantage of paragraph 4 of this Article, which remains essentially unchanged from 2000, the concept of a ‘flexible approach’ to language use was adopted by SEEU during 2002-2003³¹, as the policy of ‘flexible use of languages’ dates back to Council of Europe Committee of Ministers Recommendation R(98)6 concerning modern languages. The Recommendation encourages teaching programmes at all levels that use a flexible approach, taking into account the ECRML and the FCPNM. The Recommendation promotes the genuine intercultural outlook encouraged by bilingual and bicultural education, and points to the need for adequate numbers of suitably trained language teachers. The ‘flexible language policies’ are also mentioned in Article 5.3 of Council of Ministers Recommendation R (98)3 on access to higher education. SEEU has faced questions about its policy to develop flexible language use in a cost-effective way, which is in line with these two Recommendations, although it became apparent over the first four years that some members of the local European diplomatic community seemed unaware of their contents. This is not the place to describe the policy in detail, but adjustments to curricula consequent on adopting ‘3 plus 2’ instead of ‘4 plus 1’ first and second cycles from October 2005 were necessary to draw the correct balance between learning professional subjects and language skills.

Whatever the policy adopted, the curriculum must pass the scrutiny of the Licensing and Accreditation Board of the Republic of Macedonia, since courses which do not convey required professional competences will not be acceptable for recognition of diplomas. Successful completion of a higher education programme in the Republic of Macedonia, as in other neighbouring countries, has hitherto depended on the ability to learn facts

³¹ This followed meetings between the Rector and other SEEU staff with the relevant officials of the Council of Europe in Strasbourg.

and to be able to repeat them in a written examination, rather than on the acquisition of competences including language competence.

A solution: gradually substituting the English language

The Council of Europe's *Common European Framework* for language learning provides a common basis for the elaboration of language syllabuses, curriculum guidelines, examinations, textbooks, etc. across Europe. It describes in a comprehensive way what language learners have to learn to do in order to use a language for communication and what knowledge and skills they have to develop so as to be able to act effectively. The description also covers the cultural context in which language is set. This provided the basis for the new approach to language learning in SEEU. Given the objectives of the *Framework*, and in accordance with the Law on Higher Education 2008, SEEU requires students to have a solid knowledge of Albanian and Macedonian languages. This helps the process of integration of students, and consolidates linguistic and cultural diversity, one of the greatest strengths and defining characteristics of SEEU. SEEU's work allows students from both major language groups to follow higher education of a quality comparable to western institutions. Nevertheless, it is obvious to all that given the high level of competition in the new marketplace of higher education from systems originating outside the SEE region, in particular from the United States, and the relatively poor funding of state education, the only way in which a student can achieve personal goals which include a high standard of living is to have a good command of an international language, in practice the English language. It is recognised that success in the modern world depends in most subjects on having a good command of a modern international language related to the subject discipline. It is not only for professional reasons. The European Union takes the view that learning to communicate in common languages helps to tackle xenophobia and ultra-nationalist backlashes as a primary obstacle to European mobility and integration, and as a major threat to European stability and to the healthy functioning of democracy.

Whether this means that the actual teaching has to be carried out only in English is another question entirely. SEEU takes the view that it does not necessarily aid the economic and social development of the country or the region to attempt to exclude local languages from the teaching process, as is the case in some private providers, not least because as yet there is an inadequate cadre of senior professors able to teach in English. The Law

envisages either teaching in the ‘languages of the communities,’ in practice Albanian, or in foreign languages. A mixed approach means that Macedonian must also be studied. The flexible use policy therefore has high cost. The policy of SEEU is to help students in international subjects such as Business Administration (BA) and Communications Sciences and Technologies (Computing Branch) to reach at least the level of B2 independent user, and from September 2008 courses at first and second cycle in Business Informatics will be taught entirely in English. However, achieving a higher level of language competence is not based solely on the number of hours of instruction undertaken at SEEU: many students arrive at SEEU having already reached A1 or A2 level. It is clearly not the University’s sole responsibility to provide language tuition within the Common Framework: as this makes clear, it is necessary for common language learning *to be encouraged, put on an organised footing and financed at all levels of education by the competent bodies*. So the state also has a responsibility to encourage and finance language learning at all levels. One contribution of SEEU to this, so far without government financial support, has been to help with the provision of well-trained teachers in Albanian-language schools. SEEU also has the right to expect the government to help with the costs of providing high level language tuition in the national interest but so far this has not happened.

The ground is prepared for a possible next step, a one or two year foundation programme as part of the National Qualifications Framework in which students concentrate on gaining language, IT and other generic skills leading to entry to or completion of Year 1 of the three-year first cycle degree, depending on ability and performance. After that, professional subjects could be taught in English. However, even the revised Law is not flexible enough to allow study programmes to be responsive to student needs. As it is, now all students entering SEEU who have not passed the new State Matura examination, offered for the first time in 2008, must take a test in English in order to place them at the appropriate level for the appropriate level of the Basic Skills in English (BSE) course. Apart from the first cycle course in Business Informatics, the process allows the gradual introduction of teaching in English in the third year of the first cycle, and in the second cycle in Business Administration and Computing, with some availability of teaching in English in Law (Public and Private International Law including European Law) and Public Administration (related to accession to the European Union). This implied a strategic restructuring of basic and special purposes English courses.

Conclusion

Issues of language are of fundamental importance to the different communities which make up countries in the SEE Region. By preserving and protecting their use in higher education while opening up possibilities for students to learn English as a medium of international communication, institutions can enhance the prospects for employment and personal development of their students. However, it is necessary that laws recognise this. While the Kosovo and Bosnia & Herzegovina legislation place no obstacles in the path of these developments, there is a long way to go before either country is in a position to realise them. By contrast, the Macedonian law is still somewhat restrictive and arguably needs further refinement if the goals established by SEEU are to be fully achieved and disseminated to other parts of the Macedonian higher education system.

Penal sentences during 1945-1991 in Albania

Femi Sufaj, MA
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Abstract

In the late years, the topic of historical studies is extended outside its traditional framework and has started to highlight even those fields that were not its own focus. One of these topics is the penal policy in Albania during 1944-1991, which is the scope of the following study. In the reviewing Albania today's history and especially communist time, this thesis highlights a very important aspect of our history. This study will support the implementation of Council of Europe recommendations in the Resolution No. 1096 date 27.06.1996 and No. 1481 date 25.01.2006 for condemn of communist crimes and improvement of standards for treatment of persons in conflict with the law and with the respect of citizens basic rights and freedoms. It is not just about opening of lawsuits on crimes, murders, imprisonments and not fair persecutions, but of moral condemn of dictatorship and implementation of legal and practical mechanisms for the prevention of any kind of dictatorship and violence on citizens, as recommended on aforementioned resolutions. This work is the summary of a more complete study on penal policies during totalitarian system in Albania that I have prepared under the guide of Prof. Ajet Shahu at History-Philology Faculty in Tirana on my Ph.D thesis. In this work we included penal condemns, death sentences, imprisonments, and deportations etc., that were sentenced during communist regime. Through authentic tables and statistics gathered from State Archive, we have illustrated the dimensions of violence and oppression, which have never been consulted till now. We have presented how communist ideology and single party in power dominated penal policy. We have analyzed social structure of sentenced and political differentiation policy followed by state and party structures.

Abstrakt

Viteve të fundit, subjekti i studimeve historike është zgjeruar jashtë kornizës tradicionale të saj dhe ka filluar të nxjerr në pah edhe ato lëmi të cilat nuk ishin në fokusin e saj. Një nga këto subjekte është politika penale në Shqipëri gjatë periudhës 1944-1991, e cila është sfera e studimit në vazhdim. Në rishikimin e historisë së sotme të Shqipërisë dhe veçanërisht kohën e komunizmit, ky punim ndriçon një aspekt të rëndësishëm të historisë tonë. Ky studim do të përkrah implementimin e rekomandimeve të Këshillit të Evropës në Rezolutën nr. 1096 të datës 27.06.1996 dhe nr. 1481 datës 25.01.2006, dënimin e krimeve komuniste dhe përmirësimin e standardeve për trajtimin e personave në konflikt me ligjin dhe me respektimin e të drejtave dhe lirive themelore të njeriut. Nuk ka të bëjë vetëm me hapjen e proceseve penale, vrasjeve, burgimeve dhe persekutimeve të padrejta, por të dënimit të diktaturës dhe implementimit të mekanizmave ligjor dhe praktikë për parandalimin e çfarëdo lloj diktature dhe dhune mbi qytetarët ashtu siç rekomandohet në rezolutën e lartë përmendur. Ky punim është përmbledhje e një studimi më komplet në politikat penale gjatë sistemet totalitar në Shqipëri që unë e kam përgatitur nën udhëheqjen e Prof. Ajet Shahu në Fakultetin e Historisë-Filologjisë të Tiranës në tezën doktoraturës sime. Në këtë punim ne i kemi përfshirë dënimet penale, dënimet me vdekje, burgimet dhe depërtimet etj., që janë shqyrtuar gjatë regjimit komunist. Nëpërmjet tabelave autentike dhe statistikave të mbledhura nga Arkivi i Shtetit, ne kemi ilustruar dimensionet e dhunës dhe tiranisë, e cila gjë nuk është referuar deri tani. Kemi prezantuar se si ideologjia komuniste dhe një parti e vetme në fuqi ka dominuar politikën penale. Është analizuar struktura sociale e politikës ndëshkuese dhe diferencuese e ndjekur nga strukturat shtetërore dhe partiake.

Апстракт

Во последниве години темата за историските студии е проширена надвор од традиционалните рамки и почна да ги истакнува и оние области кои претходно не беа во центарот на внимание. Една од овие теми е кривичната политика на Албанија во текот на 1944-1991, која е во доменот на следнава студија. Во разгледувањето на денешната историја на Албанија и особено во времето на комунизмот оваа теза го истакнува многу важниот аспект на нашата историја. Оваа студија ќе ја поддржи имплементацијата на препораките дадени од Советот на

Европа во резолуцијата број 1096 од 27.06.1996 и број 1481 од 25.01.2006 за осудување на комунистичкиот криминал и подобрување и на стандардите за третирање на лицата во конфликт со закон и со почит на основните права и слободи на граѓаните. Не се работи само за отворање на судски постапки за криминал, убиства, затвори и не фер гонења, туку и за морално осудување на диктаторството и имплементација на на правните и практични механизми за заштита од било каков вид на диктаторство и насилство врз граѓаните, според препораките од горенаведените резолуции. Овој труд е резиме на покомплетните студии на кривичните политики во тоталитарниот систем во Албанија кои што јас ги подготвив под водство на проф. Ајет Шаху на Историско-Филолошкиот Факултет во Тирана за мојата докторска теза. Во овој труд ние ги вклучивме кривичните осуди, затвори и депортирања итн., кои беа изрекувани во текот на комунистичкиот режим. Преку оригиналните табели и статистики прибрани од Државната архива, ние илустриравме димензии на насилство и тиранија кои досега никогаш не беа консултирани. Ние презентиравме како комунистичката идеологија и единствената политичка партија на власт доминира врз кривичната политика. Ние ја анализиравме општествената структура на политиката на изрекување казни и политичката диференцијација која ја следи државата и партиските структури.

Introduction

The performance of institution for execution of penal sentences was a direct mirror of policy-governance system during different time periods of our history. Since the beginning of the last hundred years, when Albania become part of the world political map as an independent and sovereign country, after five centuries of Ottoman occupation, Institutions of penal sentences have changed drastically. There were changes on human right concept, their organization and architecture. During 1942 up to 1944 we can see some attributes of penitentiary system in Albania.

First of all, during this period, due to the low level of economical development there were very weak prisons infrastructure, with an inadequate architecture, which do not guaranteed security, human treatment, hygienic conditions and possibility for future return to society of prisoners. Most important prisons inherited by Ottoman occupation were Shkodra, Gjirokastra, Korca, Elbasan and other prisons were placed at any prefecture

centre. During King Zog monarchy was reconstructed Gjirokastra prison inside the Castel of the city (1928), which was used up to 1995. "...The way it is constructed –wrote the inspector of King Zog court, Xh. Ypi on 1932 – is not in conformity with human existence. On 1930 was build Tirana Prison, which is still operative. During the Second World War were build many new prisons like Burrel, new prison in Tirana, today's Pretrial Institution at Str."J.Misja" and many deportation camps as Porto Romano, where were imprisoned members of the anti fascist resistance. The general situation of prisons during the War was described by Army General, G. Pagrili on 1942: "Civil prisons in Albania are placed at provisory locations, which normally lack any hygienic and moral conditions, they are not appropriate even on security level...In prisons there are mixed those with long and life sentences, with those with soft sentences and waiting for trial. The damage coming from this mixture is very clear and the prison fails to achieve its moral education of those convicted for severe crimes."

Second: Up to enforcement of Zog regime for management and organization of prison system, there were in force legal acts inherited from Turkish regime. Penal law of April 28th, 1910 in some parts organized the prisons administration (acts 131-149). During First World War different occupying countries as Austro-Hungary, France and Italy tried to change acts and codes but the insufficient time was impossible to implement them. The establishment of Legal framework started after 1920, a period marked by establishment of high level institutions from Lushnja Congress. In the establishment of the legal framework, a special role was played by foreign specialists close to Albanian government, especially English ones. On August 1033 was entered into force the new prisons' guideline, prepared based on a package "Summary of rules on prisons treatment" sent by the League of Nations through the Ministry of Foreign Affairs on 09.11.1931. The guideline was approved by a government decision and was signed from whole government as there were obligations to be fulfilled by all ministries, upon respective directives.

Third: Through legal acts and archive documentation related to institutions of penal sentences, we can see the public character of this service. In the letter of Korca persecutor, Sali Babeni of 1917, sent to the city council, he stressed out that the prison instead of being administrated by a civil worker, who should have the responsibility coming from the procedure, still was under police authority. In a document regarding the election of Vlora prison, on June 8th, 1992, was mentioned that the competition will be organized based on the Directive of Internal Affairs Ministry 728/1 date 3.2.1921" For investiture of state administration civil

servant". In the prisons guideline of 1933, were defined the structure for the prison management. During the war time there were made some partial changes of the guideline and management. So on 1942 was established the Central Penitentiary Directory.

Forth: We see human attitude toward dealing with prisoners. Through series of documents, responsible structures were remarked on cases of violations of prisoners rights and also for cases of maltreatments.

I. Penal sentences from 1945-1991

Penal policy of totalitarian system in Albania, as in many other countries of the same system, was totally dominated by the ideology and policy of single party in power over objectivity, positive experience and its scientific character. During its first years penal legislation, penal laws and codes included democratic elements from the legislation after national liberation and before 1939. In Penal Code of 1952, article 2 stressed out "*No one can be considered responsible of penal acts that are not foreseen as crime by the laws*" which is the sanctioning of well known principle of penal right classical school. ("*nullum crimen, nulla poena sine lege*") This principle is sanctioned at Universal Human Rights Declaration where is written: "No one can be convicted for actions or not actions, which on the time where they were committed do not constitute a criminal act upon domestic or international right. At the same time, no sentence can be given that is harder that the one used on the time when criminal act was committed."

This principle was formally sanctioned, because at the Penal Code of 1952, in the chapter of crimes against the state were in a special article (77) Subversive activity before liberation, that foresaw a sencece not less than 10 years or death and confiscation of wealth.

In the Penal Code of 1977 this principle was formally eliminated, while remained unchanged the article for subversive activity before liberation, even though 35 years have passed. In the Penal Code of 1952 was foreseen that the maximal extend of a penal act for death penalty was 20 years. In the 1977 Penal Code extend for penal acts that were considered crimes or any category foreseen as only violations were eliminated. So we see greater constrains and limitations that the one foreseen in 1952 Penal Code, even if we are 25 years later.

The first penal code after liberation was approved on 1952. Up to this period sentences were given based on 1928 penal code and some penal laws approved by KANC (National Anti fascist national liberation Council) and People assembly. With the law No. 61, date 17 May 1945 all legal dispositions enacted during foreign occupation and all penal decisions of that period were abrogated and considered not valid. Meanwhile laws, decrees, guidelines that were in power up to April 7th, 1939 were still valid even for future period, when they were not opposed to the new democratic spirit.

Among laws approved during that period we can mention, Law No. 21, date 15.12.1944 “On war and people power saboteurs”, Law No. 382 date 14.01.1945 “On military court functions”, Law No. 372 date 12.12.1946 “On crimes against people and government”, Law 373 date 12.12.1946 “On persecution of prohibited trade, speculation and economic sabotage”, Law 382 date 24.12.1946 “On general penal provisions”, Law 390 “On execution of penal sentences”, Law 599 date 13.5.1948 “On general provisions of Penal Code”.

In **1928 penal code** the following sentences were foreseen: *capital sentence by shooting or by hanging, life sentence, heavy imprisonment, imprisonment and deportation, fine, interdict from public duties*. These were the sentences for criminal penal acts. Meanwhile for violations were foreseen *finis and light imprisonment*. In **law 382 date 24.12.1946 “On general penal provisions”** were foreseen capital sentence, life sentence and hard work, privation of liberty with forced work from 6 months to 20 years and privation of liberty from 3 to 5 years, lost of citizenship, lost of civil and political rights, lost or reduction of power, prohibition to exercise the profession or activity, fine, confiscation of property and deportation. In **1952 penal code** were foreseen: capital sentence, privation of liberty, deportation with correction work and social obloquy. Additional and main sentences were losing of work, degradation, fines while complementary sentences like confiscation of property, privation of rights, prohibition to exercise a defined activity or profession. Privation of liberty was foreseen in the range from one month to 25 years and was executed in prison, when the convicted was a recidivist and when had committed a dangerous crime.

In **1977 penal code**, in articles 17 were foreseen different kind of sentences. Courts gave the following sentences for those that committed crimes: 1. Education through work, 2. Privation of liberty, 3. Capital sentence.

For those that committed penal violations courts gave following sentences: 1. Social obliquy, 2. Fine, 3. Education through work, 4. Privation of liberty.

For those that committed penal acts courts could give these complementary sentences: 1. Privation of medals, 2. Prohibition to exercise an activity or profession, 3. Prohibition of voting right, 4. Exile, 5. Deportation.

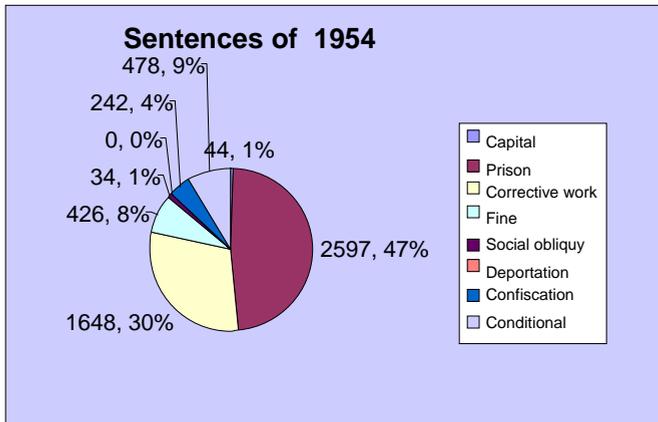
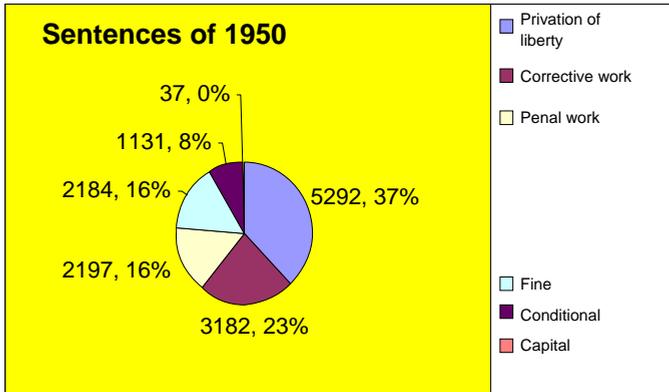
In legal acts and codes after liberation it was sanctioned the sentence with corrective work, privation of liberty and hard work. The main function of this provision was to secure working force for working in difficult areas like mines, irrigations, road construction, agriculture etc. If we carefully see the sentences for 1950, 1951 those sentenced with hard work, privation of liberty and corrective work are about 37-39 percent. However, even those sentenced with privation of liberty and deportation were obliged to work. This was foreseen in the penal code and penal procedure, where was mentioned that persons sentenced with privation of liberty will execute their sentence in labor camps and in particular cases in prisons. The last ones were most dangerous political prisoners, not able to work and those that could create problems and endanger the life of other prisoners and staff.

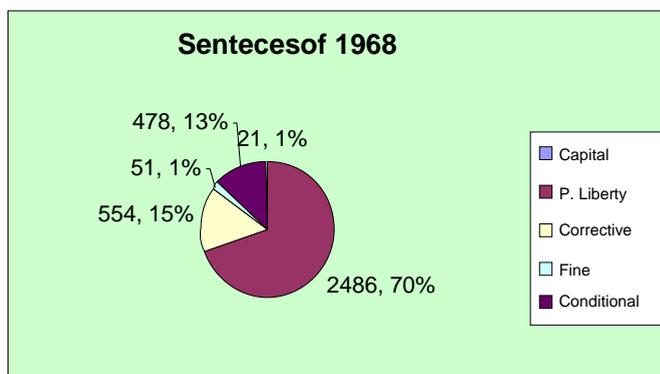
Penal Codes were extremely politicized, what was openly expressed in Article 1 of 197 Penal Code “Penal legislation of RPSSh express the will of labor class and other working classes and is a powerful weapon of proletariat dictatorship in classes struggle. Penal legislation duty is to protect the socialist state, PPSH as the only political force guiding the state and society, citizens’ rights and interests and entire socialist order from dangerous acts, through application of penal measures against those committing these acts”. The concept of right as impartial is clearly void in different comments in the code where it criticize “capitalist” and “revisionist” countries that hide under their equal rights for everyone, the class character of their penal legislation. Albanian legislation on the other side do not hide it, but it clearly makes it present that the interest of the Party, as the pinnacle of working class sword and spokesmen of working class will, prevail in all its parts.

First session of 1977 Penal Code, as the one of 1952 deals with political crimes, which are considered as crimes against the state. It keeps with some small changes, all corresponding statements of the 1952 Penal Code. Crimes against the state are sentenced to death, except the crime for incitement of racial and national hate, where the sentences were from three to ten years imprisonment. Additional sentences like confiscation of property, which was

applied earlier for all crimes against the state, was not applied anymore in the 1977 Penal Code.

Most of articles defining crimes against the state are very vague, which allowed courts to have a wide interpretation. The charts illustrate the sentences given by courts in years..





Capital sentences

Capital sentences were based on laws approved by KANÇ and latter on up to 1952 on people assembly acts. We can mention Law on “War and people power saboteurs”, of 15.12.1944, “On functioning of military courts” date 14.1.1945, “On general penal provisions”, 24.12.1946, “On crimes against people and authorities” and “On persecution of prohibited trade, speculation and economic sabotage” 12.12.1946.

From 1952 up to 1976 capital sentences were based on Penal Code approved on 1952 that foresaw capital sentence in 31 articles, out of which 15 were for crimes against the state. This code was in power for 15 years. On 1977, after the approval of 1976 Constitution was approved the new penal code that did not decreased capital sentences but extended them in 33 articles. On 1988 there were made some other changes at the Penal Code and penal crimes punished by capital sentence decreased at 11 cases. The capital execution of 1988 at Kukes city by hanging and exposure of the body in front of the public for the entire night up to 11 a clock in the morning was a clear testimony that the savage of dictatorship was still fresh despite legal changes that we mentions. (Capital execution of Kukesi poet, Havzi Nela)

Starting from number of death sentences and their motivations, we can divide them into three periods. Period up to beginning of 1950, which was characterized by a harsh repression, mainly against people accused by the regime as collaborators of fascism and war criminal, members of groups and parties that were opposed to Communist Party, representatives and spiritual leaders, etc. Second period is after 1950 up to beginning of 1970 when there is a decrease of number of executions. Third period is after 1970, when the

so called new revolutionary spirit and mass directive had strong influence on penal justice system. The following table can give an idea of capital sentences, even though we cannot present all years due to lack of data.

| Years | 1950 | 1951 | 1952 | 1954 | 1960 | 1967 | 1968 | 1969 | 1970 |
|-------------------|------------|------------|------|------|------|------|------|------|----------------|
| Total prisoners | 12900 | 8966 | 6952 | . | | 3235 | 3139 | 2456 | 1879 9 muaj |
| Capital sentences | 37 0.2% | 81 0.9% | 50 | 44 | 26 | 20 | 21 | 14 | 2 |

During Second World War, at the end of 1944, capital sentences were executed without being sentenced by a higher court and without complains, as is the normal court practice. In order to stop such practice, High Military Court, by an order sent to all military courts on 3.9.1945, required that no capital sentence should be executed without being priory approved by High Military Court.

This practice, later on, was placed in the code of Penal Procedure. Legal provisions foresaw that within 10 days from the decisions, High Military Court should revise the capital sentence for any case even when there were no complains. Those sentenced with capital sentences, had the right to require for amnesty from Speaker of People Assembly. This last one, depending on cases should be independent for his decision, but only for ordinary crimes meanwhile on political crimes he had no independency. This is more that understandable, if we see that formal requests were sent to E. Hoxha, even if he never held that position.

The first to be targeted after communist regime came into power, were the so called “war criminals and collaborators of fascism”. Entire world started trials for sentencing war criminals. But in our country such process was very wide and was not based on justice but on revenge. Sami Repishti, imprisoned on 1946 describes as follow the terror atmosphere in Shkodra during those days: “An ugly event at the center of the city, fall as the first bomb to woke up the citizens, a first signal of what was coming on. A group of collaborators with occupying armies were publically executed at the main square... A silent crew was looking horrified at this massacre, public executions, Nazi model, without trials, no legal protection, and no appeal. It was the taste of new society. On March 1st, 1945 a special court in Tirana, chaired by Koçi Xoxe gave 17 capital sentences, 8 life sentences, 10 of 30 years imprisonment and 23 others with 2 to 20 years of prison. They

included high officials of former government, nationalists, people from Balli party, etc qualified as collaborators with the occupier and war criminals. In a letter of June 25th, 1945, Enver Hoxha Chief Commandant of National Liberation Party, directed to all military units, notifications about capital sentences of 14 effective officials of National Liberation Army and 17 other sentences for members of Balli party, militia or police force, which based on that letter were making propaganda against National Liberation party. What impresses here is the spirit on which the leader passes this news to the opinion, it is very suggestive, and it fosters class war between social groups and with a sense of revenge.

Object of such punishment were individuals and families with high reputation and credibility for their nationalist position. Enver Hoxha and the government were receiving letters to forgive them, but they did not react. A familiar from Vlora writes “As a simple peasant cheated by a fraud policy, I acted with my eyes closed. One of my sons at major age was killed, please forgive my other one”. On October 1st, 1946, National Ministry of Defense by an order signed by Enver Hoxha at the quality of Supreme Commander of Armed Forces approaches all military courts “All effectives arrested in all divisions should immediately processed in front of military courts and the sentence should be notified within October 5th 1946.” Within few day hundreds effectives of all ranks were sentenced with long and capital sentences. For example, military court in Gjirokastra notifies the Ministry of Defense that it sentenced 33 effectives, 8 by capital sentence, 24 by prison and 1 was proclaimed innocent. Such notices came from all military courts.

A capital sentence was given as a simple administrative act, without procedures or proves. These call the attention of some members of high court, who intervened trying to stop such measures. In a letter of Chairman of High Military Court, of 26.11.1947 sent to Gjirokastra Military Court considered “**top secret**” is said: ... On coming trials try to decrease capital sentences; you should give such sentence only on very serious cases. Such harsh measure leaves a bad taste, so please try to look on it and do not feel happy when you give only capital sentences. Capital sentences should be rare and appropriate.”

Most famous capital sentences given by communist courts were the following: March, April 1945, Tirana Special Court sentenced by shooting 17 citizens accused as “war criminals and fascism collaborators”, who were high state officials during the war and had an important role in the Albanian policy making during the first part of XX century.

On July 3rd, 1946, High Military Court sentenced by shooting representatives and leaders of Democratic Union. 37 people were arrested and 9 had capital sentence and the rest was sentenced for heavy crimes.

On September 1947 was organized the trial of deputies, which sentenced to death by hanging 3 intellectuals and by shooting 13. Up to its last days, communist dictatorship was marked by an extreme violence followed by imprisonments, deportation and execution of representatives of Catholic and Muslim clergy.

Murdering of party leader for Mirdita region in 1949 was followed by massive executions, 37 of them, with and without trials. In only one day, forces commanded by Mehmet Shehu, on August 1949, in a place Qafa e Valmirit Kaqinar, fusilladed 14 people as revenge for the murder of Bardhok Biba, who were buried in a common hole covered by wires.

Series of capital sentences followed one of main events of that time, known as the incident with Russian Embassy. On 1951 at the courtyard of this embassy, which on that period was known as “second government”, was thrown a grenade that didn’t hurt or killed anyone. The politic bureau held an extraordinary meeting on 22 February 1951 where decided to inform Stalin, to apologize for what happen and that the struggle against dangerous elements will go on. This event was considered intentional to damage the friendship with Russian government. So the investigations were politicized. Mehmet Shehu who was minister of Foreign Affairs at that time proposed: “we should follow same terror used in the case of murdering of Bardhok Biba, when we killed without following legal practices. We should arrest 100-150 persons and kill 10-15 of them.” In 1960, most sensational sentence was the one against Teme Sejko group. With a montage of accuses as agents of imperialism, in order to show loyalty and friendship to Soviet Union, in a time when the first discrepancies were showing, state security and Ministry of Foreign Affairs opened a penal case against Rear Fleet Admiral, Temo Sejkos. As it was well known, Teme Sejko already sentenced to death could not make it up to shooting platoon, because he died during tortures of the security that have been ordered “get more from him”. After his tragic end many citizens from Çameria were sentenced as “Greek agents”. During 1970, we can mention shooting of those participating and instigating prisoners revolt at Spac camp, putsch group leading the army, two young guys from Librazhd, Vilson Blloshni and Genc Leka.

The number of capital sentences for all crime categories after 1980, expressed in percentage was:

| | | | | | | | | | |
|------|------|------|------|------|------|------|------|------|------|
| 1980 | 1981 | 1982 | 1983 | 1984 | 1985 | 1986 | 1987 | 1988 | 1989 |
| 0.1% | 0.2% | 0.1% | 0.4% | 0.5% | 0.4% | 0.5% | 0.7% | 0.8% | 0.8% |

To the number of executed we can add those died of illness and many accidents due to hard labor. For years 1951, 1952 and 1953 officially were reported dead 178, 207 and 120 prisoners, respectively.

Sentences with privation of Liberty (prison)

Privation of liberty was the main sentence for penal acts that are considered crimes, but also violations when consequences were severe and dangerous for the society. In the Penal Code of 1952 and 1977 and in late changes was used the terminology “privation of liberty” understanding imprisonment. Even in penal legal provisions of 1945-1952 were used the same terminology. In the actual code is used the term “imprisonment”. I think that “privation of liberty” instead of “imprisonment” is related to infrastructure of institutions executing penal sentences up to 1991, which on biggest part was composed by labor camps. Moreover such term used during social system was to cover its real repressive character. The terminology and language used during communist period have changed in conformity with developments of the system and in function of ideological influences over individuals. At the Penal Code of 1952 was used the term “correction camp”, at the Penal Code of 1970 was used the term “reeducation site through labor”. In the Penal Code of 1952 was foreseen that privation of liberty should be executed at correction working camps. The court could decide that entire period or part of it to be passed in prison when the prisoner was repetitive, dangerous and had committed a serious crime. Normally, courts do not sent sentenced to prisons due to the fact that they were repetitive. In prisons were sent those convicted for crimes against state that were called not only verbally but also officially “enemy of the people”. Decree No. 3584 date 12 November 1962, on “Implementation of judiciary practices” foresaw that the prison should be considered a more severe punishment compared to labor camps. Convicted should be sent to prison if they “commit heavy or repeated violations” of camp regulations or keeping them in labor camp was a threat or when they are not able to work due to bad physical conditions. On 1947, statistics of Camps and Prisons Division showed that Albania had 18 prisons, 8 for political prisoners, 7 for ordinary prisoners and 3 with both categories. Prisons were situated in 9

districts, concretely in Tiranë, Elbasan, Korçë, Vlorë, Shkodër, Durrës, Berat, Gjirokastër dhe Burrel. Their total capacity was 3005 prisoners, as were the standards of that time. Statistics of January 1st, 1951 showed that in prisons were 7168 inmates, so 4163 over capacity.

The construction of labor camps with political and ordinary prisoners, i.e. Maliq, Bedenit, Vlashuk started in the first years after liberation. On 1953 were closed 4 prisons, Elbasan, Durres, Berat and Gjirokaster, meanwhile were constructed bigger ones, Camp No 1, No2, No 3 and No 4. For deported people were build a special camp called Camp No 5. The Ministry of Internal Affairs to express the military character of most important institutions, by special decision No 1620 of 1955 labor camps and prisons decided to call them workshops. They changed these new notions that are still in our memories not only of prisoners, like the famous 303 Spac workshop or 301 in Bulqiza, 313 in Tirana. The geography of prisons and camps during 1945-1991 changed compared to the most important needs of the economy and where were the most difficult areas, mines, construction and agriculture. For example, Camp 1 called Workshop 301 during its existence had more than 1000 prisoners; it changed location from Maliq marsh on 1951 to Gose, Kavaja on 1952-1953, at Berat aviation field on 1953, in Rinas from September-December 1953 and in Bulqiza on 1954.

Communist government that came into power at the end of 1944 was faced with difficult conditions, where worse were economical ones. They found as solution, to the reconstruction of the country and primitive levels of production forces, hard labor of citizens regardless of age and gender,. Such method was used by communist state during all its existence. Hard labors were done by prisoners. Labor camps at the same time were a solution for housing and keeping thousand of prisoners. The result of these massive punishments was the tremendous increase of prisoners. So on 1 January 1950 Albania had 7168 prisoners and 2000 deported people, in total 9168 so 753 prisoners for 100 thousand people (at that time Albania had 1 218 000 inhabitants). Such number of prisoners could not be housed in prisons that were almost destroyed but even when they were at their best had a capacity 3 times lower. Based on a report about criminality in Albania during 1945 up to 1957 were proceeded and sentenced for ordinary and criminal crimes 109 111 persons. In this amount were not accounted crimes against the state, out of which we do not have numbers from 1944-1948, while from 1948 to 1957 were about 4198 proceedings.

Statistics for prisons capacity on 1 January 1951.

| N/R | Prison | Capacity | | Real | Over |
|-----|-------------|-----------|------|------|------|
| 1 | Tirana | Political | 287 | 902 | 615 |
| | | Ordinary | 191 | 873 | 722 |
| 2 | Elbasani | Political | 163 | 216 | 53 |
| | | Ordinary | 118 | 324 | 206 |
| 3 | Korça | Political | 221 | 353 | 132 |
| | | Ordinary | 91 | 487 | 396 |
| 4 | Vlora | Political | 211 | 130 | 81 |
| | | Ordinary | 102 | 544 | 442 |
| 5 | Shkodra | Political | 256 | 565 | 309 |
| | | Ordinary | 265 | 564 | 309 |
| 6 | Durrësi | Political | 149 | 97 | -52 |
| | | Ordinary | 176 | 308 | 132 |
| 7 | Berati | Ordinary | 216 | 487 | 273 |
| 8 | Gjirokastra | | 351 | 735 | 384 |
| 9 | Burreli | Political | 228 | 581 | 353 |
| | Shuma | | 3005 | 7168 | 4163 |

Deportation and Exile

Deportation institutions were established based on Decree No 649 date 10.1.1949 and was later changed with decree No 1906 date 02.08.1954, No 3021 date 12.01.1960, No 4137 date 9.5.1966 and with later decrees.

In article 22 of 1952 Penal Code defines the sentences as “Sentence is expulsion from domicile for a time period from 6 months to 5 years with full stop or moving from one place to another known place. When the sentence is given in addition to privation of liberty, this time is calculated from starting date of privation of liberty.

Expulsion as additional measure was given when the court believed that staying of the sentenced in a defined place was dangerous for the society.

Sentence against foreigners could be followed with their deportation outside R.P.S.SH borders.

Article 21 defines deportation: “Deportation is removing of sentenced from his domicile to another define place with or without correction labor. Deportation as main sentence is given for a period from 1 year to 10 years.

Deportation without correction labor was given for a period of sixth months up to five years and was executed after fulfilling the main sentence. Even the 1977 Penal Code preserves the same disposition unchanged. In the following table there is an idea on deportation in a period of 15 years

| Sentence | Motive | 1953 | 1954 | 1955 | 1956 | 1957 | 1958 | 1959 | 1960 |
|--------------|-----------|------|------|------|------|------|------|------|------|
| Deportation | Political | 579 | 646 | 20 | 194 | 213 | 312 | 202 | 216 |
| | Ordinary | - | 11 | - | - | 13 | - | - | - |
| | Total | 579 | 657 | 20 | 194 | 226 | 312 | 202 | 216 |
| Exile | Political | - | 26 | 23 | 33 | 30 | 17 | 35 | 25 |
| | Ordinary | - | - | | | | | | |
| | Total | | | | | | | | |
| Total | | 579 | 673 | 43 | 227 | 256 | 329 | 237 | 241 |

| Sentence | Motive | 1961 | 1962 | 1963 | 1964 | 1965 | 1966 | 1967 | Total |
|-------------|-----------|------|------|------|------|------|------|------|-------------|
| Deportation | Political | 557 | 372 | 92 | 26 | 99 | 98 | 197 | 3528 |
| | Ordinary | - | - | 19 | 30 | 1 | 299 | 85 | 614 |
| | Total | 557 | 372 | 111 | 56 | 100 | 397 | 282 | 4141 |
| Exile | Political | 43 | 9 | 17 | 23 | 1 | - | 2 | 286 |
| | Ordinary | | | | | | - | | |

| | | | | | | | | | | |
|-------|-------|-----|-----|-----|----|-----|-----|-----|-------------|--|
| | Total | | | | | | | | | |
| Total | | 600 | 381 | 128 | 79 | 101 | 397 | 284 | 4997 | |

Deportation and exile started in 1945, although they had no legal base. A document of 1947 states that since 1947 from January there were 1272 deported persons that were placed in Kruja and Berat. Some of them were war prisoners, mainly Germans.

| | Jan | Feb | March | April | May | June | July | Aug | Sept | Oct | Nov | Dec |
|--------------|------|------|-------|-------|------|------|------|-----|------|-----|-----|-----|
| N/r Total | 1272 | 1158 | 1115 | 1126 | 1110 | 867 | 878 | 884 | 895 | 881 | 886 | 976 |
| Berat | 855 | 792 | 762 | 770 | 743 | 565 | 575 | 575 | 586 | 571 | 583 | 583 |
| Kruja | 416 | 366 | 353 | 356 | 367 | 302 | 303 | 309 | 309 | 310 | 303 | 303 |

Deportation and exile would apply only in these cases:

Against those people representing social dangerousness:

Some members or entire family of a person that escaped out of the country and when the family lives close to boarder area.

Some members or the family of a person that escape out of the country, but do not live close to boarder area could be deported only when such measure served to prevent other possible escapes from that area.

Elements opposed to the party, whose stay in a special place made it dangerous for the others.

Persons or their families living close to boarder areas and were in danger of escaping.

Those elements that could terrorize other people.

Seniors of families which were war criminals and escaped outside the country, other familiars of escaped persons outside the country when they were reactionaries and were serious threat. For these two categories such measure will be taken in main cities where they live.

In particular cases, deportation could be given also for those persons that have done repeated acts of robbery, prostitution, vagabondism but only if they lived in the main cities.

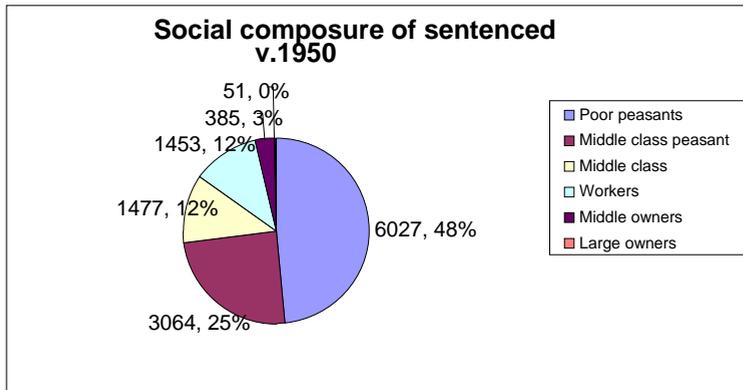
Treatment and rights of deported persons were foreseen in a special guideline of 1962 which was very formal as none of those foreseen there were implemented in reality. Article 2 stated “Deported people have the same rights of all citizens in R.P. of Albania, but without respective permit of competent bodies cannot leave the territory where they are sent deem they sentence. If the sentenced leaves the deportation site without permit, he/she is sentenced based on article 229 of Penal Code. Article 4 stated that deported persons do not have electoral rights, if such was sentenced in the court decision. Article 28 stated that the court can decide about removing electoral right when it gives a sentence for privation of liberty and deportation of more than 2 years. We have to remind that deportation was given for a time period of 10 years and was extended in time. So from 1965 up to August 1967, 117 have passed their period and were freed only 73 persons or 38 percent of them. Article 5 foresaw that deported persons by their request could take and keep their children with them. On such occasions the respective body of internal affairs prepared the statement for the deported. Also the deported person could take with them other members of the family, his/her wife, husband, parents etc, only after receiving a respective authorization from the officer of internal affairs. Along with capital sentences and deportation there were given conditionals especially for small acts, fines and corrective labor. Following table illustrate the sentences and the report between different sentence categories. However because of paper length we can analyze criterions, reasons and policy followed for their application.

| Period | Total | Capital sentence | Deprived of liberty | | | | | Corrective labor | Conditional | Fines |
|----------------|-------|------------------|---------------------|---------|----------|-----------|------------|------------------|-------------|-------|
| | | | Gj | + 1 vit | 1-3 vjet | 3-10 vjet | 10 25 vjet | | | |
| 1970 (9 Month) | 1879 | 2 | 1492 | - | - | - | - | 354 | 360 | - |
| | | 0.1% | 79.4% | | | | | 18.8% | 19.1% | |
| 1969 complete | 2456 | 14 | 2007 | - | - | - | - | 389 | 361 | - |
| | | 0.57% | 81.7% | | | | | 15.8% | 14.6% | |

| | | | | | | | | | | | |
|------|---|------|------|-------|-------|-------|-------|------|-------|-------|------|
| 1968 | " | 3139 | 21 | 2486 | 1552 | 502 | 328 | 109 | 554 | 487 | 51 |
| | | | 0.6% | 79.1% | 62.5% | 20.6% | 13% | 4.3% | 17.7% | 15.5% | 1.6% |
| 1967 | " | 3235 | 20 | 2676 | 1453 | 645 | 458 | 138 | 451 | 407 | 51 |
| | | | 0.6% | 82.7% | 53.6% | 24% | 17.1% | 5.2% | 13.9% | 12.6% | 1.6% |

Social composing of prisoners, result of political differentiation, struggle of classes and economical structure.

The first years of communist power were followed by an overall violence and attack against all classes that were considered opposite to the communist system, "exploiting classes", traders, proprietary's, intellectuals, workers of previous administration, representatives of clergy. No one could escape to this violence even most simple and power classes. The goal was total submission and obligation of citizens to support communist leadership in implementation of their program. Same conclusion came for thinkers and analyst from other communist countries. So Viven Stern in the study "Sentenced to die" argues that two were the reasons for massive imprisonment in the former Soviet Union and other communist countries: total submission of population and securing a labor force to work at most difficult sectors, what could not be covered by free workers. The collapse of existing production relations and placement of socialist relations was the main strategic objective of the Party after they took the political power. Main paths followed to establish economic base were nationalizations, by expropriating land owner and agrarian reform. The way such reforms were done is given by the leader of that time, Enver Hoxha "through a despotic intervention on land property and middle classes relations". Measures taken by the state for socialist nationalization of main production and transportation tools, implementation of agrarian reform brought lots of changes in classical social structure of the population. On 1950 in Albania were these social class structures over 14 years old: Workers 9.9%, peasants and handcrafts 2.2%, individual peasants 73.3%, individual handcrafters 5%, capitalist elements 2.1%, intellectuals 7.5%.



In the following chart we see that 85 % of sentenced in 1950 were composed by poor and middle peasants. Such categorization in poor and middle peasants was based on economic level and standards of the time, which were very low. These categorizations were used later on literature and official acts of those years. Later instead of poor peasant was used individual peasant. This was very demagogic, to convince domestic and international opinion that poverty and crises were not related to socialist government.

| Crimes against the state | | | | | | | | Ordinary crimes | | | | | | |
|--------------------------|-------|-----|-----|-----|-----|-----|---------------|-----------------|------|------|------|------|------|----------------|
| Social layers | Years | | | | | | | Years | | | | | | |
| | 52 | 53 | 54 | 55 | 56 | 57 | Total | 52 | 53 | 54 | 55 | 56 | 57 | Total |
| worker | 19 | 20 | 5 | 8 | 31 | 16 | 99 5.3% | 1058 | 712 | 683 | 567 | 515 | 331 | 3866 12.7% |
| Poor and middle peasant | 393 | 338 | 134 | 102 | 125 | 157 | 1249 67.8% | 635 | 4012 | 2760 | 2685 | 2179 | 1686 | 19627 64.5% |
| Wealthy peasant | 50 | 74 | 27 | 14 | 10 | 23 | 198 10.7% | 207 | 143 | 89 | 75 | 43 | 38 | 595 1.9% |
| Middle and small trader | 6 | 12 | 13 | 5 | 11 | 14 | 61 3.3% | 575 | 348 | 161 | 120 | 83 | 64 | 1351 4.4% |

| | | | | | | | | | | | | | | |
|---------------------------------|----|----|----|----|----|----|-------------|------------------|-----|-----|-----|-----|-----|-------------------|
| Large traders | 3 | 2 | 6 | 3 | 1 | 4 | 19 1% | 1 9 8 | 56 | 28 | 16 | 8 | 3 | 309 0.9 % |
| Low and middle employers | 17 | 22 | 12 | 11 | 28 | 45 | 135 7.3% | 5 2 6 | 298 | 129 | 156 | 124 | 44 | 1277 4.2 % |
| High level employer | 8 | 5 | 6 | 1 | 2 | 5 | 27 1.5% | 5 4 | 24 | 33 | 12 | 11 | 10 | 144 0.5 % |
| Party members | 17 | 10 | 10 | 6 | 7 | 3 | 53 2.9% | 1 2 4 1 | 765 | 607 | 526 | 308 | 133 | 3582 11.7 % |

Society in its largest number was composed by peasants, in both categories of sentences with 64.5-67.8%. This was related to population structure, where peasants composed 73 % of it. Craftsmen were 5.3% up to 12.7%. If we compare social dimension of violence with another communist country like in Czech Republic, we see another report of social composure of prisoners. In the middle of 1950, number of persons that committed crimes against the state, which were workers before being arrested, was 39 %. Middle and high level officials were 28 % and in the third place were peasants. These data were related with economical and class structure of Czech Republic in that period.

On 1960-1961 numbers of sentenced workers were 23 %, while the number of peasants falls to 33-34 %. This was related to increase of labor class due to change of country's economical structure. Social composure of sentenced in 1988 is presented in the following table. The larger number of political prisoners in the 80's was composed by workers, as shown in statistics 35.5% and 63.6 %. In second place are those working at agriculture cooperatives 22 % up to 43.4 %. The class of former proprietary's was called kulak by communist regime, big and middle merchants, so called exploiting classes were already eliminated. From economical reforms of communist government, clash against private property, intelligence, and freedom to believe was achieved in a gradual way by eliminating all classes and differences between different social groups and the creation of so called mass.

In the first half of 1986 were 1204 political prisoners and 2287 ordinary prisoners, in total 3491. Political prisoners were 40.7% from the cities and 59.3 % from villages. Ordinary prisoners were 46.4 % from cities and 53.6 % from villages. Composure of classes was not important for state structures. The policy followed was based on equality aimed at diminishing disparities between classes, village and city, intellectual and physical work. Such policy gave results especially for eliminating marking borders between labor and cooperatives classes. Both of them did not have properties and were working at the large state property or group property.

Conclusions

Evidencing the dimensions of violence during totalitarian regime does not aim just to look behind but it also serve to normality and moving forward. “Without condemning communism’ crimes –says Romanian president, Traian Badescu – we will go ahead with the skeleton of the past on our back.”

Reforming of Institution of Execution of Penal Sentences was and continues to be an important aspect of democratization and civilization of Albanian society in post communist period. Up to 90’s Albania as many other countries in Eastern Europe had a penitentiary system with not human treating conditions, not adequate food, medical care, forced labor and violence.

Albanian government in order to change such condition on 1991 started to close the famous Spac, Qaf Barit, Tërnovës, Bulqizës ,Burrelit etc camps and with the participation of Albania in many international conference of that period, where the pillar of recommendations was the reform of entire system and passing of prison administration under the Ministry of Justice. The main problems faced by system of execution of penal sentences in Albania after the fall of communist regime were the legal reform, administrative reform and improvement of prisoner’s conditions. Long tradition of communist regime was a hurdle for moving forward. Concretely, infrastructure was composed by large working camps where conditions were not adequate for their mission. Even existing prisons were old and amortized. Beside lack of institutions, even policies followed by judiciary bodies and prosecutors influenced to overpopulation. We can refer to

statistical data and see an indicator that about 100 % of prosecutors for imprisonment were accepted by courts. On 2004 Tirana prosecutor office required 713 arrests and the court accepted 704 of them. So, either such security measure was a preferred one or judiciary bodies just act shortly. This kind of thinking closes the way to application of alternative sentences foreseen by Penal Code. If we refer to 2005 and 2006 statistics at country level, it seems that the courts have two types of sentences, fine and prison for penal crimes. Over 50 % of sentences are those up to 2 years. I think that exist the possibility to give other sentences like labor for public interest or conditionals. This would be helpful for prisons to get empty as they are overcrowded and conditions are below standards. Signing of SAA and taking invitation for membership in NATO, add new tasks for improvement of service in Institutions for Execution of Penal Sentences. Changes from the beginning of democracy are enormous but we still have inherited from communist regime very hard punishments and no institutions. The establishment of legal frame work is forward compared to practice. Many dispositions regarding treating, social rehabilitation and employment have not been implemented in practice due to lack of infrastructure that is not adequate for a penitentiary institution. Real social rehabilitation programs are not applied beside all discussion about them. In the entire prison system there is only one school for obligatory education that operates in discontinuance. Other important problems are staff, training and nominations. Still with all changes achieved by our penitential system we are behind other European countries. IEDP (institutions for execution of penal sentences) staff does not have the status of civil servant and this allows not good policies for their recruitment. The role of IEDP is very important for implementing penal policies of a country, which aim at prevention of criminality, its punishment and execution of penal decisions. Justice does not start and do not end at the trial court. That's why a serious assessment of all above factors is necessary not only for penal justice but also for civil society.

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Right to a fair trial under International Human Rights Law

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Abstract

“Everyone has the right to have any claim relating to his civil rights and obligations as well as criminal charges brought before an independent and impartial court or tribunal established by law. Right to a fair trial is one of the most vital human rights and together with the right to security, and the right to protection from discrimination form the base of individual security from state authority. Without this very basic procedural right, a violation of a human right is unlikely to be remedied in domestic procedures. Moreover, this basic human right has a more vital role in protecting other human rights especially in developing countries where state institutions are weak or tend to be authoritarian. Because of this crucial role, the right to a fair trial remains still one of the most expansive and most complicated human rights. Individuals without the set of guarantees that includes the right to a fair trial would always be living under the fear of government – something which is sometimes intended and why this right is violated (Curtis, 2003 p.328).

Abstrakt

“Çdo person ka të drejtën për t’i parashtruar një gjykatë të pavarur dhe të paanshme të krijuar me ligj, pretendimet e lidhura me të drejtat dhe detyrimet me karakter civil si dhe çdo lloj akuze penale. E drejta për proces të rregullt është një ndër të drejtat më jetësore të drejtave të njeriut dhe së bashku me të drejtën për siguri dhe të drejtës për tu mbrojtur nga diskriminimi, formojnë bazën e sigurisë së individët ndaj autoritetit shtetëror. Pa këtë të drejtë themelore procedurale, dhunimi i të njëjtit të drejtë të njeriut nuk do të mund të kurohej nga procedurat shtetërore. Për më tepër, kjo e drejtë themelore e njeriut ka një rol jetësor për mbrojtjen e të drejtave të tjera të njeriut, veçanërisht në vendet në zhvillim ku institucionet shtetërore janë

të dobëta ose tentojnë të jenë autoritare. Pikërisht, për shkak të këtij roli thelbësor, e drejta për proces të rregullt mbetet ende një ndër të drejtat më të gjëra dhe më të ndërlikuara të njeriut. Individët po të mos gëzonin garancitë që përmban e drejta për proces të rregullt do të jetonin gjithmonë në frikën e qeverisë- diçka e cila ndonjëherë synohet dhe që njëkohësisht është edhe arsyeja përse dhuhet kjo e drejtë. (Curtis, 2003 F.328).”

Abstrakt

Seкоја личност има право да поднесе барање за своите права и одговорности но исто така и кривични обвиненија пред секаков вид на независен и непристрасен суд или трибунал кој е основан со закон. Правото за еден регуларен процес е едно од основните човекови права кое заедно со правото на одбрана и заштита од дискриминација ја сочинуваат основата на индивидуалната безбедност од државните авторитети. Без ова основно процедурално право, кршењето на човековите права не може да се исправи од страна на државните процедури. Покрај ова, ова основно човеково право има позначајна улога во заштитата на другите човекови права, особено во земјите во развој каде државните институции се слаби или имаат тенденции да бидет авторитативни. Токму поради овој значаен елемент, правото за еден регуларен процес е едно од најсложените и најраспространетите човекови права. Личностите без овие гаранции кои го вклучуваат и правото на еден регуларен процес секогаш ќе живеат со стравот од државата - нешто што некогаш е намерно и во исто време е и причина поради која се крши ова право. (Цуртис, 2003 п.328).

Introduction

Right to a fair trial is one of the most expansive and most complicated of all human rights protected under international law. (Curtis, 2003, p. 328) This right is guaranteed in the article 6 of the Protocol no.7 of the European Convention on Human Rights and Fundamental Freedoms, article 14 of the International Covenant on Civil and Political Rights (ICCPR), article 8 of the Inter-American Convention on Human Rights (In-ACHR). Both the European Court of Human Rights (ECHR) and the Inter-American Court of Human Rights have made clear that right to a fair trial foreseen by article 6 and 8 apply to all proceedings to which they are relevant. (Curtis, 2003, p.328). In other words right to fair trial applies both to administrative as well as judicial proceedings (Curtis, 2003, p. 328). This right applies whenever a subject of law in accordance with legal norms into force is entitled to a material as well as procedural right, than there must be a fair procedure to determine disputes about this right and respective claims.

Right to a fair trial includes in itself a set of guarantees that apply case by case depending from the type of proceedings and the legal norms applicable on such case. According to the ECHR, the right to a fair trial is applicable in every civil and criminal proceeding, if a civil of right or obligation is involved. This Court on the interpretation of the right to a fair trial has made clear that: “right to a fair trial foreseen in the Article 6 of the Protocol no.7 of the European Convention on Human Rights and Fundamental Freedoms is a very expansive and in every case should be examined very carefully by national courts by analyzing in details every fact that in a way or another would violate the material and procedural rights of the defendant. (Nowvicki, 2003. Case *Apeh Uldozotteinek Szovetesege and other vs. Hungary*, application no.32367/96, *Pellegrin vs. France* No.28541/95).

Right to fair trial applies since at the moment when an application has been lodged until final execution of a court judgment. (Daci, 2006, p.186) This statement has been done by the ECHR in the Case *QUFAJ CO. SH.P.K. vs. Albania* (Judgment of November 18, 2004, Application no. 54268/00), §38) when the Court reiterates that Article 6 § 1 secures to everyone the right to have any claim relating to his civil rights and obligations brought before a court or tribunal; in this way it embodies the “right to a court”, of which the right of access, that is the right to institute proceedings before courts in civil matters, constitutes one aspect. However, that right would be illusory if a Contracting State’s domestic legal system allowed a final, binding judicial decision to remain inoperative to the detriment of one party.

It would be inconceivable that Article 6 § 1 should describe in detail procedural guarantees afforded to litigants – proceedings that are fair, public and expeditious – without protecting the implementation of judicial decisions; to construe Article 6 as being concerned exclusively with access to a court and the conduct of proceedings would be likely to lead to situations incompatible with the principle of the rule of law which the Contracting States undertook to respect when they ratified the Convention. Execution of a judgment given by any court must therefore be regarded as an integral part of the “trial” for the purposes of Article 6. It is not open to a State authority to cite lack of funds as an excuse for not honouring a judgment debt. Admittedly, a delay in the execution of a judgment may be justified in particular circumstances. But the delay may not be such as to impair the essence of the right protected under Article 6 § 1 (see *Hornsby v. Greece*, judgment of 19 March 1997, Reports of Judgments and Decisions 1997-II, p. 510-511, § 40; and *Burdov v. Russia*, no. 59498/00, § 34-35, ECHR 2002-III; see also *Jasiūnienė v. Lithuania*, no. 41510/98, § 27, 6 March 2003).

Criminal Proceedings

The concept of criminal proceedings varies in different countries in terms of criminal offence subjects, specific criminal offences, criminal punishment and criminal qualification for specific actions and omissions. To conclude on the issue whether we are dealing with a criminal process and not a civil process, ECHR emphasises that several factors shall be taken into consideration such as: juridical and criminal qualification of the criminal offence by the domestic legislation of a country, the nature of the criminal offence, social gravity of the criminal offence and other circumstances related to the applicable law, events and facts as well as criminal punishment foreseen by the criminal law. A person shall be considered as a defendant for a criminal offence when state, undertakes measures which comprise the allegations that he or she has committed a criminal offence and which essentially impact to the status of the defendant. (*Foti and others vs. Italy*, 1982)

Right to a fair trial regarding a criminal proceeding, consists of set of guarantees for every person under investigation, trial, punishment, appeals and application for a reexamination. In other words it includes the whole process as determined under criminal material law and procedural law. While “indictment” under the article 6 of the Convention, means “the act

through which a person is officially informed that has been charge with a criminal offence. (Daci, 2003, p.187)

a) Right to have access to an independent and impartial court of law

Everyone has the right to have any claim relating to his civil rights and obligations as well as criminal charge brought before an independent and impartial court or tribunal established by law. Such right shall be guaranteed *de facto* not only *de jure*. However, the right to have access to a court might be limited under several circumstances with the purpose to secure a legitimate aim and to the extent of the aim itself. This right is subject to limitations also under several circumstances when for its enjoyment, legal aid is required in order to ensure that an individual exercises this right. In this case, its enjoyment is made possible through the legal aid offered by qualified individuals. In the same manner, this right is ensured also for poor people, which due to their financial situation cannot exercise this right. The right to have access to a court, would be violated if a person shall not be able to exercise this right because of the lack of professional legal knowledge and would not profit free legal representation if he would not have enough financial means to afford the payment of a legal representative.

The Albanian legislation also limits the right to have access to the High Court with the need to have the status of an advocate. Certainly this limitation represents a violation of the article 6/1 as long as there is no scheme through which would be guaranteed the legal representation of persons that do not posses enough financial means to pay an advocate to represent them in civil proceeding regarding an application lodged to the High Court.

The right to have access to an independent and impartial court may be limited also in domestic laws that foresee time limits within which this right shall be exercised. This limitation shall be legitimate for the interest of the proper administration of justice system. Indeed, if the right to have access to a court would not be limited in time, this unlimited right to have access to a court would harm the functioning of the justice system and would make much more difficult the work of courts, because they would be obliged to deal with claims related to events and facts that have happened long time ago. Their examination would not be essay as long as most of the evidences that would light the facts and though which would have been proved the

legality of their claims would not exist anymore. Furthermore, the legal relationships would have changed, or ceased existing several times until the time of their examination by a court.

Although, this right would not have sense if the court to which an individual raises his claims would not be independent and impartial. The independence of courts is one of the most essential elements for an independent judicial system. On the other hand, the judgment delivered by these courts shall not be changed by a non judicial body with exceptions of amnesty or pardon recognized by the constitution and delivered by the Legislative Body and the Head of State. This right also does not limit the possibility to establish special courts by law which shall guarantee the right to fair trial.

Based on this right, at any case a court shall not refuse to examine claims of persons with the justification that there are no legal norms that regulate the situation concerned. In other words, a court has always jurisdiction to examine claims of persons subject to criminal proceedings. Moreover, the right to fair trial comprises also the right to appeal, which is guaranteed by the protocol no.7 and not the article 6 of the European Convention of Human Rights and Fundamental Freedoms.

b) Right to a fair and public hearing within a reasonable time

The duration of a trial proceedings is one of the most used reason for most of the application lodged before the European Court of Human, alleging the violation of the right to a fair trial caused by a trial done out of a reasonable time. The Court has evaluated claims regarding the reasonable time based on the complexity of the case, the nature of legal facts, the number of subjects concerned, the proper procedures, other undertaken procedures related thereto etc. The Court has also tolerated longer extension of duration regarding civil proceedings and shorter extension regarding criminal proceedings. In case of applications alleging the violation of this right, the Court shall decide by taking into consideration all the factors that directly or indirectly impact to the duration of the proceedings.

The right to a fair trial is guaranteed through a proper and public administration of justice. Proper administration of justice is not only in the interest of litigants, but also in the interest of the entire society. On the other

hand, a public hearing guarantees transparency towards the public, while the presence of the later is a kind of pressure over judges to apply correctly the law. In this perspective, the hearing done in places that do not ensure the participation of the public makes the process unfair. The guarantee of a public hearing is applicable at any phase of proceedings that impacts to “the decision” on the application (*application Axen vs. Germany, 1983*). This right may be limited also in cases when such limitation is necessary to protect the right of persons, parties involved in judgment. E.g. when subjects involved in judgment are juveniles, the hearing shall be not open to the public, with the condition that the judgment shall be published in a summarized form and shall ensure the anonymity of persons concerned. On the other hand, the trial on family disagreements with the aim to protect the right to a family life may not be open to the public. Another example when the trial may be not open to the public is the cases involving persons’ members of criminal groups or protected witnesses. In this case, the right to life of these persons and members of their families is a legitimate aim to undertake a non public trial. To conclude, public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.

c) Trial in absence “*in absentia*”

According to the article 6 of the Convention, everyone has the right to be present in the trial against him. However this rights is not absolute, because the article 6 does not restrict the trial in absence of the defendant when he cannot be chaptered or when he is not informed for the trial. In any case, the court shall nominate a legal representative to protect his rights and when he turns back or he will be informed for the process against him, he has the right to demand a reexamination of his case. This right derives from the article 6 and the right to defend himself and to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him. Regarding this matter, the ECHR in the case “*Sunday Times (No.1) vs. United Kingdom*” emphasizes that: “Article 6 of the Convention is an important reflection that lays upon the foundations of the Convention, because in the preamble, state high contracting parties refer to the common legal order’s heritage”. Also in the case “*Alber and Le Compte vs. Belgium*”,

ECHR emphasizes that: “the rights foreseen in this article are guaranteed to the defendant regardless of the fact that he is being trialed in liberty, is under arrest or is hidden, while in case of punishment ‘*in absentia*’ may be considered that his rights have been respected, if after being informed for the judgment he would have been able to demand the repetition of the proceedings, this time with his participation.” In the case “*Thomann vs. Switzerland*” of June 10, 1996, RJD-III, par.33-36, the ECHR, underlines the maturity of Federal Court’s judgment, because the judges who reexamine the case, now in the presence of the defendant in the case that has been previously examined in his absence are not connected with the previous judgment. Also in the judgment regarding the case “*Ekbatani vs. Sweden*”, of May 26, 1988, A 134, par 25, the ECHR emphasizes that: “from the concept of the fair trial, derives the general principle that everyone charged with a criminal offence has the right to be present in the court hearing”. This right derives from the guarantees foreseen in the paragraph no.3 of the article 6 of the Convention. While guaranties to examine witnesses, article 6, paragraph 3, letter “d”, derives from the principle of “equality in defence” in terms of equality regarding means in process available to the defence and the prosecution, principle which is a very crucial part of the right to a fair trial

d) The principle of equality of means or “weapons”

This principle means that parties in a proceeding shall have equal possibilities to deliberate and prove their claims. This right means also that each party has the right to information regarding the facts and arguments of the other party. Therefore, it is necessary that both parties be present in the hearing and have the possibility to debate on regarding fact and arguments of each party. Under the criminal proceeding, this right is a guaranty more for the defendant from which derives the obligation of the prosecution to allow the defendant or its advocate to be informed with the evidences and arguments upon which is based its indictment. Non recognition of these facts and arguments makes impossible the preparation of defence for the defendant.

e) Reasoning of judgments and the right to not testify against oneself

Court judgment shall be reasoned. The reasoning of judgments make possible for parties to effectively use the right to appeal. Certainly, a reasoned judgment cannot contain contradictory statements. Such situation would be equal with the lack of reasoning. A non reasoned judgment is invalid, void or null.

Another important principle that is an essential part of the right to fair trial is the right of everyone to not incriminate oneself. What means that a person charged with a criminal offence is not obliged to testify against his interests. In respect of this right, are not obliged to testify against the defendant prenatal and postnatal persons such as: the daughter, the son, the mother, the father, including the wife and the husband. This exception is done with the aim to protect the family because such testimony given by one of these persons may be a cause for the destruction of the family.

f) The presumption of innocence (*in dubio pro reo*)

Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law, by a final judgment. This right derives from the principle *in dubio pro reo*, or any doubt shall be taken in favor of the defendant. On the other hand, this right constitutes an obligation for the accusing party to collect evidences and to prove the indictment, what constitutes one of the basic principles of so-called accusatory systems of criminal proceeding. From this right derives also the obligation of governmental authorities to not make statements upon the guiltiness of a charged person until the moment when the final judgment is delivered by the court of law. Thirdly, in respect of this right, trials shall not be used as public debates to drive at the guiltiness of individuals who have been declared innocent.

g) The Right to be informed promptly, in a language which he understands and in details of the accusation against him

Everyone charged with a criminal offence has the right to be informed promptly, in a language he understands and in details of the accusations against him. This right makes possible for the person to prepare his defence and in this way to respond to the deliberation of the other party. The ECHR, has confirmed violation of this right in cases when a person tried in absentia in another state, has been informed for the indictment by the state of residence by handing over the documents prepared by the other state without being previously translated (*application Brozicek vs. Italy, 1989*). From this right derives also the right to be assisted by an interpreter during the whole process. However, this right shall be considered as being realized when the defendant is assisted by an advocate who recognizes the language used by the court and the language of the defendant.

h) The right to have adequate time and facilities for the preparation of his defence

This right is strongly connected with the right to be informed and the right to legal representation. In respect of this right, the person shall have adequate time to prepare his defence, to have adequate means, to have the possibility to examine witnesses and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him. This right means also the guaranty to be consulted with a lawyer of his choosing or appointed by the proceeding authority. This right shall be guaranteed also in cases when the defendant has not sufficient financial means to afford the payment of his defence. In this case the state shall guarantee free legal aid.

i) The right to defend himself in person or through legal assistance of his choosing

Everyone against which take place a criminal proceedings, has the right to defend himself. However, many people do not have good professional legal knowledge. Therefore, the right to defend for these people is guaranteed through legal assistance of his choosing or appointed by the proceeding authority if the defendant does not have sufficient financial means to afford payment for the lawyer of his choosing. Nevertheless, having a lawyer does not necessarily mean respect of this right, if the lawyer shall not act in a professional way to protect the interests of the person that he defends, but would constitute a violation of such right. (Application “Artico vs. Italy 1980”) This right guarantees also the right of defendant to freely communicate with his defender under full confidentiality. From this right derives also the obligation to not allow the interception of conversations between the lawyer and the defendant and between lawyers themselves.

j) The right to have free assistance of an interpreter

Everyone, charged with a criminal offence has the right to have free assistance of an interpreter if he cannot understand or speak the language used in court. The oral character of the trial makes necessary the understating of arguments presented or the evidences debated throughout the hearings. If this right would not be guaranteed, the defendant would not be able to defend himself nor to have examined witnesses against him, or to obtain the attendance and the examination of witnesses on his behalf as well to examine evidences that would prove his innocence. However, this right means also the assistance of special interpreter for deaf-mute persons. The assistance of interpreter does not consist only in translation of oral conversations, but also the translation of documents. The right to have fee assistance of an interpreter is not connected with the ability of a person to pay or not an interpreter, but it is an obligation of state to ensure proper effective system of criminal justice.

k) No punishment without law

In the article 7 of the European Convention of Human Rights and Fundamental Freedoms and the article 15, of ICCPR is confirmed the principle of non retroactivity of the law and principle of no punishment without law (*ex post facto* and *nullum crimen, nulla poena sine lege*). These two principles, ensures the right that no one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed. Indeed these two principles have a vital importance for a fair criminal proceeding. Non application of these two principles would gravely harm the integrity of the judicial system in general and especially the criminal justice. Moreover, in respect of these two principles, it is prohibited the analogical application of criminal law against the interests of the defendant.

European Convention on Human Rights and Fundamental Freedoms, differently from the ICCPR, does not foresee the possibility of retroactivity effect of law in cases when the new law is more favorable for the defendant. However, the retroactivity of the law that is more favorable for the defendant is not incompatible with the Convention and with its aim, because in such case the retroactivity effect of law does not harm the defendant, but in contrary is more favorable for him. Consequently, we could state that as long as the Convention does not expressly prohibit the recognition of retroactivity effect of law in cases when it is more favorable for the defendant is not incompatible with its general view. Nevertheless, this right shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognized by civilized nations.

l) The right not to be tried or punished twice (*Ne bis in idem*)

The disrespect this principle and at the same time this right by courts would gravely harm the right to a fair trial and the rights of defendants. Judgments delivered in disrespect of this principle would be considered as being arbitrary and in contrary with the article 4, of the Protocol no.7 of the

Convention. In the republic of Albania, this right is guaranteed by the article 34 of the Constitution and the article 7 of the Criminal Procedures Code. Under the framework of this discussion it is important to bring into attention the several articles of the Albanian Criminal Code such as the article no.298 which for the criminal offence of “help given for illegal passing of state border”, foresees two main punishments for the same criminal offence. More concretely, the article 298, foresees as punishment, imprisonment and fine up to 6 million All, pronounced at the same time. Meanwhile, the article 29 of the Criminal Code, foresees the punishment with fine and imprisonment as two main criminal punishments. In this meaning, the application of article 298 and other several similar articles of the Criminal Code of the Republic of Albania violates the principle of prohibition not to be tried or punished twice by punishing twice a person for the same criminal offence.

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Sovereignty Challenged The United Kingdom's Adoption of the Human Rights Act in 1998

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Abstract

The United Kingdom's decision to domesticate the rights granted by the European Convention for the Protection of Human Rights and Fundamental Freedoms, through adopting the Human Rights Act in 1998, opened the debate on the potential negative effect on the constitutional doctrines of parliamentary sovereignty and the separation of powers. The discussion prior to the adoption of the Act focused to a large extent on the fear that courts might use human rights legislation as a gateway for judicial activism, challenging thus the sovereignty enjoyed by the Parliament. It is beyond doubt the fact that the adoption of the Human Rights Act in 1998 altered to a certain extent the relationship of courts and Parliament, but whether the courts have been truly activists in a manner that threatens parliamentary sovereignty it is still questionable. Consequently, seems reasonable to scrutinize the presumable changes in the political-judicial relationship, the factors that could have generated such changes, the impact of the adoption of the 1998 Act on the parliamentary sovereignty and finally, the extent to which this impact is a consequence of the courts' actions.

Abstrakt

Vendimi i Mbretërisë së Bashkuar për të miratuar të drejtat e garantuara nga Konventa Evropiane për Mbrojtjen e të drejtave dhe lirive themelore të njeriut, nëpërmjet miratimit të Aktit të drejtave të njeriut më 1998, hapi debat mbi efektet negative të mundshme në doktrinat kushtetuese të sovranitetit parlamentar dhe ndarjes së fuqive. Diskutimet para miratimit të

Aktit, me të madhe ishin të fokusuar në shqetësimin që gjyqet mund të përdorin legjislacionin e drejtave të njeriut si mundësi (portë) për aktivizim gjyqësor, kështu duke e sfiduar sovranitetin që ka gëzuar nga Parlamenti. Është përtej dyshimit fakti se miratimi i Aktit të drejtave të njeriut më 1998, alarmoi deri në një masë marrëdhëniet në mes gjyqeve dhe parlamentit, por nëse gjyqet në të vërtetë kanë qenë aktivist të vërtetë që në një mënyrë të kërcënojnë sovranitetin parlamentar ende është e diskutueshme. Si rrjedhojë e kësaj, duket e arsyeshme që të shqyrtohen ndryshimet e supozuara në marrëdhëniet politike-gjyqësore, faktorët që mund të kenë gjeneruar ndryshime të këtilla, ndikimin që pati miratimi i Aktit të 1998, në sovranitetin parlamentar dhe përfundimisht, niveli që ky ndikim është si pasojë e veprimeve të gjyqeve.

Апстракт

Одлуката на Обединетото Кралство да ги прилагоди правата кои се доделени од Европската конвенција за заштита на човековите права и фундаменталните слободи, со усвојување на Актот за човековите права во 1998, отвори дебата за потенцијалниот негативен ефект за уставните доктрини на парламентарниот суверенитет и поделбата на власт. Дискусијата пред усвојувањето на Актот беше повеќе фокусирана на ризикот дека судовите можеби ќе го користат законодавството како пат за судски активизам, предизвикувајќи ја сувереноста која што парламентот ја ужива. Несомнен е фактот дека усвојувањето на Актот за човековите права во 1998 до извесен степен го смени односот на судовите и парламентот, но дали судовите биле вистински активисти на начин на кој ќе наштетат на парламентарниот суверенитет сеуште е дискутабилно. Според тоа, изгледа разумно внимателно да се разгледаат веројатните промени во политичкиот-судски систем, факторите кои предизвикуваат такви промени, влијанието од усвојувањето на Актот од 1998 за парламентарен суверенитет и конечно степенот до кој ова влијание е последица на делувањата на судот.

Introduction

Setting as starting point the evolution of the relationship between the judiciary and the legislature after the adoption of the Human Rights Act, the

present debate is centred on the question whether the judiciary can and would pose a challenge on the sovereignty of Parliament. This article proposes the hypothesis that the eventual challenges on the British parliamentary sovereignty doctrine, raised by the adoption of the Human Rights Act, by UK in 1998, do not follow from any pressure exercised by the judiciary, but could rather have been determined by certain features imbedded in the act itself. Furthermore, shall be addressed the issue of the scope of the adoption of the Human Rights Act, and the extent to which the changes it generated with respect to the parliamentary sovereignty, could be regarded as a positive development.

Departing from a traditional Dicey doctrine on Parliamentary sovereignty, one might define it as the supreme legal power embodied in the Parliament. According to the theory, the sovereign legislator is competent to make and repeal any legislation whatsoever, on any matter, including on constitutional matters, so that no Parliament could bind its successors, and no court may question the validity of any Act that it passed. Consequently, no act of Parliament could be invalid in the eyes of the courts, since it is the Parliament alone the one that enjoys the legal and political power to make laws. The doctrine triggers hence profound implications for the relationship between the legislature and the judiciary, in the sense that the courts do not enjoy the ultimate power fully to protect rights, and to ensure that the Parliament will not, in the future, legislate such rights out of existence.

The justification for the sovereignty of the Parliament is hence grounded on its democratic mandate, on the principle that the Parliament, elected and hence responsible and accountable to the electorate, should be the highest authority within the polity.

Consequently, in order to protect fundamental rights, some form of confinement of the sovereignty of the Parliament appeared to be necessary. In this regard, the Human Rights Act adopted by United Kingdom in 1998 reflects a delicate, political compromise, it incorporating the main rights of the European Convention whilst preserving the parliamentary sovereignty, so dear to the British constitutional tradition.

This compromise is apparent in the very equation of the Human Rights Act. The Act protects the principle of parliamentary sovereignty by domesticating the Convention rights, but not permitting the Convention to be used so as to override primary legislation. If a statute is clear in its terms, and clearly incompatible with the Convention, courts must give effect to it.

The Human Rights Act confers the higher courts the power to declare an Act of Parliament to be incompatible with the Convention, but not to render it invalid. These provisions are aimed to preserve intact, at least in theory, the constitutional right enjoyed by the Parliament to be the only institution capable of changing its own legislation. The courts are subject to an *interpretation requirement*, engaging them in reading legislation on the presumption that the Parliament intended to legislate in accordance with the Convention. As mentioned before, in case of statutes clearly incompatible with the Convention, the most that can be done is to issue a ‘declaration of incompatibility’, which enables the government to use a fast-track parliamentary procedure to amend the offending statute, certainly should it wish to do so.

It has been rather often argued that the fore-mentioned *interpretative obligation* can be associated to a form of *interpretative power* making the judiciary a determinate body with respect to a range of policy issues, which have been hitherto fully within the sphere of parliamentary responsibility. In other words, it has been implied that the interpretation requirement renders possible manifestations of judicial activism, posing a great challenge to the doctrine of parliamentary sovereignty. Yet, in the context of the Human Rights Act, the interpretation proved to be more an *obligation* rather than a *power* assumed by the courts. Any deviation from the intended legislative meaning of words might be regarded, in most of the cases, just as a response to the requirements of the Act itself.

The traditional doctrine of statutory interpretation provided for the courts to do the best they could to divine the intention of Parliament in the legislative measure before them. At present, on the basis of the Section 3 of the Human Rights Act, the courts are required to adopt a rather different view of legislative intention. Now, the judges are requested, ‘so far as it is possible to do so’, to find a meaning that upholds Convention rights. In addition, the traditional interpretive rule required a clear ambiguity in legislation before a construction compatible with Convention rights could be justified. Such ambiguity is no longer required, and an incompatible interpretation of legislation will only be justified if a clear legislative intention exists to support incompatibility.

Of high relevance in this respect is the statement of compatibility under Section 19 of the Human Rights Act, which, interacting with the interpretative duty under Section 3, lends support to the idea of an interpretative presumption. Ministerial statements of compatibility are likely to be used as evidence of parliamentary intention. Moreover, it can be advanced the thesis that this very Section 19 of the Act is a very significant

factor determining an even stronger pressure on the boundaries of interpretation; it provides strong incentives for the judges to *read down* express legislative provisions or *read in* words so as to achieve compatibility. What results from here, is a clear judicial priority to find interpretations that are compatible with Convention rights, holding the declarations of incompatibility as an option of last resort. Indeed, observing the low number of the declarations of incompatibility issued so far, one might reach the conclusion that the courts have a tendency to favour the interpretative method.

Issuing declarations of incompatibility could be though a more desirable choice, since it might foster the inter-institutional dialogue. In this respect, one might postulate that argument, dissention, criticism amongst the institutions of the government is not a bad thing per se. This dialogue takes place when a court, in reviewing legislative and executive action, requires justification within the terms of the Convention for the law or action in question. The judicial pronouncement of a declaration of incompatibility is only one of three institutional views on the scope of the Convention rights. Parliament and the Government are equally entitled to their view under the Human Rights Act. Ensuring that no arm of government has a monopoly on the human rights endeavour guarantees a more complete exploration of rights, with the concomitant improvement of their content as differing perspectives are brought to bear. Moreover, it ensures that no arm of government simply transfers its responsibility for human rights to another.

Where legislation has been declared to be incompatible with the Convention, the Human Rights Act empowers the launching of response mechanisms and the taking of remedial action. To this respect, the possibility of response to the judicial decisions and the range of responses available, can be regarded as a further step in the process of inter-institutional dialogue and as well a form of preservation of the parliamentary sovereignty. The latter is supported by the fact that the Parliament or the Executive have the alternative to choose to do nothing, since there is no compulsion to respond under the Human Rights Act.

It has been argued though, that reacting by inaction might pose an electoral threat on the elected hands of the government. It is very possible for the public to show a high interest in the response issued by the Government and Parliament, but this interest is not necessarily accompanied by a strong public pressure to change the law. Furthermore, one might bring forth the argument that those relying most on human rights are the unpopular and the minority, enjoying a limited public interest in their issue, let alone support for the respect of their human rights. This might bring us to the

conclusion that choosing to do nothing is for the elected arms of the government a choice just as valid as the other ones.

Secondly, the Parliament may decide to pass ordinary legislation in response to the declaration of incompatibility. This action might be regarded as a reassessment of the legislation in light of the expressed view of the judiciary. This option provides a legitimate interaction between the Parliament and the judiciary, recognising that both institutional perspectives can shed light on the limits of lawmaking and respect for human rights.

Finally, a Minister is empowered to take remedial action. By virtue of the Section 10(2) of the Human Rights Act: If a Minister of the Crown considers that there are compelling reasons for proceeding under this section, he may by order make such amendments to the legislation as he considers necessary to remove the incompatibility.

Remedial orders must ultimately receive the approval by resolution of both Houses of Parliament. However, there is provision for a fast track procedure. If the Minister declares the matter to be urgent, parliamentary approval is not required for the order to become operative. Under this fast track procedure, the Minister needs only to present the order to each House of Parliament 'after it is made'. The remedial order will cease to have effect unless it is approved by a resolution of each House of Parliament. However, anything previously done under the order remains valid. If the fast track remedial action is not approved, all action done under to the remedial order remains legal.

Returning to the issue of challenged parliamentary sovereignty, one might argue that, with respect to the response mechanisms, the threat is posed not by the action of the courts, but by the executive, through its ability to amend legislation. Consequently, it appears clear that the Human Rights Act embodies a particular kind of parliamentary sovereignty. It preserves legislation from judicial invalidation, whilst allowing the executive to override primary legislation by secondary legislation via the remedial order mechanism. Could be that the only reason for adopting such a selective protection of the parliamentary sovereignty is the democratic pedigree distinguishing the executive from the judiciary?

Shouldn't in this case the democratic pedigree be justifying the protection of parliamentary sovereignty as well in the case of a devolved parliaments?

By virtue of Section 6 of the Human Rights Act, it is unlawful for a public authority to 'act' in a manner incompatible with the Convention. This Section excludes the Parliament from the definition of 'public authority'.

The reason given for excluding the Parliament from the notion of public authority is, again, the parliamentary sovereignty. Though, while the [United Kingdom] Parliament is not regarded as a 'public authority' in the context of the Human Rights Act, the Scottish Parliament and the Welsh Assembly, as subordinate legislatures, are bound by the 1998 Act.

A centralising tendency of a rights regime appears to be problematic when applied to a constitutional system committed to the decentralisation of power through devolution. The British human rights project may have had an effect of suppressing the diversity, the opportunity for difference that the devolution was intended to create.

The distinction between the Acts passed by the Scottish Parliament, for instance, and the UK Acts is of high significance in this respect. As it has been mentioned before, while the UK Acts are vulnerable only to a declaration of incompatibility by a superior court, the Scottish Parliament's Acts are to be challenged directly in a court at any level.

Consequently, if reconsidering the constitutionally appropriate level of government at which decisions about specific human rights regimes should be made, one might advance the thesis of a possible new framework for the future. To this respect, one might argue that the incompatibility principle and procedure could be appropriately extendable to any parliament and any form of parliamentary legislation. The reasoning behind the argument that, for instance, the Scottish Parliament should be protected from the nullification of its Acts is not at all a plea for federalist tendencies. As fundament of this thesis stays the view that there should be an opportunity for any Parliament (whether devolved or not) to reflect, to consider its options, and to produce viable solutions, without the pressure of annulment. Furthermore, the argument could be reinforced by calling into question the idea of 'dialogue'. If the incompatibility principle and procedure is a desirable solution to be applied in case of legislation incompatible with the Convention, and if it is a means to foster the dialogue between courts and legislature into the UK system, this must give added force to the claim for the devolved Parliaments to be accorded equal esteem..

Conclusions

Summarizing, one could stress the fact that the courts, even though empowered to proceed by issuing declarations of incompatibility, tend rather to push forward the limits of interpretation. This could come as a

consequence of their strong interpretative obligation to read and give effect to all legislation in a manner compatible with the Convention. This rather than posing a challenge to parliamentary sovereignty, could be regarded as actually a mere compliance with the provision of the act itself. Hence, one could argue that it is not the judiciary putting under *threat* the sovereignty of the Parliament. The challenge might come though from other sources. One could not disregard, in this respect, the place for manoeuvre left by the Act to the executive, via remedial orders, for instance, as shown in the above. Moreover, the Human Rights Act brings forward the idea of dialog. Insofar as it fosters the dialogue between the legislative and the judiciary, or even between the local courts and the devolved parliaments, the Human Rights Act could be seen as making scope for a challenge to the parliamentary sovereignty, as presently understood, by promoting a new perspective on the matter, awarding the same status of sovereign parliament to the devolved legislative bodies as well.

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The glocal entrapment – on the phenomenon of poverty in a global context

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Abstract

The paper examines the phenomenon of poverty through the prism of the wider notion of inequality in many spheres which make the two seemingly opposite bodies of social/economic vs. civil/political rights mutually dependent and interlinked. It is argued that poverty is both a local and a global phenomenon and problem and it concerns both the least-developed as well as the industrially developed countries. Essentially, poverty springs from the violations of different human rights (mainly the right to food, the right to health, the right to education and the right to an adequate living standard), and at the same time entails deprivation of other rights. The problems of poverty and inequality cut across national borders and are as much a responsibility for/of global (international economic) institutions and players and the neo-liberal practices and the ‘withering away’ of the welfare state, as they are closely linked with local/national elites. Thus, any attempted solution must take into consideration both the local and the global aspects, flows and perspectives.

Apstrakt

Punimi e shqyrton fenomenin e varfërisë nëpërmjet prizmës së nocionit më të gjerë të pabarazisë në shumë sfera, e cila gjë me sa duket krijon dy trupat e kundërt socialja/ekonomikja vs. drejtës civile/politike reciprokisht të varura dhe të ndërlidhura. Është argumentuar se varfëria është fenomen dhe problem lokal dhe global dhe është shqetësim që i tangon shtetet në zhvillim dhe shtetet e zhvilluara. Në thelb, varfëria rrjedh nga shkeljet e

ndryshme të të drejtave të njeriut (kryesisht e drejta për ushqim, e drejta për shëndetësi, e drejta për arsimim dhe e drejta për një standard adekuat për jetesë), dhe në të njëjtën kohë tërheq me vete privimin e të drejtave tjera. Problemet e varfërisë dhe pabarazisë kalojnë kufijtë kombëtarë. Si të tillë janë edhe përgjegjësi e institucioneve dhe aktorëve global (ndërkombëtarë ekonomik), si dhe praktikat neo-liberale dhe gjendja e mirëqenies, të cilat janë ngushtë të lidhura elitat lokale/kombëtare. Kështu që çdo orvatje për zgjidhje duhet të merr parasysh aspektet lokale dhe globale, rrjedhjen dhe perspektivat.

Апстракт

Овој труд го проучува феноменот сиромаштија преку призмата на поширокиот поим на нееднаквост во многу сфери кои ги сочинуваат двете навидум спротивни тела на општествените/економските наспроти граѓанските/политичките права кои се меѓусебно зависни и поврзани. Се тврди дека сиромаштијата е локален и глобален феномен и проблем кој ги засега како најмалку развиените така и индустриски развиените земји. Во суштина сиромаштијата е предизвикана од нарушувањата на различни човекови права, (имено правото на храна, правото на здравје, правото на образование и правото на адекватен животен стандард), и во исто време го повлекува со себе и лишувањето на другите права. Проблемите на сиромаштија и нееднаквост ги засегаат националните граници и се одговорност за/на глобалните (меѓународни економски) институции и играчи и неолибералните практики и исчезнување на социјалните држави затоа што тие се тесно поврзани со локалните/националните елити. Затоа секој обид за разрешување треба да вклучи како локални така и глобални аспекти, текови и перспективи.

За калење на 100,000 парчиња челик годишно, вкупната заштеда по таа основа изнесува €18 033. Со примената на оваа метода може да се остварува дефинираниот квалитет при најмали трошоци во работењето.

Introduction

Although globalization has implied the shrinking of space and time, we are living in a world that strengthens its inclinations to perceive the different

problems of global importance from a West (or Euro)-centric point of view. When looking at the post-World War II global trends of development, and particularly at the post-Cold War context, one could argue that we are witnessing an upward progression in the spheres of democratization, wider consent on human rights, technology development, improving standards of living and generally improved human welfare. We have widely accepted global mechanisms for the protection of human rights. In particular, the *International Covenant on Economic, Social and Cultural Rights* outlines:

Inherent dignity;

Freedom from fear and want;

Mutual benefit;

The right of everyone to an adequate standard of living;

Adequate food, clothing and housing;

Continuous improvement of living conditions;

*The fundamental right of everyone to be free from hunger
(as cited in Ghandi, 2000).*

A World of No Choice? – An Attempt to Conceptualize Poverty

The attempt of drawing a comprehensive definition of poverty seems challenging enough, as it requires to: a) include all the different aspects and components of this heterogeneous and complex issue (such as: undernourishment, life expectancy, child mortality, etc.) and b) draw a map of the countries which most severely face the problems of deprivation. The dimension of inequality merits a special attention, as a closely related, but not a synonymous phenomenon. Furthermore, understanding poverty possesses a natural tendency of viewing it in the context of human rights, more precisely the right to food and the right to health.

Broad Definitions for a Global Problem

Each definition of poverty immediately reveals its multidimensionality and mosaic-like nature, which calls for a similar multi-dimensional, segment by segment approach in dealing with it. Amartya Sen (1982) claims that “In understanding general poverty, or regular starvation, or outbursts of famines, it is necessary to look at both ownership patterns and exchange entitlements, and at the forces that lie behind them” (p. 6). This statement clearly outlines three essential dimensions of poverty: 1) that it is generally related to the right to food; 2) that it is intimately connected with ownership and (re)distribution; and 3) that there are visible or invisible factors and forces which shape, cause or generate it.

“A Matter of Deprivation”

The biological approach to poverty tends to place it in the context of starvation and hunger, as Seebom Rowntree in 1901 referred to families being in “primary poverty” if their “total earnings are insufficient to obtain the minimum necessities for the maintenance of merely physical efficiency” (as cited in Sen, 1982, p.11). However, over the decades the standards have risen and the contemporary goals are directed much further beyond the mere satisfaction of one’s basic physical needs for food. As the Committee on Economic, Social and Cultural Rights pointed out in its General Comment No 12, “the human right to adequate food is of crucial importance for the enjoyment of all rights.” Thus, having access to adequate food is only the first level in the pyramid of poverty. Adam Smith’s claim that “No society can be flourishing and happy of which the far greater part of members are poor and miserable” fits this context (as cited in UNDP Human Development Report 2005). Drawing on Amartya Sen’s notion of well-being understood in terms of capabilities, S.R. Osmani offers a definition of poverty as “a very low level of well-being, [which] can also be seen as the failure to achieve certain basic capabilities. Thus, poverty can be defined as lack of capabilities to be free from hunger, to be able to lead a life free from avoidable morbidity and mortality, to be able to take part in the life of the community, to be able to appear in public with dignity, and so on” (Osmani, 2005, p. 207). This definition also sets poverty in a wider context, highlighting its plural and complex nature.

As we have already mentioned, a crucial element is the proper understanding itself of the dimensions of poverty. For this purpose, the

UNDP in 1997 developed the Human Poverty Index (HPI), as a measure which takes into account deprivation in four aspects of life: percentage of people who die before the age of 40, adult illiteracy, a decent standard of living as measured by the percentage of people without access to safe water, health services, and the percentage of children under five who are underweight (Vic and Wilding, 2002). Hence, dealing with poverty actually calls for dealing with a range of different, but inter-related problems which fall under the disputed umbrella of social, economic and cultural rights. Poverty, however, should not be considered in this isolated context, as all of the above-mentioned HPI factors indisputably affect the ability of oneself to take participation in the civil and political life of one's society.

But, no matter how many common denominators poverty has when viewed in a global context, it has specific context-related manifestations, as Eric Hobsbawm summarizes it – “[it] is always defined according to the conventions of the society in which it occurs” (as cited in Sen, 1982, p.17). Moreover, the people who suffer from deprivation and poverty are not a homogeneous group themselves: there are important sub-divisions along the lines of gender, age, culture, and ethnicity.

However, the whole problem can be as well shifted toward the opposite end, and, in Thomas Pogges' terminology, be entirely ascribed to “our new global economic order” [in which] “the vital interests of the global poor are neglected in international negotiations”, and which leads to the core issue of inequality (Pogge, 2002, pp.20-21).

The Failed Ideal of Equality

In 1997, the percentage of people not expected to survive to age 40 years was 3.1% for the Advanced Industrial Countries and 30.8% for the least developed (Vic and Wilding, 2002). The problem of inequality, when considered as existent on a global and on a micro-level scale, helps us perceive the real, frightfully wide scope of poverty. Inequality in opportunity and unequal starting points for different groups in society based on inherited attributes such as gender, ethnicity, inherited wealth, are present in almost every country in the world, meaning that even the richer developed states are not immune to it. Thus, in the United States, inequality increased sharply between the 1970s and the 1990s (Vic and Wilding, 2002). Moreover, the US is currently facing an essential problem of unequal access to health-care, with an estimated number of at least 18 000 Americans dying prematurely each year solely because of a lack of health insurance, as revealed in the 2005 UNDP Human Development Report. Another striking fact reveals that

the US ranks at the bottom of human development in comparison with the industrialized, developed countries of Europe (Felice, 2006).

Although there is a quite wide-spread common consent that poverty and inequality are inter-related, there are certain libertarian voices which deny the existence of social justice, as F.A. Hayek claims that it is up to the free markets, and not human agency to determine the allocation of wealth (UNDP, 2005). However, the United Nations Development Program (2005) is categorical in that “progress towards the reduction of absolute poverty is heavily conditioned by inequality. This is true not just for income, but also for wider inequalities in areas such as health, education and politics.”

Another highly important common denominator of poverty and inequality is the notion of (re)distribution. In this context, Amartya Sen (1982) argues that a different distribution system may cure poverty even without an expansion of the productive capacities of a country. Similarly, Pogge (2002) ardently argues that shifting of a mere 1% of aggregate global income - \$312 billion annually from the group of the people of the “high-income economies” to the global poor would eradicate severe poverty.

If we consider the phenomenon of inequality to be a more encompassing one than that of poverty, or if we view poverty as one dimension of inequality, we can become aware of the fact that both cut across all the crucial sectors of human existence and the two seemingly different bodies of civil/political and social/economic rights.

Poverty and Human Rights

Although the debate on the justiciability of social, economic and cultural rights and the accountability of States in (non)-abiding to the different global and regional treaties is very likely to go on in years to come, it is indispensable to recognize the importance and the relevance of the rights-based approach to poverty. The UN Committee on Social, Economic and Cultural Rights clearly identifies the role of State-parties in dealing with poverty. Moreover, as the General Comment No. 12 underlines, “good governance is essential to the realization of human rights, including the elimination of poverty and ensuring a satisfactory livelihood for all.”

It is evident that poverty springs from the violations of different human rights, and at the same time entails deprivation of other rights. Thus, it can be viewed as “a denial of human rights”, as well as “caused, inter alia, by the

denial of human rights (Osmani, 2005)". In this context, the phrasing of the States' obligations in relation to all human rights as obligations "to respect, to protect and to fulfill" appears to be particularly relevant. However, what seems to be problematic is the gap between "respect" and "fulfill", along with the fact that certain states have not made a progression from the first level of protection (or in Berlin's words – from the notion of negative freedom), which implies that the goal-stage of fulfillment or positive freedom is still a mere light at the end of the tunnel.

The right to development covers a wider range of human rights related to poverty and its eradication, but we are going to examine the relevance of the two core rights: the right to food and the right to health.

Right to Food

Article 25 of the Universal Declaration of Human Rights and Article 11 of the International Covenant on Economic, Social and Cultural Rights deal with the right to food. In the General Comment on the right to food, the Committee on ESCR notes that "Every State is obliged to ensure for everyone under its jurisdiction access to the minimum essential food which is sufficient, nutritionally adequate and safe, to ensure freedom from hunger" (General Comment No.12).

The principal violations of the right to food arise from the two core notions of availability and accessibility. While (non)-availability of food sometimes is indeed an issue for certain countries, in the majority of the cases it is an issue of misallocation, and not of a lack of resources (Tomaševski, 1984). Concerning accessibility, there are two dimensions: economic and physical. The widely accepted agreement on that the economic aspect is of a paramount importance seems quite plausible. Conflicts of interest, unequal distribution of resources and wealth, and complex power relations form part of the context (as cited in Alston and Tomaševski, 1984). It is also important to note the shift from practicality to formality in approaching poverty. As both Tomaševski and Spitz argue, statistics, indicators, research and counting of the numbers of the poor partially replaced practical action towards eradicating poverty. In the words of the post-WWII Director-General of FAO: "The hungry people of the world wanted bread and they were given statistics..." (ibid, p.176).

Sixty years later, we can still draw a similar unfortunate conclusion. As Philip Alston (1984) rightly notes, "the eradication of hunger and malnutrition has not, in practice, been a priority concern of the vast majority

of governments” (p. 60). This leaves us with the fact that the right to food still remains a “goal right” (Osmani, 2005), also in terms of the first UNDP Millennium Development Goal of eradication of extreme poverty and hunger. Possible solutions are going to be considered in the subsequent chapter.

Right to Health

Just as the right to food, the right to health falls in the category of more comprehensive, “goal rights”, which include another range of sub-rights indispensable for their full enjoyment. Thus, the right to health does not imply a right to be healthy, but “right to the enjoyment of a variety of facilities, goods, services and conditions necessary for the realization of the highest attainable standard of health” (J. Mowbray, personal communication, 21-28 March, 2007). This implies that the realization of the right to health is inherently related to the rights to food, housing and (e.g. sexual/reproductive) education. Hence, it is an inclusive right which is based upon the principle of complementarity in relation to the other rights, and more essentially to the right to life.

In this context, a field-research of those suffering from poverty shows clearly that they mostly describe ill-health in multidimensional terms, not only as disease but also as hunger, pain, exhaustion, exclusion, isolation, insecurity, fear, powerlessness (“Dying for Change,” n.d.). The authors agree and follow the UNDP Human Development Report conclusions that premature death, ill-health, child mortality and the violation of the right to health in general is in principle a consequence of the malfunctioning of the public health-care system and unsatisfactory states’ health policies. The Report (UNDP, 2005) quotes cross-country data suggesting that the child mortality rate among the poorest 20% is falling at half the average rate of decline, so that the mortality gap between rich and poor children is widening (child poverty is an entire problem of its own and at the same time a piece in the broader mosaic of poverty. However, it is of a paramount importance to always have in consideration that “poverty in childhood is a root cause of poverty in adulthood” and therefore that “poverty reduction must begin with children” (UNICEF, 2005). This further emphasizes the complex threads which link poverty to inequality and the rights we are discussing. Furthermore, the percentage of underweight women is four times higher in South Asia than in Sub-Saharan Africa, indicating in addition gender inequalities, while in China 70-80% of the rural population has no health insurance coverage (UNDP, 2005).

All of this goes to show that as a core segment of poverty, (the right to) health is indeed of global concern, with many regional complexities and specificities which have to be dealt with case by case. Together with the right to food, housing, education, work, and the issues of inequality, which are to be found both in richer and underdeveloped or developing countries, poverty has to be perceived as a complex web which actually involves and spreads over vast sectors of every society (social security, health-care, educational systems, etc.) It also has to be taken into consideration that poverty is an indicator of institutionalized unequal power relations (Gready and Ensor, 2005). In this sense, it has to be identified as serious malfunctioning of some of these sectors and factors which cut across national borders, and therefore approached both from a local and a global perspective.

A World Freed From Fear and Want?

It cannot be denied that there have been developing of strategies for fighting world poverty and improvement of human welfare, but at the same time they are being countered by parallel processes of economic globalization and growing gaps between the rich and the poor of the world. The ardent critics of the International Monetary Fund and the World Trade Organization are as loud as their supporters. While globalization raises awareness about human rights and enables the creation of global networks of initiatives or NGOs, it equally makes us aware of the flaws of the much praised trade liberalization and open markets, for example, and the need for a more comprehensive reform: a shift in the neo-liberal paradigm towards strengthening of the welfare state, assuming both individual and national responsibility and possibly enlarging the scope of global governing bodies and organizations. Furthermore, one also must take into consideration the existence of equally powerful internal and external factors which influence poverty (such as, for example, the paradox of the countries which despite rich natural resources have high poverty rates). The number of unsuccessful attempts of the World Bank to eradicate poverty through economic growth, however, has its counterpart in many local, smaller projects, strategies and initiatives, which further enforces the opposition competitiveness vs. solidarity.

Economic Freedom vs. Economic Slavery

As all of the above mentioned arguments have shown, there is a very thin line between economic freedom and economic slavery, in terms of having available resources, but not having access to them. The projects of the World Trade Organization and the International Monetary Fund have so far managed to allow free flow of goods across countries and continents, but at the same time have also contributed to establishing different limitations related to the free choice of the people who have somehow become secondary to the goods and the traded products.

Against the Global Economic Order

The fact that the rich countries' average tariffs on manufacturing imports from poor countries are four times higher than those on imports from other rich countries, allows Pogge (2002) to found his argument against the policies of the World Trade Organization, locating the problem with "not that it opens markets too much, but that it opens our markets too little and thereby gains for us the benefits of free trade while withholding them from the global poor (p. 19)." In fact, the International Financial Institutions (the Bretton Woods Institutions), the World Bank and the International Monetary Fund, were originally found with a different idea: "The IMF was originally envisioned to promote steady growth and full employment by offering unconditional loans to economies in crisis and establishing mechanisms to stabilize exchange rates and facilitate currency exchange. Much of that vision, however, was never born out (John F. Henning Center for International Labor Relations, Institute for Industrial Relations, University of California, Berkeley, n.d.). The main argument on which many human rights activists, transnational NGOs, experts and academics are basing their criticism of the Bretton Woods Institutions is the inefficiency and the harmful effects of the Structural Adjustment Programs (SAPs). The governments of the developing countries are eligible for loans by the IMF only when they sign the agreement on monetary and fiscal austerity, privatization and financial liberalization. The so-called "cross-conditionality" principle means that a government must be first approved by the IMF, before applying for an adjustment loan from the WB, which is based on the similar (imposed) principles of privatization, capital market liberalization, and free trade. The grim reality and the apparent flaws of the SAPs sound more convincing in the words of J. Stiglitz, the former head of the WB:

“The IMF likes to go about its business without outsiders asking too many questions. In theory, the fund supports democratic institutions in the nations it assists. In practice, it undermines the democratic process by imposing policies. Officially, of course, the IMF doesn’t “impose” anything. It “negotiates” the conditions for receiving aid. But all the power in the negotiations is on one side—the IMF’s—and the fund rarely allows sufficient time for broad consensus-building or even widespread consultations with either parliaments or civil society. Sometimes the IMF dispenses with the pretense of openness altogether and negotiates secret covenants” (Stiglitz, 2000).

The consequences of the SAPs are to be found in the reduction of the role of the State, which has in itself contributed to the further aggravation of the economic, social and cultural rights (Gomez, 2007). The disastrous effects are most visible in Africa, where, according to some authors, an estimated 500,000 more children died from the imposed restructuring of their countries' economies to ensure increased flows of money to external banks, while spending on health care declined by 50 per cent and on education by 25 per cent since these structural adjustment programs began (McMurtry, 1998). The other side of the argument tends to show that the WB project reforms have had positive results, for example by helping out millions of people in rural South-western China with “an innovative and exhaustive poverty reduction program” (World Bank, 2007). The main concern, however, remains with the fact that no matter how successfully implemented the programs are, they are still outweighed by those which proved highly harmful and ineffective.

The Indebted

Another important dimension of the much criticized global economic order and one of the main causes and consequences of poverty is the problem of the financial debt of the developing countries.

There are over 60 low- and middle-income countries, whose economies account for more than \$500 billion of outstanding public and public-guaranteed long-term debt, an amount that represents approximately 40 per cent of the total long-term debt of all developing countries (“United Nations Conference on Trade and Development”, n.d.). Among the most seriously indebted countries, suffering its severe consequences and high rates of absolute poverty are the Central American countries of Nicaragua and Honduras, Nicaragua being the region’s poorest nation with the highest level

of per capita debt in the world, where each man, woman and child owe around \$1.200, with external debt of more that \$6 billion (Casciani, 1999).

However ironic it may appear to be, the IMF and the WB were those who designed the HIPC (Heavily Indebted Poor Countries) debt relief initiative. With the total cancellation of the debt refused, Mozambique, for example, got two additional conditions in order to qualify for the HIPC debt relief - an increase in health service user charges, and the speedy introduction of a Value Added Tax – VAT (Fauvet, 1999).

Inspite of the many efforts towards solving the debt crisis, one of which is the Debt Management – DMFAS Program of the United Nations Conference on Trade and Development, it is evident that under-developed countries, mostly the African and the Central-American ones which face serious problems of absolute poverty, are indeed caught in a vicious circle perpetuated by the conditions and the strategies of the International Economic Institutions.

Is There a Solution?

Regardless of the current highly pessimistic indicators, the issues of poverty and serious human rights violations are not an unsolvable problem. On the contrary, had the relevant actors taken into consideration the UNDP Human Development Reports' recommendations, the opinions of the human rights experts or the numerous NGOs dealing with poverty reduction, the situation would have been closer to the envisaged Millennium Development Goals. The possible solutions may be considered as belonging to three categories: introduction of a “structural approach to human rights” (Gomez, 2007), reforms of the International Financial Institutions and “greater distributional equity”, as recommended by the UNDP.

Global (In)Equality

As the 2005 *UNDP Human Development Report* states, for high-inequality countries with large populations in poverty, shifting even a small share of the income of the top 20% could lift large numbers of people above the poverty line, giving a hypothetical example of Brazil, in which the presumed transfer of 5% of the income of the richest 20% would cut the poverty rate from 22% to 7%. On local level, national governments should address the structural inequalities connected to wealth, gender, location and

assets, while also the international community should act towards overcoming extreme international inequalities. Thus, **distribution** is seen by the UNDP as central to human development.

One possible way of overcoming inequalities on global level and thus effectively leveling down of poverty rates is the much-recommended reform of the WB and the IMF. Debt cancellation, replacing loans with grants, ensuring accountability and effectiveness of the WB, assessing social and environmental impacts, are some of the possible steps to be taken towards a more effective implementation of the development projects.

The Right to Development – a Utopia?

The Declaration on the Right to Development adopted by the UN General Assembly in December 1986 certainly marked a significant turn and a progressive step forward in overcoming the gap between civil and political vs. economic, social and cultural rights. The over-arching notion of development includes all the aspects which promote human welfare and allow for a life free from fear and want. Emphasizing inter-state cooperation, indivisibility and interdependence of all the human rights and freedoms, international peace and security, the right to development seems to address all of the core issues which are at stake in the global context of inequality and increasing poverty. However, we are left with the fact that the “solidarity rights” still exist only at a declaratory level, and that it was the USA, one of the principal global actors, which voted against the Declaration on the Right to Development. It cannot be denied that the utopian dimension of the Declaration is present, but, on the other hand, one has to bear in mind that it does look utopian only in the relation to the context, and it is us who shape the context and eventually fill it with content.

The “structural approach to human rights” refers to the need for changes both domestically and internationally, so that all of the human rights can have full application and realization. It is of a paramount importance to recognize the equal importance of the economic, social and cultural rights, and overcome the tendency to associate human rights only with civil and political rights. It seems still distant, but very much achievable and possible to give a different turn to the current flows of globalization and push it towards globalizing and strengthening of a “universal culture of human rights” (Gomez, 2007). This raises another crucial question – that of expanding the jurisdiction of the international bodies, for example, having stricter and more effective controlling mechanisms through more binding

treaties, as the processes of globalization more and more decrease the role of the nation-state.

The current state in many developing countries shows that the overall situation calls for a change in the policies of the WB and the IMF. The refusal of cancellation of the debt is only one of the dimensions which aggravate the already fragile economic and human rights situation in the countries which suffer highest rates of absolute poverty. Mapping possible solutions calls for a greater responsibility and accountability on the part of the state governments, international and intra-governmental organizations.

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Economic Challenges for Macedonian Economy toward European Union Integration

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Abstract

In this Paper, the major economic challenges of Macedonian economy towards European Union (EU) are analysed, which are related to the capacity of Macedonian economy to meet the membership economic criteria identified by European Commission in Copenhagen.

Comparative analyses of key economic indicators of Macedonia with the European Union countries (EU27), and candidate countries (Albania, Croatia, Bosnia and Herzegovina) shows that Macedonia lags well behind in development processes compared to integrated countries within European Union structure, with the lag being smallest compared to candidate countries. Macedonia has the poorest indicators in comparison with the listed countries in terms of GDP per capita level and unemployment rate. Macedonian starting position on the way toward European Integrations is far worse than that of present candidate countries. As it were, one can not expect, Macedonia, neither in a short, nor in medium run, to reach the economic performance of the listed countries that can be taken as a benchmark for future Macedonian European Integration

In the context of Copenhagen criteria, Macedonia already has a significant good start in terms of general price stability, budget deficit, public debt, liberalization of prices and foreign policy. Macedonia needs less time to open a business, in comparison to the average of candidate countries. The main challenges that Macedonia is faced with, for being part of EU are strengthening of competition, strengthening of suitable capacity of human capital in the country, and finally strengthening of non – bank financial institutions. Having in mind this, one can claim that Macedonia

does not have well functional market economy, thus, making Macedonian companies, less efficient and less able to cope with competitive pressures and market forces in the European Union. The challenges that Macedonia has to solve will certainly result in progress related to market economy functionality and better prerequisites for strengthening private sector competitiveness.

Abstrakt

Në këtë punim, janë analizuar sfidat kryesore ekonomike të Maqedonisë kah integrimi në Bashkimin Evropian (BE), të cilat lidhen me kapacitetet e ekonomisë së Maqedonisë për të plotësuar kriteret ekonomike për anëtarësim të identifikuar nga Komisioni Evropian në Kopenhagë.

Analizat krahasuese të indikatorëve kryesor ekonomik të Maqedonisë me shtetet e Bashkimit Evropian (BE27), dhe shtetet kandidate (Shqipëria, Kroacia, Bosnja dhe Hercegovina) tregojnë se Maqedonia është shumë pas në procesin e zhvillimit krahasuar me shtetet e integruara në strukturën e Bashkimit Evropian, është një nga shtetet kandidate më të vogla të krahasuara. Maqedonia ka indikatorët më të varfër në krahasim me shtetet e përmendura në aspekt të Bruto Prodhimit Vendor (BPV) për kokë njeriu dhe shkallës së papunësisë. Pozita fillestare e Maqedonisë në rrugën e Integrimi Evropian është shumë më e keqe se sa vendet kandidate aktuale. Kështu me këtë gjendje nuk mund të pritët që Maqedonia, në një periudhë afatshkurte e as afatmesme që të arrijë performancë ekonomike të shteteve të përmendura që mund të merren si benchmark për Integrimin Evropian të Maqedonisë.

Në kontekst kriterëve të Kopenhagës, Maqedonia, tashmë ka një fillim të mbarë sa i përket stabilitetit të çmimit të përgjithshëm, deficitit buxhetor, borxhit publik, liberalizimit të çmimeve dhe politikave të jashtme. Koha e nevojshme për hapjen e biznesit në Maqedoni është më e shkurtër me kohën mesatare të shteteve kandidate. Sfidat kryesore me të cilat ballafaqohet Maqedonia për anëtarësim në BE forcimi i konkurrencës, forcim të kapaciteteve të përshtatshme të kapitalit njerëzor në shtet dhe përfundimisht forcimi i institucioneve financiare jo-bankare. Duke pasur parasysh këtë, ajo që mund të thuhet është se Maqedonia ka ekonomi tregu funksionale, gjë që i bën kompanitë e Maqedonisë më pak efikente dhe më pak kompetente për tu ballafaquar me trysinë nga konkurrenca dhe fuqitë e tregut në Bashkimin e Evropian. Sfidat që Maqedonia duhet t'i zgjidh padyshim se do

të rezultojnë me progres sa i përket funksionimit të ekonomisë së tregut dhe parakushte më të volitshme për forcimin e konkurrencës në sektorit privat.

Апстракт

Во овој труд се анализирани главните економски предизвици на македонската економија кон Европската унија кои се однесуваат на капицитетот на македонската економија да ги исполни економските критериуми за членство кои се идентификувани од страна на Европската комисија во Копенхаген.

Компаративните анализи на клучните економски индикатори во Македонија со земјите од Европската унија (EU27), и земјите кандидати за членство (Албанија, Хрватска, Босна и Херцеговина) покажуваат дека Македонија е поназад во развојните процеси во споредба со интегрираните земји во структурите на Европската унија со помала заостанатост во споредба со земјите кандидати за членство. Македонија има посиромашни индикатори во споредба со наведените земји во однос на БДП по глава на жител и стапката на невработеност. Почетната позиција на Македонија на патот кон Европското интегрирање е далеку полоша од онаа на сегашните земји кандидати. Според сегашната состојба никој не може да очекува Македонија ниту краткорочно ниту пак среднорочно да ја достигне економската изведба на наведените земји која може да биде земена како гранична точка на пресврт за идната европска интеграција на Македонија.

Во контекст на Копенхагенскиот критериум, Македонија веќе има значително добар почеток во однос на општата стабилност на цените, буџетскиот дефицит, јавниот долг, либерализација на цените и странската политика. Во Македонија е потребно помалку време за отпочнување на бизнис во споредба со просекот на земјите кандидати. Најголемите предизвици со кои Македонија се соочува за да биде дел од структурите на ЕУ се зајакнување на конкуренцијата, зајакнување на соодветниот капацитет за човековиот капитал во земјата и конечно зајакнување на небанкарските финансиски институции. Имајќи го предвид сево ова може да се изјави дека Македонија нема добра функционална пазарна економија, оттаму македонските компании се помалку ефикасни и не се во можност да се соочат со конкурентните притисоци и пазарните сили во Европската унија. Предизвиците кои Македонија треба да ги реши секако ќе резултираат во напредок кој се

однесува на функционалноста на пазарната економија и подобри предуслови за зајакнување на конкурентноста на приватниот сектор.

Introduction

Enlargement is one of the European Union's (EU) most powerful policy tools. It serves the EU's strategic interests in stability, security, and conflict prevention. It has helped to increase prosperity and growth opportunities and to secure vital transport and energy routes. The present enlargement agenda covers the Western Balkans countries and Turkey, which have been given the perspective of becoming EU members once they fulfil the necessary conditions

The main goal in transition countries' foreign policy after the end of socialism is full membership in the European Union. The reasons for such an orientation are that these economies, gain opportunities to participate to European financial resources, thus enabling these economies to gain positive spillovers from integrated markets. In line with this, Macedonia's strategic goals also include membership in European Union, for which goal the entire county agrees upon, both its public and the relevant social subjects. However, due to insufficient effort of Macedonian government directed toward fulfilling prerequisites for membership, Macedonia lags well behind other transition countries, in terms of meeting the Copenhagen membership criteria. This is particularly evident in the field of the economy, an area that will surely be a determining factor influencing the actual duration of this process. Macedonia is already lagging well behind in its economic performance, both compared to European Union candidate countries for membership and new integrated countries such as Bulgaria and Romania. Considering this, Macedonian relevant government institutions should seriously consider the economic aspect of integration, in order to speed up the process in future.

Integration's economic challenges include meeting the Copenhagen criteria as a prerequisite for European Union membership. Macedonia is already capable of fully meeting some of the prerequisites listed above, such as price stability, public finance stability, price and trade liberalization. On the other hand, there are many fields with poor results, and the problems are present starting from the level of GDP p/c, competition policies, large-scale privatization, business sector, etc. All these are challenges facing Macedonia today. Thus the intention of this paper is to identify economic challenges of

Macedonia to EU integration. The first section of the paper offers an overview of Macedonian economic performance for the years starting from 2000 up to 2006. After a brief review of Macedonian basic economic performances for the period under review, the second section is focused on the analysis of Macedonian economic indicators in the “European environment”. Actually, a comparative analysis of Macedonian and European Union countries (EU 15, EU 25, “EU 2”) and other candidate countries provides an insight into the position of Macedonia with respect to these countries. The main goal of this comparison is to objectively determine how far, or how close Macedonia is to these countries, as well as where the biggest problems or advantages are compared to them. The third part of the paper includes economic criteria for membership in the European Union and their meaning, while the next section analyses Macedonia in terms of these criteria.

Macedonia – Summary of Economic Development since 2000

Table 1
Macedonia: main economic trends, 2000 – 2006

| Indicators | 2000 | 2001 | 2002 | 2003 | 2004 | 2005 | 2006 |
|----------------------------------------------|-------|-------|-------|-------|---------|---------|---------|
| GDP (Real Growth Rate) | 4.5 | -4.5 | 0.9 | 2.8 | 4.1 | 4.1 | 3.7* |
| Inflation rate (CPI), annual average | 5.8 | 5.5 | 1.8 | 1.2 | -0.4 | 0.5 | 3.2 |
| Unemployment rate, official, % | 32.2 | 30.5 | 31.9 | 36.7 | 37.3 | 37.3 | 36.0 |
| General Government Budget Deficit (% of GDP) | 1.8 | -7.2 | -5.7 | -1.1 | 0.0 | 0.2 | -0.6 |
| Trade Balance (FOB) in millions of \$ | 690.8 | 526.7 | 805.6 | 851.0 | 1,139.0 | 1,063.0 | 1,285.0 |
| Trade Balance (%GDP)*^ | 23.34 | 19.45 | 24.95 | 21.41 | -24.79 | -26.05 | -27.34 |
| Current Account Balance (%GDP)* | -2.7 | -6.9 | -10.0 | -4.0 | -8.4 | -2.7 | -0.9 |
| External Debt (% GDP) | 43.1 | 43.5 | 43.5 | 39.7 | 38.7 | 39.1 | 36.1 |
| FDI inflow, million \$** | 175.1 | 440.7 | 77.7 | 96.0 | 155.9 | 97.1 | 350.3 |
| FDI net inflow, % of GDP^ | 5 | 13 | 2 | 2 | 2 | 2 | 6 |

Source: National Bank of Republic of Macedonia (NBRM). www.nbrm.gov.mk/statistical

* Calculated on the basis of SSO nominal GDP in denars convert in dollars using average exchange rate denar/USD.

** EBRD, Transition Report 2007

^ Calculations made by the author

*^ Calculations made by the author using nominal GDP converted in dollars using average exchange rate denar/USD. Nominal GDP data using GDP vol, 1995 prices and average exchange rate denar/USD are obtained from International Financial Survey (IFS) data

Before the interethnic conflict, in 2000 Macedonia registered high rate of economic growth (4.5%). The economic growth in Macedonia was as a result of privatisation of state owned companies with monopoly power. The explanation behind this is that, in 2000, the largest bank in Macedonia - Stopanska Banka a.d. Skopje – was sold to National Bank of Greece (60%), International Financial Corporation (IFC) (15%) and International Bank for Reconstruction and Development (IBRD) (15%). The same year, was sold the largest insurance company, ADOR a.d. Skopje, to QBE International (55%) from UK. Therefore, the economic growth in 2000 was as a result of international community investments, into the country banking system and insurance companies, more than the result of investment activity within the country. Another important fact that should be taken into account is that during the national conflict period, in the year of 2001, the country GDP registered sharp decrease, which by itself shifted the country's starting position to an exceptionally low level, even though the Macedonian FDI inflow as a share of GDP, in 2001, picked up to 13%, which represent the highest level during the observed period. This is not in accordance with traditional explanation that FDI are more likely to go to countries with political stability, because Macedonia in that year experienced political problems followed by national conflict. If we were to say that this indicator represent the level of economic development of the country, we can not say that the level of development is high, therefore, it would be misleading to say that this high level of FDI was an indication of high level of economic development in Macedonia. In 2002, the trend of GDP growth was 0.9 percent. The trend enjoyed steady rise during the year of 2003, and then rose significantly in 2004 and 2005 to 4.1 percent. In 2006 Macedonia registered positive level of GDP growth (3.7%). Although the GDP growth in 2006 indicates slower economic dynamics relative to the preceding two years, the accomplishment of positive growth rates is a signal of an economy which has a capacity to maintain a growth pace and to accelerate it further. Positive expectations for the future economic activity of the manufacturing as the dominant sector, and the banking industry as the most dynamic sector in the Macedonian economy, support such perceptions³². (NBRM, Annual report,

³² Survey on Business Tendencies in Manufacturing (SSO) and Credit Activity Survey (NBRM).

2007). In 2006, the external factors had diverged effects. Thus, the increase in the oil price in the world stock exchanges was considered as an adverse shock, while the favourable conditions on the metals market in 2006 had significant positive effect on domestic exporters, which have significant share in creating the value added in the Macedonian economy (NBRM, Annual report, 2006). At the same time, the indicators of domestic demand indicate growth, so that in 2006, Macedonian GDP was created by combined effect of both, the domestic and external demand.

Data on unemployment rate, presented on table 1 shows almost a constant trend, up to the year of 2003. In 2004, the trend of official unemployment rate rose significantly to 36.7 percent, and then tended upwards up to 37.3 percent in 2005. In 2006, the trend of official unemployment rate in Macedonia, registered a sharp decrease. The data presented in table 1 shows that in 2006 it amounted 36 percent. Despite the fall in the unemployment rate, it is still high, and the problem with the unemployment in Macedonia becomes even worse once the long – term unemployment is identified. The analysis of the duration of the unemployment from 1996 until 2005 indicates that the persons unemployed for more than one year and the persons unemployed for more than four years participate in the total unemployment with 84.3% and 58.4%, respectively (NBRM, Annual Report, 2006). Having in mind that the relation between the duration of the period in which one person is unemployed is in inverse proportion to the possibility for their employment, such a structure significantly hinders the possibility for solving the problem with the unemployment. With respect to the labour market one should note that many estimates reveal that the official unemployment in the country has been overestimated. The main reason is the participation of grey economy in overall economic activities in Macedonia, i.e. a great number of officially unemployed people who have some sort of employment in informal sector (NBRM, annual report 2007). These data also lead to the conclusion about a significant participation of grey economy in Macedonia, i.e. a great number of officially unregistered persons that have some sort of employment that has not been registered statistically.

Data on the trade balance presented in table 1 indicate negative trend of this macroeconomic indicator, which shows that Macedonian economy is not so open toward other European economies, thus making difficult Macedonian economy for future integration into EU. Although, there is unsatisfactory rate of Macedonian overall budget deficit, the inflation rate is pretty stable. The inflation rate measured by CPI index has been below 1% level in 2004 and 2005. In 2006, the Macedonian economy registered inflation higher than 2% for the first time after four years. The average

inflation rate equalled 3.2%, which is a significant increase relative to the previous year, when the average inflation rate equalled 0.5%. In circumstances of a prudent macroeconomic management, acceleration of the inflation is to a large extent result of supply side factors. The correction of the official inflation by the effect of these factors indicates a significantly lower inflation and points to maintaining of the price stability as an ultimate monetary objective (NBRM, Annual Report, 2006). The policy of stable exchange rate significantly contributes to maintaining low and stable inflation and creating stable inflationary expectations, thus being within the projected level (3.3%)³³. (NBRM, Annual Report, 2006). In environment of prudent macroeconomic management, the inflation developments in 2006 were primarily triggered by non-monetary factors, such as the higher tobacco price, the higher food prices, the increase prices of the energy for heating and electricity and the higher oil price on the international exchanges. (NBRM, Annual Report 2006)³⁴. The core inflation rate, which excludes the effect of the increase in the prices of food products and the increase in the prices of energy, additionally corrected for the effect of the administrative increase in the prices of tobacco, in 2006 equalled 1%, on average. For comparison, the core inflation rate in 2005 equalled 1.2% (excluding food and energy). The exceptional stability of general price level is mostly the result of the restrictive role of the Central Bank in Macedonia – Currency Board arrangement – which by definition excludes the inflation due to monetary expansion. Macedonian monetary policy in 2005 and 2006 was conducted within the strategic framework of targeting the nominal exchange rate of the Denar against the Euro. This monetary strategy further generate positive performance, demonstrated through the low and stable inflation and stable inflation expectations, thus, creating positive performance. However, given the policy of stable exchange rate and the high amount of foreign currency inflows in the economy (typical for the last two years), the appreciation of the Real Effective Exchange Rate (REER), i.e. lowering the competitiveness of the domestic economy on the international market, thus deepening the trade deficit, is a potential risk, which has monetary implications. Hence, the REER is also an essential issue the central bank should focus on. The pronounced monetary stability is a crucial determinant of the overall macroeconomic stability in the country. Together with stable inflation, Central Bank of Macedonia registers continuous growth of overall currency reserves

³³ According to initial projections, the inflation rate in Macedonia was expected to be 2%. However the price growth in food products, unlike the expectations to remained the same, and the faster growth in the oil prices on the international markets compared to the expected, in the first three quarters in 2006, caused inflation rate higher than the expected, therefore, in November 2006, the projected inflation rate for 2006 was being revised to 3.3%

³⁴ The total contribution of regulated prices, i.e. prices of oil derivatives, electricity and heating energy to the inflation was 15.4% in 2006. If the effect of the administrative increase in the prices of cigarettes is added, the influence of these non-monetary factors caused around 54% of the total inflation in 2006.

As concern to the external sector, the conditions on the Macedonian foreign economic relations are not worrying. The current account deficit, in 2006, amounts to the level of 0.9% as a percentage of GDP. Narrowing of the deficit in the balance of payments current account and reducing the level of country's indebtedness, as well as the significant inflows on the basis of foreign direct investments (primarily on the basis of privatization) were the main features of the external sector in 2006. The external debt expressed as a percentage of GDP decreased slightly to 36.1%, in 2006, relative to the previous year, from 39.1%, while FDI reached a share of 6% of GDP. In 2006 a significant inflow on the basis of foreign direct investments was registered of the Electricity Supply Company of Macedonia "ESM - Distribucija") in March 2006, as well as further inflow on the basis of portfolio-investments, which contributed to the increase in the share of these two categories in GDP (by 1.2 percentage points on annual basis). The developments in external sector lead to a significant increase in the official foreign reserves.

Finally, after the brief review of Macedonian economic conditions, we deduce that the biggest problems arise from real sector (GDP, unemployment). The relative growth of GDP of 5% is insufficient for Macedonian circumstances, moreover, having regard to the ambitions of Macedonia, toward European Union integration. Unemployment is extremely high, even though it has decreased, relative to the previous year. On the other hand, bright side of Macedonian economy includes general price level, minimum current account deficit, falling trend of external debt and rising trend of FDI.

POSITION OF MACEDONIAN ECONOMY IN THE EUROPEAN ENVIRONMENT

Macedonia and its way toward European Union

The accession of the Republic of Macedonia, to the European Union is one of the highest strategic priorities for the country's government. This aspiration is shared by the majority of politicians and citizens.

The first EU mission installed in Macedonia came on 31 March 2003. (Bechev, D, 2004) This was the EU first-ever peacekeeping mission, named rather symbolically Concordia.³⁵ In less than six months, a membership perspective for the Western Balkan countries (Albania, Bosnia and Herzegovina, Croatia, Macedonia, Serbia and Montenegro)³⁶ was stressed up, in the Thessaloniki Summit of the EU. The intention of the summit was to inaugurate the so-called European Partnerships geared towards institution-building with a view to prepare the Western Balkan countries to join the EU in the following decade. When Macedonia submitted its application to join the Union in March 2004, it became the first country to do so with a EU police mission on its territory, Concordia's heir Proxima.³⁷

The Republic of Macedonia was the first non-EU country in the region to have signed the Stabilisation and Association Agreement (SAA) with the European Communities and their Member States on 9 April 2001 in Luxembourg. Since the SAA agreement with Macedonia, was signed, at the time, while the conflict between two major ethnic groups, Albanians and Macedonians was happening, we can say that peace-building was still very much on the EU agenda, marginalising the association and integration elements within the Stabilization and Association Pact (SAP). This was an occurrence with no precedent in the EU's own history, but it also reflected the EU's multidimensional approach towards the western Balkans combining intervention and inclusion. The Assembly of the Republic of Macedonia ratified the Agreement on 12 April 2001. This Agreement, signed between the republic of Macedonia and the EU, was the first to be ratified from all the Member States and entered into force on 1 April 2004.

In August 2001, the major ethnic Macedonian and Albanian parties signed, under the watchful eyes of the US and EU mediators James Pardew and Francois Leotard, the so-called Ohrid Framework Agreement, which charted a broad programme with measures like constitutional reforms, administrative decentralisation, police reorganisation.

Under the SAP, the European Commission, conditionally requires from Macedonia, to empower the political and economic position of Albanians and other nations that lives in Macedonia, in order for the state to become a member of European Union. In line with this, Macedonia, is required to

³⁵ Concordia was launched on the basis UN Security Council Resolution 1371/2001. It included 400 soldiers from both the EU Member States as well as the then candidates in Central and Eastern Europe (including Romania, Bulgaria and Turkey). See: <http://www.delmkd.cec.eu.int/en/Concordia/main.htm> <accessed 11 June 2004>. Concordia was the second ESDP mission after a police force deployed in Bosnia-Herzegovina on 1 January 2003.

³⁶ EU-Western Balkan Summit Declaration, Thessaloniki, 21 June 2003, PRES10229/03.

³⁷ Proxima started on 15 December 2003. It involves 200 police personnel from EU Member States. Council Joint Action 2003/681/CFSP.

implement fully the Ohrid Agreement, and substantial funds have been allocated for that goal³⁸. The EU aims at preserving and strengthening Macedonia by rendering its structures both more representative of ethnic diversity and more efficient. To proceed with their integration into the EU, this state must meet the key preconditions of *functioning statehood* and *sustainable inter-ethnic relations*.

The country submitted its application for EU membership on 22 March 2004, in Dublin, Ireland. Six months later started the procedure of answering the questionnaire of the European Commission about the performance of applicant country for membership in the European Union. The European Commission reviewed the answers and recommended granting status of candidate country for membership in the EU, therefore, the European Council on 17 December, granted the Republic of Macedonia a candidate status for membership in the EU, recognizing the progress that it has made in meeting the Copenhagen criteria

As part of the activities for EU approximation, on 6 September 2004, the government adopted the National Strategy for European Integration. It is especially important that this Strategy was supported also by the Assembly of the country through the Commission for European Issues, thus confirming the general political consensus on European integration.

Macedonia and EU members

European Union (EU) is one of the most powerful economic and political leading organization in the world, consisted with integrated nations. By comparing Macedonian economic performance with other integrated countries within European Union, we can show, that Macedonian economy lags well behind other EU countries, in terms of macroeconomic trends and other indicators accompanying the real sector of the economy.

³⁸ See the annual SAP reports on the Western Balkan states. http://europa.eu.int/comm/external_relations/see/actions/index.htm

Table 2. Macedonia and EU 27 – Key Economic Indicators; 2006

| Indicators | European Union (EU = 27) (year 2006) | Macedonia (year 2006) |
|---------------------------------------------------------|-----------------------------------------|--------------------------|
| GDP per capita in Purchasing Power Parity (PPS)** | 103.8 | 28.9 |
| Real GDP growth rate** | 2.8 | 5.1 |
| Unemployment rate, as a % of total labour force** | 7.2 | 34.2^^ |
| Inflation, average consumer prices index, (2000 = 100)^ | 2.38 | 2.21 |
| Current Account Balance (as a % of GDP)^ | -1.205 | -2.69 |

Source:

*^ estimated data (SSO)

** eurostat

^ <http://www.imf.org/external/pubs/ft/weo/2008/01/weodata/index.aspx> world economic outlook database, April 2008

* eustat <http://www.eustat.es/indic/indicadores.asp?idioma=i&ambito=99&indictipo=2&temaseleccionado=42>

^^ The unemployment rate figure for Macedonia is obtained from the Labour force survey of Statistical Office of the Republic of Macedonia.

Regarding the GDP per capita figure, one can conclude that Macedonian GDP per capita is only 28.9 on the observed year, representing a relatively good indicator of the level of Macedonian inhabitant's standard of living compared to that in EU 27. Regarding the data on unemployment rate and current account balance, conditions are worse, when one has in mind that the official unemployment rate in Macedonia is five times higher, and the deficit in the current account balance is two times higher than that of European Union Countries. Consequently

As concern to GDP growth rate, we observe that, this figure for Macedonia is two times higher than that of EU 27, showing that Macedonian economy is more promising and faster growing than that of EU27.

Macedonia, could be equal to the group of EU27 countries with respect to inflation figure. The data, presented on table 2, shows that Macedonia is fully comparable in the areas of general price level, measured by average consumer price index, with EU27. On the other hand, the lag of Macedonia, compared to EU27 is the most prominent in the real sector, i.e. in the level of unemployed persons as a percentage of labour force.

Macedonia and Candidate Countries

Albania, Bosnia and Herzegovina, Croatia, are candidate countries, their accession being expected in 2009. The integration of these countries into European Union, is undoubtedly extremely important for Macedonia.

Table 3: Macedonia and EU candidate countries – key economic indicators in '06

| INDICATORS | Albania | Bosnia and Herzegovina | Croatia | Average of (A + BH + C) | Macedonia |
|---------------------------------------------|-------------------------------|------------------------|----------|-------------------------|-----------|
| Real GDP growth rate, % change | 5.5 | 6.7 | 4.8 | 5.6 | 3.7 |
| GDP per capita (US dollars) | 2 866.3 | 2 995.7 | 10 524.1 | 5 462.03 | 3 186.7 |
| Unemployment rate (% of labour force) | 13,8 | 41.0 | 10,5 | 21.7 | 36,0 |
| Inflation rate (CPI), annual average | 2.4 | 7.0 | 3.2 | 4.2 | 3.2 |
| General Government Budget Balance, % of GDP | -3.2 | 2.9 | -3.0 | -1.1 | -0.5 |
| Current Account Balance, % of GDP | -7.3 | -14.0 | -7.9 | -9.7 | -0.9 |
| External Debt, % of GDP | 19.8 | 53.9 | 85.6 | 53.1 | 36.3 |
| Source | Transition Report, EBRD, 2007 | | | | |

From table 3, it can be seen that Real GDP growth in candidate countries such as Albania, Bosnia and Herzegovina and Croatia, is higher than in Macedonia, supporting the conclusion that the rate of GDP growth of 3.7 percent is insufficient for Macedonian Economy. Macedonian GDP per capita, is about two times lower, of the average of the three observed countries, which is relatively good, with respect to estimates pointing to underestimated GDP level in Macedonia, due to the presence of grey economy in the country. As concern to labour market conditions and current account deficit figure, one can conclude that the position of Macedonian economy is significantly worse, compared to other integrated countries within European Union (table 2). On the other hand, the current account figure, shows much better condition for Macedonian economy, rather than for the average of three other observed countries, which are considered as a potential candidate for EU entrance. Table 3, shows that the highest unemployment rate is registered in Bosnia and Herzegovina, at about 41.0%, but, if we compare the Macedonian labour market condition with the average

of other three potential entrants, one can conclude that Macedonian economy is suffering from unemployment. In terms of external debt figure, Macedonia has registered a lower external debt, 36.3%, compared to the average of three other observed countries, which is 53.1%

The general price level, is almost the same for all potential candidates, with the exclusion of Bosnia and Herzegovina, where the inflation rate measured by Consumer Price Index, is about 7%. Table 3 shows that Macedonia and Croatia, have registered the same inflation rate, 3.2% in the year of 2006, whereas, the lowest inflation rate is registered in Albania, 2.4%. Albania, has somewhat, better economic performance compared to other countries, since the indicators such as, unemployment rate, inflation, and external debt, are showing a decreasing rate, compared to other three potential entrants, individually and collectively. Also the real GDP growth is relatively higher compared to Croatia and Macedonia. Only the GDP per capita is lower in Albania, compared to other three countries, individually, although, it is also within permitted levels.

Croatia, has registered higher GDP per capita level than Macedonia, and only one of the third of unemployment rate. In terms of external debt figure, Macedonia is in a better position than Croatia. The current account deficit is significantly lower in Macedonia, compared to the average of the whole sample, showing that cash inflow in Macedonia in the form of remittances and other ways, is much higher, rather than Albania, Croatia or Bosnia and Herzegovina.

ECONOMIC CRITERIA FOR MEMBERSHIP IN EU

European Union Enlargement and Copenhagen Criteria

The Enlargement of the European Union is a very significant mechanism in order to integrate the European Union. Therefore, there have been many enlargement events since 1970s until the latest in January 2007, where, Bulgaria and Romania joined the Union. However, after every Enlargement occurred, the question of the possibility of other countries around the continent of Europe which have a good relationship with the EU to join the European Union has been raised up.

The European Union was established by the treaty of Rome in 1957. At the time of its establishment, Union was made up of twelve full members – France, Germany, Italy, Belgium, Netherlands, Luxemburg, Great Britain, Ireland, Denmark, Greece, Spain, and Portugal. Then, the community grew gradually, until the number of integrated European Countries, within the community was 15 in the years of 1990.

After the fall of Berlin Wall, and the collapse of Communism system, in Central and East Europe, in 1989, the history of European Union enlargement changed. The community, of European Union, was open toward former communist countries, of Central and Eastern Europe by giving them, a chance to be part of integrated countries. Therefore, the biggest Enlargement in the European history occurred by 10 members from Eastern Europe in 2004, and the last enlargement happened in January 2007, when Bulgaria and Romania became members of European Union.

The European Union, as a formal community of integrated countries, was established by Maastricht Agreement, signed on February 7th, 1992, which, came into force on November 1st, 1993.

In 1995, the neutral states, such as Austria, Sweden and Finland, became full members of European community. The next was the greatest one, of the European integration history, which happened in the spring of 2004, when ten new countries were granted the full member status – Malta, Cyprus, Latvia, Lithuania, Slovakia, Hungary, Estonia, Slovenia, Czech Republic, and Poland. Thus, having regard to the European indicators, such as the size of the community, from almost 4 million square kilometres, and almost 500 million inhabitants, and the total value of GDP to almost \$12 billion, there will be always willingness from other non – integrated countries, to be part of this world economic power.

Therefore, for a candidate country to become an EU member, it must complete the Copenhagen Criteria³⁹, which defines the rules for a country to be eligible for becoming EU member. These criteria imply the functioning of market economy, the existence of democratic institutions, able to preserve democratic governance and human rights, and that the state accept the obligations and intent with the EU. Because of these criteria, many candidate countries find difficulty to access the European Union. Therefore, to be more

³⁹ Pusca, Anga. *European Union: Challenges and Promises of the new Enlargement*. New York: IDEA and CEU press. 2004, pp.31-32

understandable, before one country could join the European Union, it has to meet the following criteria as fully stated, the Copenhagen Criteria⁴⁰

As concern to economic criteria for membership into European Union and European Monetary Union, they are static and do not speak much of economic quality and there is a lack of academic explanation (Efendic A, 2005). These criteria, do not discuss the effect of fulfilment on different countries, having in mind the fact that no country has the same economic environment. Economic criteria defined in Copenhagen, can be viewed through the following sub criteria⁴¹

1. Equilibrium between demand and supply is established by the free interplay of market forces; prices, as well as trade, are liberalized;
2. Significant barriers to market entry (establishment of new firms) and exit (bankruptcies) are absent;
3. The legal system, including the regulation of property rights, is in place; laws and contracts can be enforced;
4. Macroeconomic stability has been achieved including adequate price stability and sustainable public finances and external accounts;
5. Broad consensus exists about the essentials of economic policy;
6. The financial sector is sufficiently well developed to channel savings towards productive investment.
7. The existence of a functioning market economy, with a sufficient degree of macroeconomic stability for economic agents to make decisions in a climate of stability and predictability;
8. A sufficient amount, at appropriate costs, of human and physical capital, including infrastructure, education and research, and future developments in this field;
9. The extent to which government policy and legislation affect competitiveness through trade policy, competition policy, state aids, support for SMEs;

⁴⁰ Glenn, John K. EU Enlargement. In: Cini, Michelle (eds) European Union Politics. New York: Oxford University Press. 2003, pp. 216
Financial Affairs, Progress towards meeting economic criteria for accession: the assessment from the 2004 regular reports, November 2004, p. 6-7

10. The degree and the pace of trade integration a country achieved with the Union before enlargement. This applies both to the volume and the nature of goods already traded with Member States;

In order to understand the economic criteria, we have to raise the question, whether these criteria are useful for national economies, or are they are a wasted opportunity to implement their own national strategies. However, for a candidate countries, on their way to EU membership, one of the challenges, is the achievement of real convergence, which means that the income per capita and the living standard of the candidate country under observation, should come closer to the average of less developed EU members (Efendic, A, 2005), thus providing long run economic benefit for national economy, in a sense of providing long term sustainable and stable growth in the conditions of macroeconomic stability. On the other hand, non fulfilment of economic criteria for EU membership by candidate country is a wasted opportunity for the country on its way toward EU membership and is a sign of poor economic performance from national economy point of view.

MACEDONIA AND ECONOMIC CRITERIA FOR EU MEMBERSHIP

In the analysis of Macedonian economy to meet the given criteria, we will use EBRD indicators on the one hand, as well as other indicators relevant for rating these criteria.

Table 4
EBRD indices, 2006

| EBRD index (1- 4) | Macedonia | Bulgaria | Romania | Average of new EU members (B+R) | Albania | Bosnia and Herzegovina | Croatia | Average of the candidate countries (A + B + C) |
|-----------------------------|-----------|----------|---------|---------------------------------|---------|------------------------|---------|------------------------------------------------|
| Price liberalization | 4.33 | 4.33 | 4.33 | 4.33 | 4.33 | 4.00 | 4.00 | 3.08 |
| Trade and Forex System | 4.33 | 4.33 | 4.33 | 4.33 | 4.33 | 3.67 | 4.33 | 4.11 |
| Small – scale privatisation | 4.00 | 4.00 | 3.67 | 3.83 | 4.00 | 3.00 | 4.33 | 3.77 |
| Large – scale | 3.33 | 4.00 | 3.67 | 3.83 | 3.00 | 2.67 | 3.33 | 3.00 |

| | | | | | | | | |
|-------------------------------------------------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|
| privatisation | | | | | | | | |
| Enterprise restructuring | 2.67 | 2.67 | 2.67 | 2.67 | 2.33 | 2.00 | 3.00 | 2.44 |
| Competition Policy | 2.00 | 2.67 | 2.67 | 2.67 | 2.00 | 1.67 | 2.33 | 2.00 |
| Overall Infrastructure reform | 2.33 | 3.00 | 3.33 | 3.16 | 2.00 | 2.33 | 3.00 | 2.44 |
| Banking sector and interest rate liberalization | 2.67 | 3.67 | 3.00 | 3.33 | 2.67 | 2.67 | 4.00 | 3.11 |
| Securities Markets and Non Bank Financial Institution | 2.33 | 2.67 | 2.33 | 2.5 | 1.67 | 1.67 | 3.00 | 2.11 |
| Average | 3.11 | 3.48 | 3.33 | 3.40 | 2.92 | 2.63 | 3.48 | 2.89 |

Transition indicator scores range from 1 to 4 with 0.3 decimal points added or subtracted for + and – rating. The rank 1 marks the start of market economy while rank 4 means that market economy is at the level of industrialized countries.

Source: *Transition report 2007*, EBRD, London

According to transition indicators, Macedonia recorded excellent results, in terms of price liberalization and foreign trade liberalization, where the respective indexes, are both, 4.33, showing that Macedonian economy is being opened in the trade area, which has been achieved through establishing a free trade zone in the region in accordance with the Stability Pact. We observe that Macedonia registers a relatively good index in the area of small scale privatisation (4.00), while conditions on large scale privatisation are much worse. We observe that biggest problems, for Macedonia are in the competition policy area, where the index is the smallest (2.00), in comparison to the average of new EU members. Also the indexes of overall infrastructure reform (2.33), securities markets and non bank financial institutions (2.33), and banking sector and interest rate liberalization (2,67) do not show good functionality indicator for Macedonian market economy. On the other hand, if we observe the average value of analysed indexes for Macedonia, which is 3.11 we can conclude that this is a relatively good indicator of the functionality of Macedonian market economy, including the economic capacity of Macedonia, to cope with the competitive pressures upon accession to European Union.

Since, indices for both, transition countries that have become full members and for candidate countries aiming to become members of EU, it is important for this analysis to compare these indices with Macedonia.

1. The average value of Macedonian index of 3.11 is lower than the average value of new EU members index (3.40), and higher than the average value of candidate countries index (2.89), meaning that, the lag of Macedonia amounts to a total of 8.5%, meaning that Macedonian indices are about 8.5% worse in Macedonia, in comparison to the average value of new EU members index. On the other hand, with respect to candidate countries, Macedonia has a bigger advantage in terms of transition indices. Its average value is higher for 7.7%, than the average value of candidate countries indices.
2. In comparison to the average indices of the candidate countries, Macedonia has the best result in the area of price liberalization and trade and foreign exchange market, thus reaching the EU standard. Macedonia has also good results in the value of the index measuring small scale privatisation. Macedonian results on small scale privatisation (4.00) are somewhat better than the average of new EU entrants (3.83), with the lag being the smallest compared to candidate countries, such as Albania (4.33) and Croatia (4.33). As concern to the case of large scale privatisation, Macedonia lags well behind new EU entrants, and has recorded positive advantage with respect to candidate countries.
3. Macedonia registers the poorest result in the area of competition policy, where its index is 2.0, compared to the average of new candidate countries, with index of 2.67. Also, the value of indexes measuring the overall infrastructure reform, banking sector and interest rate liberalization, securities market and non bank financial institutions are somewhat smaller than the indexes of new EU entrants, with lag being the smallest in comparison to Croatia as a candidate country, and with better result, with respect to candidate countries such as Albania and Bosnia and Herzegovina.

The key economic indicators pertaining to the country's willingness to meet the membership economic criteria will not be dealt at this point of the analysis, since they were analysed in the previous section. As concern, to economic growth at about 4%, annually, over the past couples of years, we may say, this is a relatively good result, which is likely to remain at the same level, possibly, in medium term. Considering the increasing rate of FDI data

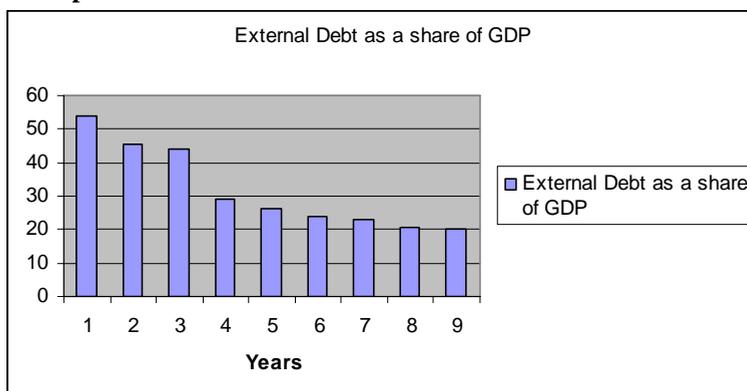
presented on table 1, we may say that the full sustainability of Macedonian economic system is still being discussed, due to the still present economy dependence on foreign aid.

Macroeconomic stability of Macedonia is now present in two levels, inflation and budget deficit.⁴² External debt in Macedonia has registered a falling trend, which is a bright side for Macedonian economy, whereas inflation rate has registered increasing trend. The level of external debt as a share of GDP was 54.0% in 1998, whereas in 2006 it was 20.0% (see table 5 and graph 1), which is an acceptable level from the European Integration prospects.

Table 5
External Debt as a share of GDP in Macedonia

| Years | 1998 | 1999 | 2000 | 2001 | 2002 | 2003 | 2004 | 2005 | 2006 |
|-------------------|-------------------------------|------|------|------|------|------|------|------|------|
| External Debt/GDP | 54.0 | 45.6 | 44.3 | 29.2 | 26.2 | 24.1 | 22.9 | 20.9 | 20.0 |
| Source | EBRD, Transition Report, 2007 | | | | | | | | |

Graph 1 – External Debt as a share of GDP



Decreasing rate of the value of foreign debt over the years 1998 – 2006, shows a very important stability factor for Macedonian economy, therefore, with respect to the economy’s foreign sector, we may say, that Macedonian economy is not import dependent.

As concern to time required to open a business, expressed as a number of days required to start a business, according to world bank data, in

⁴² See table 1

Macedonia, it takes 48 days to open a business⁴³, whereas in a candidate countries for EU entrance, such as Albania, Bosnia and Herzegovina and Croatia, it takes 41 days, 59 days and 49 days respectively, which means that Macedonia does not lag well behind other candidate countries, in terms of administrative procedures required to open e business.

Finally we will mention that the Copenhagen criteria also include the existence of suitable level of human capital development in the country. Since this index can be measured by ‘school enrolment on a secondary level, as a percentage of total population, or school enrolment on a tertiary level, as a percentage of total population, one can conclude that, Macedonia also, does not lag well behind candidate countries for EU membership. In Bosnia and Herzegovina this index is higher, in comparison to Macedonia, Albania and Croatia. The percentage of pupils enrolled on a secondary school and tertiary school in Macedonia is 84.07% and 27.09 respectively⁴⁴, whereas in Albania and Bosnia and Herzegovina the respective indexes are 78.04, 19.08 and 91.38, 44.52. In Croatia the respective indexes are 88.3 and 41.8 percentage. So in terms of human capital development Macedonia also does not lag well behind other candidate countries for EU membership. As concern to new integrated countries within EU structure, from the data obtained from World Bank, Romania and Bulgaria do not have significant advantage over other candidate countries, in terms of human capital development, since the indexes that represent the human capital development, measured by number of students enrolled on a secondary school or tertiary school, are not so high. The respective indexes in Romania are 85.09 and 40.18 whereas in Bulgaria the respective indexes are 99.25 and 40.75. Although, the criteria of human capital development are rather vague, since we cannot find a better proxy for this indicator, it is still not known what the conditions in Macedonia are in this area. It is thus, hard to say whether Macedonia meets the Copenhagen criteria in this area or not, and we will therefore, leave this question open.

⁴³ See at <http://devdata.worldbank.org/data-query/>

⁴⁴ See at <http://devdata.worldbank.org/data-query/>

Conclusion

In the context of Copenhagen criteria Macedonia, has already a significant head start in price stability, government budget deficit, and external debt. Macroeconomic stability viewed through indicators inflation and external debt, is at satisfactory level, due to decreasing trend of Macedonian external debt over the years 1998 – 2006 and low level of inflation, compared to the average of candidate countries for EU membership. Also the EBRD indices of price liberalization and foreign trade liberalization are fairly high, thus making Macedonian economy more functional and comparable with candidate countries and new candidate countries, as well. The Macedonian indices of large scale privatisation and small scale privatisation are somewhat better than the average of new countries, within EU structure, with the lag being the smallest compared to candidate countries. On the other hand, as concern to the case of large scale privatisation, Macedonia does not lag behind candidate countries, and new EU members. To start a business in Macedonia, one needs to go through different procedures that last about 42 days on average, which in comparison to the regional average 44.1, therefore Macedonia is in somewhat better condition, and does not face that much difficulties with administrative procedures. Macedonia registers poorest result in the area of competition policy, thus, it is not surprising that the rating for this area is so low, since there is no full harmonization between entities. Also the Macedonian overall infrastructure reform, banking sector and interest rate liberalization, securities market and non bank financial institutions, do not show good results, since these indices for Macedonia are somewhat smaller than the indexes of new EU members, with lag being the smallest in comparison to Croatia as a candidate country, and with better result, with respect to candidate countries such as Albania and Bosnia and Herzegovina. The area of human capital development, although it is still a subject of evaluation, it is not difficult to determine the ranking of Macedonia, one having in mind one of the measures used in empirical literature, such as number of students enrolled in a secondary school or tertiary school as a percentage of total population. With respect to this indicator, Macedonia does not lag well behind new integrated countries and other countries, candidate for EU membership. Finally, with all listed problems above, it is still difficult to say for Macedonian economy that is prepared to cope with competitive pressures and copes within European Union, thus, decreasing the functionality of Macedonian economy.

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The Application of Technology in Enhancing Multicultural and Multilingual Aspects of Education: Digital Divide into Digital Opportunities

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Abstract

Technology enhanced multicultural e-learning education with its multilingual specifics applied at South East European University is the focus of the discussion and analyses. The analyses and the developed strategy takes into account the University's mission in achieving multicultural and multilingual education within the context of the Balkans, but also in a wider European and global context. A number of issues related to such a specific context of the University, such as its multilingual and multicultural environment influenced the developed strategy and its implementation plan. The implemented strategy and solution as well as experiences gained in the process led to a number of important results as outcomes and recommendations for similar initiatives.

Abstrakt

Teknologjia përkrah arsimimin shumë-kulturor elektronik (e-learning), me specifikat shumë-gjuhësore që aplikohen në Universitetin e Evropës Juglindore, e cila gjë është në fokusin e diskutimeve dhe analizave. Analizat dhe strategjia e zhvillimit e kanë parasysh misionin e Universitetit në arritjen e arsimimit shumë-kulturor dhe shumë-gjuhësore në kontekst të Ballkanit, por edhe në kontekst më të gjerë, evropian dhe global. Një numër i çështjeve

të lidhura me një kontekst specifik të Universitetit, si që është ambienti shumë-kulturor dhe shumë-gjuhësore ka ndikuar në strategjinë e zhvillimit dhe planin e zbatimit. Strategjia e zbatuar, zgjidhjet, si dhe përvoja e fituar gjatë këtij procesi kanë çuar deri tek një numër i rezultateve të rëndësishme, si përfundime dhe rekomandime për nisma të ngjashme.

Апстракт

Технологијата го подобрува мултикултурното образование за е-учење со своите мултијазични посебности кои се применуваат на Универзитетот на Југоисточна Европа што претставува и главна точка за дискусија и анализа. Во анализите и развиените стратегии се зема предвид мисијата на Универзитетот во достигнувањето на мултикултурно и мултијазично образование во контекст на Балкан но исто така и во поширок европски и глобален контекст. Голем број на теми поврзани со овој посебен контекст на Универзитетот како што се мултијазичната и мултикултурната средина влијаеа на развојната стратегија и планот за имплементација. Имплементираната стратегија и решавањето како и искуствата кои се добиваат од овој процес водат до многу важни резултати и препораки за слични иницијативи.

Keywords. Multicultural and multilingual Education, technology enhanced learning, e-learning

Introduction

Analyses of Information and Communication Technologies-ICT and especially E-learning and its impact on Multicultural and Multilingual aspects of education are the focus of the analyses.

Technology and ICT bring a new way of learning and teaching, and so should be accompanied by new pedagogies and new approaches and strategies, according to Sutherland [8].

In an online environment South East European University (SEEU) is able to reach a large number of people previously not possible. In such an online environment, the effect of good or bad teaching is more visible. This means,

that along with transferring resources and using technology, SEEU is also transmitting cultures, values and educational methodologies. It can be argued that ICT as technology is seldom neutral. Some researchers and philosophers consider education and the use of technology as a means of favouring parental ways of knowing, which favour particular economic systems as discussed by Biraimah [1]. SEEU uses the Angel LMS-Learning Management System. But Angel LMS is not a stand-alone solution, but rather is "blended learning," mixing hands on and technology-based training.

The strategy SEEU has employed takes into account the traditional classroom education and classical methodologies and compares the options and possibilities to apply them in combination with the current technologies in a blended manner following the guidelines from Rosenberg [5]. Below is the schema for service request.

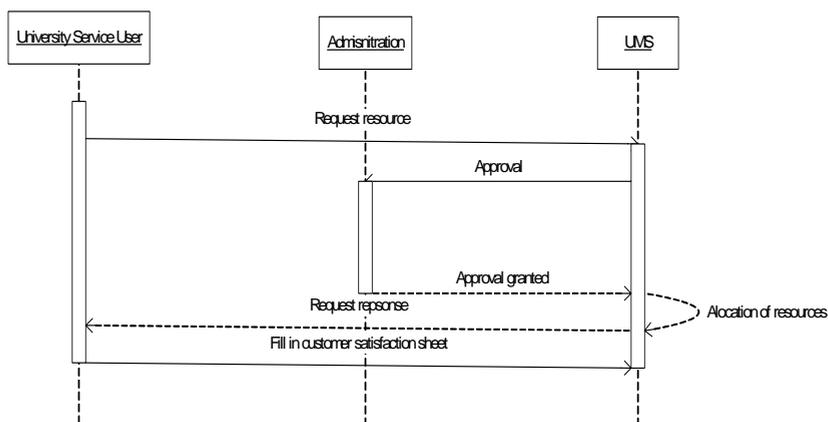


Figure.1. Service Request

The regional multilingual and multicultural geographic specifics are an important factor driving the decision of how to implement technology-enhanced e-learning multicultural education. The complexities associated with multilingual and multicultural geography specifics invites a new dimension of teaching/training issues in providing borderless education.

Thus, special attention is given to the multicultural, multiethnic and multilingual society of Macedonia. For example, SEEU has introduced three official languages: Albanian, Macedonian and English, representing an unique example in the country and wider region by incorporating not only multilinguicity but also multicultural aspects into the essence of the

University existence. Also, much attention has been given to promote inter-ethnic understanding by ensuring a multicultural approach to teaching and research, and to develop the teaching programme in a broader international, regional and European perspective.

SEE University Experiences in Multicultural Education

Central to SEEU's existence is the belief that multicultural education can help to solve interethnic conflict. The University was created with the goal of increasing the representation of the large ethnic Albanian minority in higher education in the Republic of Macedonia. At the same time, it was founded as a multicultural and multilingual university whose aims were clearly defined and sights aimed at European integration and full implementation of the Bologna Process. In all of these aspects, it was and still is a leader in the country and the region.

The current ethnic distribution of students at the University is 82% Albanian, 15% Macedonian, and 3% other (including Turkish, Roma, Greek, etc.). It is the only university in Macedonia that has a public-private and non-profitable status, allowing it to charge small tuition.. This situation enables the University to keep tuition relatively low, while keeping services and opportunities for students and staff at a high level. From the start, SEEU has endeavored to be a truly modern university. It has been able to achieve a good degree of success partly due to support from USAID, which contributed a large part of the funding for the educational development of the university during its first six years (2001 – 2007). This funding, administered chiefly by Indiana University, included the establishment of both the Language Center and the Computer Center, two large teaching units on campus where all SEEU students at some point attend classes.

Other projects, all of which involve the use of electronic technology include the Instructional Support Center (providing training in modern, interactive teaching methodologies with an emphasis on the use of technology and intercultural communication), the Career Center (bringing students and local businesses together, and networking with other career centers in the region), the Business Development Center (providing services to local businesses, again with an emphasis on using technology), and the Distance Education Center (an effort to extend the University's services beyond the campus and into surrounding communities).

SEEU has a unique language policy, which it defines as the "flexible use of languages." There are officially three main languages used actively in all communications on campus: Albanian, Macedonian, and English. All students are required to study two semesters of either Albanian or Macedonian (Albanian students attend Macedonian language and vice versa). All students (with the exception of a small number of students who enroll in degree programs in French or German) are also required to study English for four semesters, starting with general English and concluding with advanced study relevant to their chosen field. Both the Business Administration and Computer Sciences and Technologies faculties also routinely offer courses taught by foreign professors in English.

In addition to language study, curricula in the five faculties at SEEU have a strong focus on technology. All students attend one obligatory course in basic Instructional Technology (IT) skills during their first year with elective courses available later. The University is quite well equipped, having a number of dedicated computer labs, and sophisticated equipment in many of the classrooms. The University's website (translated into the three official languages) disseminates information to students and the community outside.

All students complete their schedules electronically and have access to their transcripts and other pertinent information via E-services. Teachers also manage their schedules on the same service and post grades on the recently implemented E-grading service. Instruction in all courses is supported by the course management tool Angel.

Multicultural Experiences in Computer Sciences Education

By using the Angel LMS-Learning Management System (www.angelllearning.com), SEEU has been able to investigate the multicultural impact of technology enhanced e-learning courses. The analyses was not limited to Computer Science Education; different courses using the Angel system were reviewed and analyzed, while the insights and guidelines were applied to those courses under the Computer Science Department. The specific multicultural issues were studied comparing different courses and more in detail for the Advanced Elective course "Object Oriented Programming in Java" and the two core courses "Software Engineering" and "Algorithms and Data Structures". Students registered in

the courses as partial fulfillment toward their BSc degree in Computer Science department.

Since SEEU has in use three official languages, the needs of a particular course might be to create content in all three or just two languages, thus providing equal opportunities to all the students. Each particular course conducts an initial need analysis at the beginning of the semester and identifies the languages in which the particular course will be delivered.

At the beginning of the semester the lecturer gives students a quiz to test their pre-knowledge of the course content and depending on these results concentrates more on some topics and less on others that students have already mastered and have shown extensive knowledge of. Use of online discussion tools and web resources support an existing course taught with face-to-face lectures. At the beginning and the end of the semester a survey given to students provides feedback for their specific needs as well as for their experiences. At the end of the semester students provide opinions about the extent to which their needs were taken under consideration for that course.

The Angel system has been used as support to the traditional classroom, but all learning, as well as assessment and the research component, have focused on using Angel in a student-oriented manner. Students have expressed appreciation for asynchronous activities that allow more flexibility because such activities can take place at any time.

Since there are no time constraints, learning is extended. Students have more time to think, reflect, and investigate an issue in more depth.

Individual students initiated topics in the free discussions that were very interestingly realized in three languages and groups of students were responsible for different forums. However monitoring was conducted by using the track student function. Instructors had to encourage and persuade the passive students to be more active by sending individual emails and informing them about their low activities, which the Angel system had identified during the time.

Feedback or comments were given from time to time during class meetings or posted online to sustain the motivation of active participants. Occasionally, instructors challenged the views of the students by asking for clarification. Very often instructors had to remind the students to follow the threads of the messages

Technical enquiries from students were handled. The final task was to evaluate the performance of the students by giving them marks. Then different courses were analyzed with an aim to assess if there were any improvements, especially in the learning process.

The focus was especially on the content since learning depends on this, not the technological environment as the analyses demonstrated. The purpose of the analyses of the authoring issues using Angel LMS was to improve the overall e-learning quality by proposing and applying solutions to these issues.

Based on comparative analyses and qualitative research from Fetaji [7] as well as on the review of the work of several experts in this field, SEEU has come to several important conclusions that helped in creating sound e-learning course content.

We have approached this issue following guidelines according to Moore [3]. Further aims of a needs analysis are to support the selection of approaches that achieve one or more of the following: 1) are likely to save time or costs, 2) are valuable and viable, 3) are scalable and sustainable.

Multicultural Experiences in Language Education

Part of the University's mission is to promote a multilingual approach to learning, stressing both the importance of local and international languages. The Language Center has the central role in achieving this goal. The primary function of the Center is to provide courses specified in the curricula of the five SEEU faculties. The Center offers instruction in four foreign languages: English, French, German, and Italian.

All students, except those studying French and German in the Teacher Training Faculty, are required to study English, while courses in French, German, and Italian can be chosen as foreign language electives. Because of these requirements and student interest, all students at the University attend courses in the Center at one time or another, with the majority attending three.

The Language Center is SEEU's "melting pot." Language Center courses are not diverse by design; students enroll in classes according to their level of proficiency and times that fit their schedules. Since all faculties at the University have similar language requirements, with the exception of

English for Specific Purposes (ESP), there is no need to provide courses specific to individual faculties or even to their year of study. And, unlike most other courses offered at SEEU, there is no need to divide students by language of instruction. Teachers are encouraged to focus on the target language in class, using only minimal translation. The teaching staff reflects this diversity. One third of all Language Center teachers are ethnic Macedonian, as compared to less than 20% of their students. To place these figures in context, the University ethnic distribution is as follows: Of a total of 267 instructors, both full and part-time, 74% are ethnic Albanians compared to 20% Macedonian.

Since the first year of its operation, the Language Center has utilized technology for the purposes of both staff development and teaching.

In terms of the University as a whole, the establishment of the Instructional Support Center (housed within the Language Center) has had the largest impact of any staff development program. Like the Masters via distance program that preceded it, the Instructional Support Center (ISC) (set up in March 2005) was also funded by USAID administered by Indiana University. The ISC's aim was (and remains) to provide training in three areas: English language; contemporary, interactive teaching methodology; and integrating technology with teaching. 35 instructors from the five faculties, the Computer Center, and the Language Center were required to attend weekly sessions in these areas. These participants were given a reduced teaching load in order to compensate for the additional responsibilities. Most training sessions were run locally. In addition, at least once per month a videoconference with Indiana University was organized for ISC participants. Topics of these workshops included critical reading, assessing students' writing, syllabus design and creation, democratic discussion, on-line teaching, and dealing with students of mixed abilities and multiethnic classrooms.

It was through the work of the ISC that the course management tool used at SEEU, Angel, was first implemented in the Winter Semester 2006. Several intensive training sessions were provided for ISC participants in the use of Angel during the year prior to campus-wide implementation. Then, during the month preceding the start of classes, ISC participants conducted training sessions for their colleagues on the use of Angel. During the first year, between 68 and 71 percent of all full time teaching staff at SEEU actively used Angel in their classes. At the same time, 67% of all full time students were active on Angel.

Distance education at SEEU has been conducted with the aim of developing professional competence of the teaching staff. During the 2006/2007 academic year, the Distance Education Center (DEC) was established in Gostivar, some 25 kilometers from the SEEU campus. Since a large number of students come from Gostivar and surrounding villages, this location seemed a good choice not only to offer on-line instruction but also to help promote SEEU to the local community. The Language Center offered several language courses via the DEC, including a TOEFL preparation course and a lower level general language course. Additionally, a local business in Gostivar, which exports some of its products, arranged for English language classes for its administrative staff to be delivered in combination on-site and via distance. In fact, this format was eventually adopted by every language course once it was understood that, while they recognize it as an effective support tool, both students and teachers do not yet see on-line instruction as a replacement for face-to-face.

What has been achieved so far is noteworthy, however, especially given the volatility of the times and the region. It is worth pursuing whatever means are available to 1) increase access to quality higher education to the diverse ethnic groups living in the region; and 2) the mobility of students and staff. Continued focus and sustainable and practical, democratic uses of technology represents the best means available.

Multiculturalism and Multilingualism: Digital Divide and Digital Opportunities

Language and communication are the two aspects which constitute the essence of culture according to Vygotsky [9], especially in the use of technology-enhanced learning according to Wertsch [10]. Therefore, existing online instructional designers and instructors are living in a time of transition. However, some are not embracing the shifting paradigm.

One of the major issues that divides rather than brings close in a multicultural education course is the different ability of instructors to observe, analyze, evaluate, and reflect upon their beliefs about teaching and learning, their teaching practices, and the research, and theory related to multicultural education.

Instructional design in an e-learning environment can foster the alliance between technology and education for pushing higher education to transform

the academic environment. The questions that SEEU has posed to the tutors and students are: What does this mean to me? How can I use it? Is this better than what I am doing now? Trying to answer these questions helped tutors to create e-learning content with instructional sound design that will invoke higher level of knowledge and level of learning.

Embracing instructional technology methods helped in increasing the learning process while decreasing costs at the same time. For example, it provides the opportunity for students to interact with experts, even if they were not located physically on the campus but were from another region.

SEEU has also analyzed factors that influence instructional technology. From qualitative research and content analyses, the next factors that influence IT are: technological experience, student access to technology, multicultural background, language ability.

The second aspect of technology focuses on digital opportunities in developing confidence, skills, and abilities with educational technology.

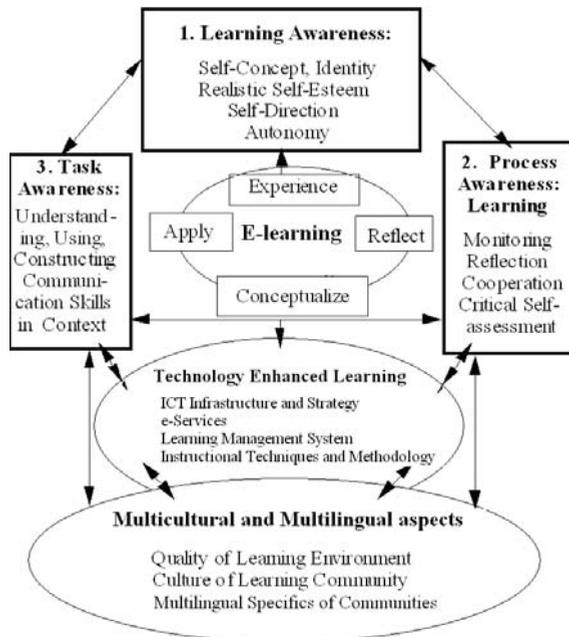


Figure 2. Multicultural and Multilingual Model

Moving from traditional classroom into the e-learning environment, learning and teaching should adapt to the new circumstances and possibilities.

Learning is a complex activity, and good teaching takes many years of experience. The skill of a good teacher is in knowing the best thing to do in advance in order to bring a given learner to the next stage of understanding and gain benefit from a specific kind of learning task.

SEEU strongly believes, based on these surveys that the reason for those benefits is not the medium of instruction, but the instructional strategies built into the learning materials. Similarly, Schramm [6] suggested that learning is influenced more by the content and instructional strategy in the learning materials than by the type of technology used to deliver instruction.

In the Computer Science Department of SEEU, students are encouraged to discover principles for themselves and to construct knowledge by working to solve realistic problems, usually in collaboration with others. This collaboration is also known as knowledge construction as a social process. Some benefits of this social process between different ethnic groups of students are:

1. Students can work to clarify and organize their ideas so they can voice them to others.
2. It gives them opportunities to elaborate on what they learned and their cultural background experiences.
3. They are exposed to the views of others as well as to other languages and cultures.

The teacher's role in the e-learning environment follows stages while functioning in three different aspects: cognitive, administrative and affective. In stage one, the planning stage, the role of designer and manager is significant while taking care of the cognitive and administrative aspects. In stage 2, the activity stage, the manager's role is still predominant at the beginning of the activity. Gradually, the facilitating role is prevailing and the focus is on the affective aspect as well as the cognitive aspect. In stage 3, the completion stage, the role of facilitator fades away. A new role emerges, that is, the role of an adjudicator.

A student's perspective is that the students perceive the teacher as playing a role that is different from that of a traditional teacher. The students also feel that the teacher's role evolve from that of a knowledge disseminator to

that of a facilitator. The teacher is perceived as a co-learner rather than the information giver.

Both of these aspects are important to ensure continuing professional development of teacher candidates and novice teachers.

Conclusion

The proper addressing of the application of multilingual education in the context of multicultural environment and issues and the path chosen as well as solutions realized were in the framework of improving the overall e-learning processes and overall learning quality in the University teaching/learning process.

The success of the approach is evaluated as positive through current students as well as alumni feedback and focus groups. The main difficulty still remains the automatic conversion and translation of content simultaneously as well as preparing the content, services, and the entire documentation in the three official languages.

As an added benefit of this analyses and realized scenarios as solutions in the discussed departments, the university has been able to create a seamless wide e-learning support of multilingual and multicultural specifics by using the experiences drawn from these analyses and experiences gained from these courses.

The evidenced issues and solutions applied led to the following outcomes:

Analysis led to a series of recommendations for changes to methods and procedures currently employed in creating multilingual e-learning courses at departmental level in the University framework.

This Analysis also led to the identification of specific activities as targets for the application of technology of Angel LMS to address multilingual issues and aspects.

Those involved in analyses and implementation, as well as managing the realization of the proposed solutions, gained a substantial increase in understanding of the overall goals of the process and attitudinal changes occurred. A common understanding of the overall e-learning process and the

role each participant played in its successful completion lead to increased goal congruence.

The university has recognized the need to streamline its instructional design process to ensure that courses delivered through e-learning in the future would share findings from this analysis.

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The European Union Policy in field on the Environment

Zoran Sapuric, PhD and Vullnet Zenki

Abstract

The European Union is a community with many common policies. Besides the policies, the policy in field on the environment has very big importance and according the Union legislation , it must be built in another common policies. The modern European Union policy in field of the environment is based on very high level of standards, what are become higher and higher from year to year. The Union nowadays. is the world leader in field on the environment. The common environmental policy of the European Union is settled on many principles, such as the principle of liability, principle of precautionary, preventive principle, polluter pay principle, and principle of public participation. According general policy of The European Union, based on the solidarity and cohesion between the member states, The Union has visible results in implementation the high level standards. There is strong willing in The Union to continue building strong environmental policy.

Abstrakt

Unioni Evropian është një komunitet me shumë politika të përbashkëta. Krahas politikave tjera, politika në fushën e ambientit jetësor ka një rëndësi të madhe dhe duke u bazuar në legjislacionin e Unionit, ajo duhet që të ndërtohet në politikat tjera të përbashkëta. Politika bashkëkohore e Unionit Evropian në lëmin e ambientit jetësor bazohet në standarde të nivelit të lartë, të cilat janë rritur nga viti në vit. Në ditën e sotme, Unioni është lider botëror në lëminë e ambientit jetësor. Sot, politika e ambientit jetësor e Unionit Evropian është rregulluar nga shumë principe, siç është principi I përgjegjësisë, principi I përkujdesjes, principi I preventimit, principi I pagesës së ndotësit, si dhe principi I pjesmarjes publike. Sipas politikës së

përgjithshme të Unionit Evropian, të bazuar në solidaritetin dhe kohezionin ndërmjet vendeve anëtare, Unioni ka rezultate të dukshme në implementimin e standardeve të nivelit të lartë. Në Union ekziston një vullnet i lartë drejt vazhimit të ndërtimit të politikave të forta të ambientit jetësor.

Апстракт

Европска Унија претставува зедница со многу зеднички политики. Покрај другите политики, политиката во областа на животната средина има се поголемо значење во рамките на Унијата и согласно легислативата на Унијата, истата мора да биде вградена во другите политики на Унијата. Современта политика на Европската Унија во областа на животната средина е базирана на многу високи стандарди, кои од година во година се се повисоки. Денес, Унијата е лидер во светски размери во областа животната средина. Согласно, генералната политика на Унијата базирана на солидарност и кохезија помеѓу земјите членки, Унијата има забележителни резултати во имплементација на високо ниво на стандарди во оваа област. Постпои цврста одредба во Унијата за продолжување на градење на силна политика во областа на животна средина.

Introduction

The European Union today is much more than association for free trade agreement. Union now is consisting of 27 member states. The European Union has common policy, strong common institutions, and law making process of its own, what making Union a form of supranational union, where the member states have a lot of restrictions of their sovereign rights. The European Union has many spheres of common general policy, like in trade, economy, foreign policy, agriculture, transport, health services, monetary policy, security and defense, cooperation in sphere of judicial matters, and in the last two decade, also in sphere of environment.

The beginning of the Common Environmental Policy

The Treaty of Rome, has no clear articles about the environment, even the Treaty,¹ has provisions about improving the quality of human life. The Rome Treaty in article 2, define Community with aims to established common market, economy and monetary union, what means the aims of the Union according Rome Treaty were basically in the field of the economy. The Stockholm conference from 1972, organized from The United Nations, as a first conference about human environment, has strong influence on the beginning development of the global environmental policy and also in the common Union environmental policy. The Conference of heads of Union member state held in Paris in 1972, open the way to start to building common environmental policy. The Conference gave the clear obligations for The European Commission, to start making concrete measures for joint action in the improving the quality and protection of the environment. The Commission went to work and prepared wide - ranging action programs for the reduction the pollution and for the management nature recourses. The Commission underlined that The European Union institutions had more capacity to built and create environmental measures, standards and action plans, than the every separate member state.

Development the Common Environmental Policy

European Union Treaty was amended by Single European Act from 1986.² The Single European Act was a key phase in the development of the common environmental policy and activities in the field on the environment. This Act underline the necessity for balanced and sustainable using the natural resources, protection measures, balance between the economy and environment, and implementation the environmental matters in all strategies, plans and another documents of the common European policies. The Treaty of Maastricht very precise defines the common environmental policy and objectives of this policy like: preserving, protecting and improving the quality of the environment, protection the human health, rationalizing the utilization of the natural recourses, promoting measures at international level

¹ See article 2,7,9 and 23 of Treaty of Rome

² See Single European Act

to deal with regional or world wide environmental problems.³ The Treaty also introduced environmental considerations into overall framework of the European Union economy policy, specifying sustainable development and environment as one of the fundamental objectives of the Union.⁴ The Treaty of Maastricht made big change in decision making process and adopting legislative in the field on the environment, involving co-decide procedure into adopting the legislative between the European Council and the only one directly elected institution un the Union- The European Parliament.⁵ That strongly increases the importance of the Union environmental policy.

Further development of the common environmental policy was made with Treaty of Amsterdam adopted 1997, came into force in 1999. The Amsterdam Treaty continued the development of European environmental policy. The Treaty promote economy activities with a, high level, of protection and improvement of the environment, with goals to protect human health and condition of leaving. The Treaty also defines activities for all European institution and underline importance for building common environmental legislation.

Very big significant for the building and implementation the common environmental policy coming from the Union environmental action programs. Following the importance of protecting and improving the quality of the environment, the European Commission was request from The European Council, to draw up first an action program on the environment. The First action program was for the period 1973-1977. Since that time the European Community has produced six action programs. The Second was for the 1977-1981, the third 1982-1986, the fourth 1987-1992, the fifth 1993-2000, and the sixths for 2001-2010. The most significant are the fifth and sixth mentioned programs.

The Fifth Environmental Action Program covered the period 1993-2000, and to that extent, was differed from the previous programs, that covered a seven year period. Entitled toward to sustainability, the Program did not specifically concern itself with the protection of environmental such as water, air, or land. The program concentrated on five key sectors of activity which have significant impacts on the environment of the state: industry, transport, energy, agriculture and tourism. The program recognize the possible negative impacts from the transport, energy, industry, and the agriculture to the environment and underline the needs for reducing pollution from this sectors. The program also underline the importance of the

³ See article 174-175 Treaty of Maastricht

⁴ See article 2

⁵ See article 100 a

quality of the environment for the development the tourism activities. The Fifth program encouraging reduces the pollution from nitrates and phosphates.

The Sixth environmental action program elements are set in environment for a period 2001- 2010. The programs was named,, Our Future our Choice,,. The Program focuses on the following priorities: climate change, nature and bio-diversity, environment and health, sustainable use of natural resources and sustainable management of waste. The main objectives have been set for each priority area. In line of climate change and Kyoto Protocol commitments, there is a target of an 8% reduction in greenhouse gases, based on 1990 levels of the six main gases, during 2008-2012. The Program also sets target for 10% noise reduction, to 2010 and 20% to 2020. Efforts are made to protect and restore the functioning of natural systems and halt the loss of biodiversity and protect the soil against erosion and pollution. In the sector of energy there is ambitious goal to use, 25 percentage of total energy, derived from renewable sources. As well as the priority areas, the Action program detailed four approaches to be taken in regard to environmental issues a related to: effective implementation and enforcement of the environmental legislation with a aim to a common baseline for all member states, integration of environmental concerns into other policy areas, using wide range of instruments including legal instruments alongside fiscal and educational measures, and stimulation the public participations and another sectors such as business sector, nongovernmental sector, and other social partners, like trade unions and professional associations, promoting better cooperation and more accessible information's in field on the environment and transparency in decision making process in the environmental matters.

The Present European Union Policy in Field on the Environment

Nowadays, European Union is world leader in the building and implementation of environmental policies and legislations. The Union policy in field on the environment is based on the high level of environmental standards for all medias, soil, land and air, and all sectors on the environment, like waste management sector, protection nature sector, forestry sector, protections from noise sector, sector for modified organisms, sector for management with chemicals, climate change sector and industrial pollution sector. The European Union has common policy in

front of the international community and in participation in international conferences and international conventions in field on the environment. That common policy makes Union much stronger in the international cooperation, with stronger position with 27 votes. Before all important conferences in field on the environment, the Union member states have intensive common consultations and built common attitudes and directions for the further activities. In building common policy have participation a number of the European institutions. The common policy results with common environmental legislation, where also the Union is the world leader in making and implementation of this legislation. The whole environmental policy has contribution for stronger cohesion of the Union.

One of the key elements of the successful common environmental policy in the environment is common financing the environmental activities. The Union creates financial instrument for the environment,, such as,, LIFE,, program, which aimed to promote to develop, and implementations the environmental policy and legislation by financing priority projects in the Union, such as the,, Natura,, 2000 network,,. The financial instruments provide technical assistance to the associated states in Central and Eastern Europe, as well as states in the Mediterranean region and in Baltic coastal areas.⁶ It provides financial support for preparatory measures, public awareness campaigns, and institutional capacity building technical assistance and measures necessary for protection natural habitats and species. In addition to LIFE, Union support through the Structural Funds and Cohesion funds facilitates the realization of common environmental projects in the poorest member states and in the poorest region from the member states. Furthermore the European Union grants financial support to nongovernmental organizations active in the projects for improving the quality and environmental protection, with goals to help and support them to contribute to the building and development and implementation the Union policy and legislation in sphere of the environment in different parts of Europe. The Unions financial instruments resulted with rapid development the Europe Union common environmental policy and development the common legislations and with implementation high level environmental standards in member states, which are on deferent level of economic development and deferent level of tradition in the field on the environment, (especially after enlargement of the Union in 2004 and 2007), and also in supporting the non member states.

There are a lot of reasons for development and building the common European Union policy. One of the most important reasons for this common

⁶ Regulation 1973/92 and Regulation 1655/2000

policy is that many environmental problems, such as long-range air pollution and pollution of the rivers, seas and oceans, can not be resolved in national context, because of the trans - boundary effects. That makes the environmental problems common, and global. Secondly, the European institutions are better placed than member states institutions and the European institutions have larger capacity than the states. That is specially case with long-term policy and measures. The member states are often occupied with short term measures and problems. Normally it is better concentration of the human and financial recourses in the Union institutions than in the institutions of the member states. Thirdly, European environmental regulations affect the competitive of companies and industries and can have strong influence on the working of European market. If one states passes sting tent national regulation competing industrial sectors, on its territory to dispose of industrial waste in environmental friendly manner and adopt the license system for integral prevent pollution system, while the other states do not, the companies from the first state will be disinvested. It could distort the common market. Therefore it is necessary the same rules to be imposed on all Union producers. The same case is with the whole Union. If the European Union member states implement high level of the protection the environment and high level for license for the industrial sectors, the non member states, could have been in privilege position in the way of lees costs for the productions the products. The Union could reduce the trade regime from the third states, for not environmental friendly products. Lastly the Union developed common policy in many other spheres, and it is normal, that also in sphere on the environment they should develop common policy with common activities and common standards, and common legislation. Common environmental problems need common activities and common environmental solutions.

Basic Principles of the Union Environmental Policy

The common environmental policy of the Union is based on many principles. The main of them are principle of:

- liability,
- principle of precautionary,
- preventive principle,
- polluter pay principle, and

principle of public participation.

The principle of environmental liability regards to prevention and remedying of environmental damage, including transboundary damage. The environmental liability, concerning the liability for the environmental damages from many subjects involved in the issues in field on the environment.⁷ Liability means responsibility from the states authorities, local authorities, factories and other companies, and associations and individuals who are responsible for the environmental damage. The subject responsible for the environmental damage is obliged to make remediation and pay for the damage. The liability is equal for the legal subjects, such as companies and the individuals, for example the managers of the factories. The liability is not only for the managers, it consider also liability for another individuals responsible for the damage involved in the process from the installations in the factories. In the last decade the protection of the environment through criminal law and criminal penalties, for the subject responsible for the environmental damage is becoming stronger and stronger. The criminal penalties also may be accompanied with other measures, such as disqualifying a person who has damaged the environment, from working on some position to managing or directing a company or some association.

The principle of precautionary, means that all subject involved in process, potentially could have negative consequences for he environment are obliged to take into account and predict all potential environmental risks, and eliminate the risks or where it is not possible to minimize the risks as much as possible. Also when a high level of risks existed, the principle underline temporary or permanently forbidden and stops with the activities, for example stop the production in one factory or one part of the factory. Also precautionary principle is related with planning the activities for the potential risks and planning activates in case of some damages on the environment.

The principle of prevention is closely related with the above mentioned principle. That means preventive approach taking account the human activities and their consequences for the environment in whole, and acting the proactive policy with aim to prevent the hazardous consequences. This principle is detailed in the Union policies and legislation in details, especially in the Directive on Environmental Impact Assessment.⁸ The principle provides that the promoter of the projects for each impact

⁷ Directive for environmental liability 2004/35

⁸ Directive 2003/35

assessment, has to supply detailed information's and figures on possible consequences for the air, water, soil, noise, waste, biodiversity such as plants, wild animals, and their habits etc. The principle of prevention is also related with eco-labeling, what gives the opportunity, that consumers have to have information for,, environmentally friendly,, products with the precise declaration and label about the clean products.

The polluter pay principle means that the costs spent in the combating pollutions are on charge to the polluters and polluting industry. The costs include all costs for the prevention, reducing and eliminating the pollution consequences. Polluter must pay also for the activities and measures necessary to combat pollution, such as investments in the installations, equipment and technologies for reducing and elimination the pollution. Polluters should bear also the costs for inspection, monitoring, taking and analyzing the samples from the competence authorities and institutions. Further, polluters should bear the costs for self monitoring and implementation the best available technologies and techniques. The aim of the principle is to encourage the polluters to eliminate pollution, or reduce as much as possible. The principle resulted with eco taxes as obligation for all kinds of polluters. The eco-taxes are deeply rooted in the Union fiscal policy, and fiscal policies member states, and the eco taxes are significant recourse for financing preventive measures and financing, „clean,, technologies and investments in the new environmental projects. The basic purpose of the eco-taxes is not to transfer the costs arising from combating the pollution, to the consumers. The core of the environmental taxes is to force paying the environmental costs, from the profit of the industrial sector. However the eco taxed affected the expenditure of the production, but also they created many benefits for the industrial sectors such as improvement the technologies and improve the quality of the products.

The principle of public participation means that the citizens and their associations such as, non-governmental organizations, have right for active participation in the decision making process in field on the environment. They also have right to ask for information's about environment and receive all the information about environmental issues from the state, local and regional authorities and industrial sectors – known as „the right to know,,

There are more other principles which are base of the European Union common environmental policy, but in this occasion we have no sufficient space to elaborate the other principles. All the principle deeply defines the common Union policy, and they have deep ethic elements, because they have aim to protect the people and their health and protect the environment

and preserve for the future generations, involving the intergeneration's responsibility, which is one of the core basic elements of policy of sustainable development.

The common European Union environmental policy is amended with The European Union Sustainable development strategy, proposed by The European Commission and approved by The European Council, on the meeting hold in Goteborg in June 2001. This strategy is based on: common coordinated development policies addressing the economic, social, culture education and environmental elements of sustainability and having the sustainable development as on of the main element of the common environmental policy. The strategy contains the main objectives to limit climate change, increase the renewable sources of energy, protect the human health, sustainable management of the nature, improve the environmental conditions in transport and land use management.⁹ From Goteborg summit, on every European Council summit, the issues related to the environment and sustainable development, are on the topic on the summits agenda. In June 2006 The European Council approved amendments on The European Union Sustainable development strategy.¹⁰ The overall aim of the renewed Union Sustainable development strategy is to identify and develop actions to enable Union to achieve continuous improve the quality of life, both for current and future generations, through the creation of sustainable communities able to manage and use recourses efficiently and to tap the ecological and social innovation potential of the economy, ensuring prosperity, environmental protection and social cohesion.

The European Union Institutions with Competence in field on the Environment

The main role in building, development and implementation the common policy has the wide range of European Union institutions: European Council, European Parliament, European Commission, and the general directorates in the Commission, especially Directorate general for the environment, the EU Committee of the regions, Economic and Social Council, the European Environmental Agency etc. As we mentioned above the institution in the Union have big capacity to do their tasks in the environmental matters. The European institutions are also responsible for making and adopted the

⁹ COM 2001/264

¹⁰ Decision of The Council of European Union 15/16 June 2006

legislation in field on the environment, where are implemented the common policy. Although since The Maastricht treaty the Parliament coo-decide in decision making process and adopting the legislation in field on the environment, with the Council.

The Council of the European Union is made by the 27 representatives from the member states. The Council is consisting of the heads of the member states. According the European Union Treaty, the Council meets at least twice a year. The Council debate in the last period on every meeting about the issues of the environment, which shows the importance of the environmental policy for the Union. The Council revue the reports from Commission and the other institutions and rule the European environmental policy in general. Also as it is mentioned, the Council adopted the environmental legislation together with the European Parliament. The Council adopted the measures and activities in the field of the environment and gives instructions to the European institutions how to enforce the common environmental policy. Each member state takes over the presidency of the Council, for a period of six months on a rotating base. Beside the European Council, also it is important the role of the Council of the ministers responsible for the environment in the 27 member states. The Council of ministers also reviews the common legislation and measures and gives proposals to the European Council, and also sometime act according the authorization in the name of the European Council. The Council of Ministries also meet at lest twice a year and has the same way of presidency like in case of the European Council.

The Parliament besides adopting legislation, (where in field of the environment the directives are the most important part of legislative), in co decide procedure with the Council, adopted the reports about the environmental issues form the European Commission and the European Environmental Agency and the other institutions and the parliamentarians commissions. Also the Parliament adopt the „soft law,, legislation, such as recommendations, conclusions, opinions, declarations, resolutions and conclusions. The parliament works on the plenary sessions and on the sessions of the committees. In the Parliament acts the Committee for the health and environment consist of 50 representatives, and it is big importance of this Committee in the European environmental issues? The Parliament also conducts it plenary sessions with question time, where the members of the Parliament require Commissioners, to answer parliamentary questions related to the environmental issues. The Commissioners answer either verbally on the plenary sessions, or in writing. This is the way of controlling the Commission from the Parliament. Concerning the co decide

procedure if the proposed environmental legislation does not pass in the Parliament, in this case the Parliament and the Council formed the common special commission, from equal members from the Council and Parliament, which job is to find common solutions for further procedure in adopting the legislation..

The European Commission also has very important role in making common environmental policy .Commission is divided into series of the departments- directorates general, (DG, s). The directorates are headed by Director General, and every Director is responsible to the Commissioner, member of The Commission. Every Director of DG is responsible for specific area, such as environment. The Environmental General Directorates is one of the 36 Directorates in the structure of the Commission and has 640 staffs. The headquarter of the Environmental general directorate is in Brussels. The most important task of Environmental Directorate is to initiate and define common environmental policy and legislation and reviewing the practical process of implementation the measures and activities fro the Union in whole and in the member states. Regarding the issues of the policy and legislation in area of energy efficiency and development the policy of renewable energy very important is the position and activities of the Directorate General for transport and energy.

The role, functions and competences of the Commission basically are laid in The European Union Treaty.¹¹ The Commission is elected by the European Council and European Parliament, on the proposals coming from the member states. The Commission has 27 members, one from each member states. One of them is the President of the Commission, and the rest 26 are Commissioners, responsible for some specific spheres. In the Commission existed separate Commissioner who is reasonable for the environment. The Commission also, acts in the capacity of executive and plays a key role in the process of formation the European Union environmental policy and legislation. The Commission has the important function in the enforcement the common policy and legislation. The Commission has the right to bring the member states before The European Court of Justice, when they do not implement the common environmental policy, legislation and the common environmental standards, or in case when the member states do not act according the common environmental standards. The Commission is empowered to observe the process of the implementation the common environmental policy and legislation, and gives reports to the European Council and European Parliament, about the process and situation in separate environmental sectors and environmental situation

¹¹ See art. 211 of The European Union Treaty

in general. The reports could be on annually, semiannually or for two years period, but also on some urgent reasons shorter. From mentioned reasons the Commission has the attribute of the „ guardian,, of the common policies and common legislative.

The Commission is responsible for proposing and initiating the environmental legislation. Also the Council and the Parliament have competence to initiate the legislation, or request the Commission to propose the suggested legislative act. When we are speaking about environmental legislation, just shortly in this article, we will mention that the most important role have regulations, directives, decisions, recommendations, declarations, resolutions etc. The regulations are directly enforceable in the member states, while the directives should be transposed and implemented in the national environmental legislation. The most important role and the most often role in field of the environment have directives which. The directives often have some flexible mechanisms for the implementation from the member states. The directives are addressed to the states, while the decisions could be addressed beside the states, to the companies or other associations. It is important to mention that in case, if some part of the legislative of the member state is not according the common legislation, then according the principle of the supremacy of the European Union legislation, the priority has the Union law.

Beside the above mention European Union institutions, in process of building and implementation the common environmental policy, also it is important the role of the other institutions, such as Committee of Regions, Economic Social Council and The European Environmental Agency. The headquarters of the Committee of Regions and Economic Social Council are in Brussels, while the European Environmental Agency is placed in Copenhagen. In the process of formulation the common policy and legislation, since Maastricht Treaty, it is obligatory for the Commission, to ask for the opinions from Committee of Regions and Economic Social Council. The opinions are not binding the Commission and the other institutions, but the Commission considers very seriously the opinions. In practice, about 70 percentages of the opinions are implemented in the common legislation. The main acting area of the European Environmental Agency is environmental data collection, analyzing dissemination of the information's from the states and trends of the European environmental level. The Agency established common European network and give support to the member states and other non member states. The Agency also sets the reports for the other Union institutions, which have competences in field of the environment.

Conclusion

Even there are some problems in decision making process and implementation the common environmental policy, European Union strongly continues the process of the development the common environmental policies and high level of environmental standards. The problems mostly arising from different level of capacities and development of the member states, but the Union is based on the principle of the solidarity and cohesion, what helps to Union to have significant results in improving and protection the environment. Beside above mention there are following more activities necessary for the stronger cohesion of the European Union environmental policy such as:

- Further update and development the environmental standards ;
- Development financial mechanisms in order to stronger support the environmental projects in the member states, specially in the new member states;
- Support the efforts of the states such as Republic of Macedonia to fulfill European Union standards in field on the environment;
- Capacity building of the institutions with the competence in field on the environment in the member states and also in the states aspirating to become fulfill member states.
- Permanent refreshment the Union strategy for sustainable development;
- Following up the process of implementation the European Union policy in field on the environment from the member states.

The Republic of Macedonia as a state with candidate status to approach the European Union has also obligations to implement parts of the common union policy in field in the environment. Macedonia received Union financial support for implementation the Union environmental policy in the period from 1998 up to now through the programs: PHARE, CARDS, 2002 CARDS, 2003 CARDS, 2004 CARDS, 2005, INEREG, INTEREG CADSES etc. For implementation mention European policy, Macedonia, beside the finical donation support, mainly from The European Union, also has to support environmental projects from own state budget. That's the way for quicker implementation the Union environmental policy.

References

1. The European Treaty of Rome;
2. Single European Act;
3. The Treaty of Maastricht;
4. EU Regulation 1973/92,
5. EU Regulation 1655/200;
6. EU Directive on Environmental Impact Assessment 2000/35;
7. EU Directive for Environmental Liability 2004/35,
8. EU Communication COM 2001/264
9. Decision of the Council of Europe 15/16 June 2006

*All above mentioned EU acts are available on the portal of EU
<http://europa.eu.int/>*

The Economic Development against the Natural Life of the Eel

Adhurime Dauti

Abstract

The human right to a better life and better living standards has been a priority since the oldest civilizations. The humanity has and will continue the struggle for a better life. However, not all the decisions made during this struggle have been the right ones. For instance, around the 1960s, buildings that brought energetic, economical and agricultural advantages were built in Macedonia, on the flow of the Black Drin River. However, these acts have harmed the ecological system of the Ohrid Lake and the Black Drin River. As a result, since then it has been almost impossible for several specific species to survive in the lake, particularly for the lake eel. Events which brought great advantages to the everyday human life were extremely harmful for the eel, making impossible its natural survival.

Abstrakt

E drejta për jetë më të mirë dhe standarde jetësore më të mira ka qenë prioritet që nga civilizimet e më hershme. Njerëzimi ka dhe do të vazhdojë të luftojë për jetë më të mirë. Sidoqoftë, jo të gjitha vendimet e marra gjatë kësaj lufte kanë qenë të drejta. Për shembull, në vitet '60-ta, u ndërtuan ndërtesat që sollën përparësi energjetike, ekonomike dhe bujqësore në Maqedoni, në rrjedhën e lumit Drin i Zi. Mirëpo, këto akte kanë dëmtuar sistemin ekologjik të liqenit të Ohrit dhe lumit Drin i Zi. Prej atëherë është gati se e pamundshme për disa lloje të mbijetojnë në liqen dhe veçanërisht ngjala e liqenit. Ngjarjet, të cilat sollën përparësi të mëdha për jetën e përditshme njerëzore, në mënyrë ekstreme ishin të dëmshme për ngjalën, duke e bërë të pamundshme mbijetesën natyrore të saj.

Qëllim i këtij punimi është që të theksojë rëndësinë e problemit dhe të rrisë vetëdijen e njerëzve për pjesën tjetër të botës jetësore. Konflikti ndërmjet zhvillimit ekonomik dhe ekzistencës së llojeve të botës shtazore është ilustruar me shembullin e ngjalës së liqenit të Ohrit, por probleme dhe sfida të ngjashme mund të gjenden në më shumë vende të botës.

Апстракт

Човековото право за подобар живот и подобри животни стандарди е приоритет уште од најстарите цивилизации. Човештвото се бореше и ќе продолжи да се бори за подобар живот . Било како, сите одлуки кои беа донесени во текот на оваа борба не беа вистинските . На пример, околу 60тите години објекти кои носеа енергетски, економски и земјоделски предности беа градени во Македонија по текот на реката Црни Дрим. Било како овие дејствија му наштетија на еколошкиот систем на Охридското езеро и реката Црни Дрим. Како резултат на тоа, оттогаш е невозможно за неколку специфични видови да преживеат во езерото, особено тоа се однесува за езерската јагула. Настаните кои на човековиот живот му донесоа многу предности беа многу штетни за јагулата, оневозможувајќи го нејзиното природно преживување.

Целта на овој есеј е да се истакне важноста на овој проблем и да се зголеми свеста кај луѓето за останатиот дел од живиот свет. Конфликтот помеѓу економскиот развој и опстојувањето на природните живи видови е илустрирано со примерот со јагулата од Охридското езеро но проблеми слични на овој можат да се најдат во многу делови од светот.

Introduction

The first impression one gets from the look on the Ohrid Lake is unforgettable. One could think it is a part of the sea, or maybe a detachment from the ocean thrown in the middle of the mountains which surround it.

The Ohrid Lake, which is the oldest lake in Europe, was created during a tectonic earth displacement which happened 3.5 million years ago in the Balkans, around the current Macedonian-Albanian border. The lake can be

called the sweet sea of Macedonia not only because of its warm blue colour, but also because of its size. The Ohrid Lake is on the list of large lakes, together with the Geneva Lake, the Boden Lake, etc. It is undoubtedly the largest and the deepest in Europe. The lake has a surface of 358.2 km², a length of 30.8 km, and a maximum width of 14.8 km, whereas the length of its coast is 87.5 km. On its area, the Ohrid Lake meets 40 rivers, 23 from the territory of Albania and 17 from the territory of Macedonia.

Primeval plants and animals which are rare and can not be found in any other place in the world grow and live in this lake. The importance of the lake was particularly emphasized when it was declared a World Heritage site by UNESCO in 1979.

The Ohrid Lake is characterized with a unique ecological system, rich in variety of endemic species and vegetal and animal relicts. What is special about this lake is a result of its geographical isolation and old geologic age, a characteristic of only a few other lakes in the world, such as the Lake Baikal, the Caspian Lake, etc. The pool of the Ohrid Lake is characterized with a rich biodiversity and several types of plants that are endemic for the Balkan Peninsula.

A broken ecological system

Even though the Ohrid Lake is declared a World Heritage site by UNESCO, it is not completely protected from human activities. The pool of the Black Drin River, with its roots and flowing waters, has been a place with a huge hydro-energetic potential since the former Yugoslavia, and it was among the first ones to be used as an energetic capacity.

From the point of view of energetics, the Black Drin River has a huge importance because of its natural accumulation, which is seen at the start of its flow. The Black Drin River flows out of Lake Ohrid in Struga. After 47 kilometres it crosses the border to Albania, west of Debar. There are several rivers which flow in it, with the biggest ones being Sateska River and Radika River, as well as a few smaller, less important ones.

As a result of the analyses made in 1952 on the capacity of the waters of Black Drin River and of Ohrid Lake, it was decided that the capacity of these waters should be used on two levels. Those two levels are: the Hydro Power Plant “Globočica”, located 25 kilometres away from the Ohrid Lake pool, and the Hydro Power Plant “Shpilje”, the dam of which is located on the

Macedonian-Albanian border. Simultaneously with the solving of the energetic problem, other problems on the Black Drin River were solved as well. The most important of them were the flooding waters in the Struga region and the excess waters in the agricultural fields.

The Ohrid Lake had several advantages from the point of view of energetics. The opportunity to utilize these advantages was real and appealing from the energetic and economical points of view and plans to invest in the building of the two hydro power plants (HPP) were approved in 1958. During the 1960s, when the region around Ohrid Lake was in the beginning of its urbanization, it was very easy to plan and build the hydropower plants. The advantages of building the HPPs, the approval of the technical concepts, the drying of the Struga valley and the utilization of the Black Drin's waters made the decision easier. The failure to use this opportunity would have meant a delay of the urbanization of the lake's pool. At that time, this would have been irrational, especially from the point of view of the economic and energetic potential which afterwards brought economic and social development to the region.

However, another problem appeared thereafter, different from the problem of improving the living standard of the people - the problem of the eel of the Ohrid Lake, which is still not resolved. At the beginning it was obvious that these hydropower plants would introduce improvement of living standards, but later they created a huge worsening of the living conditions of the eel. A few years after the first hydropower plant, the second one was built as well. Now, not only did this create a problem for the eel to survive, but it also destroyed the natural path that the eel followed. In addition, the eel was faced not only with the two hydro power plants in Macedonia, but two other plants were built in Albania as well.

Since only the female eel lives in Ohrid Lake, it has to make a journey to the Sargasso Sea in order to breed, which is why this journey is called "the journey to marriage". The dams that were built on the Black Drin River flow stopped the natural path of the eel's breeding, also known as "the journey to rebirth and death". Eels start this famous journey during early spring or during autumn. Eel's body experiences a metamorphosis just before this journey. During this period, eel's body has a light silver colour and at the moment of departure its back turns into dark green, almost olive, whereas at the end it turns into glowing black, but it remains silver on the abdominal side. During this journey, eel's eyes grow to double their normal size.

The eel has to be mature in order to start this journey, and it normally needs to reach the age of 7 to 10. When it reaches this age, it experiences a breeding stimulation. During this period, the eel consumes more food so that it can have strength to face the journey. When the conditions are fulfilled, eels start their journey. It is believed that they wait for the rainy season because along their journey they have to pass on land as well. During the rainy season, the rain wets the land and makes it easier for eels to travel. Eels' journey takes 2 to 3 years and they pass a distance of 6 to 7 thousand kilometres. Near the Sargasso Sea they wait for the male eels. After the breeding moment, the female eel dies immediately, and this is why it is said that the eels take their journey to death. From the Sargasso Sea all the young eels, both male and female, depart towards sweet waters, and they are separated only after they reach them.

Even though their natural path is blocked, when they reach maturity, eels still take off to their "journey to marriage". A trap is built in Struga, so that they do not end up grinded on the dam's turbines. However, even though they are saved from grinding, eels still find their death in the trap, by ending up in the market and then on the dining tables.

Possible solutions

The story of the Ohrid Lake eel is one of the best examples of the negative influence of the people on the environment. Since the first steps of the project of the hydro power plants, it was obvious that the dams would have a negative influence on eels' migration, and it was even thought of building a side course through which eels could pass, which would also enable eels' fishing. However, building a side course was at that time judged to be unfeasible because such a building would cost much more than the profit people would have from eel fishing. Still, due to the consequences for the living world, the investor was obliged by law to populate the lake with the living species that characterize it. This is even more important when one takes into account the fact that eels consume everything that is dead or ill in the lake, so in a way they are a regenerator of the lake. Therefore, every year, authorities make sure the investor provides funds to supply and transport the eels and to populate the lake with them.

Only the artificial breeding has remained as an option to save the eel. The Ohrid Lake is the only lake in Europe that breeds eels in this form. The enrichment of the lake with eels has started during the 1960s, that is when

the hydro power plants were built and the natural way of breeding at the Sargasso Sea and the way back to the Ohrid Lake was blocked. Since the Electro Power Company is obliged to provide the lake with young eels, it brings them to Struga and then takes them to the nearby village of Shum, where they are put in a pool and kept in quarantine for one month. A month later, eels are released into the Ohrid Lake. The last time this happened was in July 2008, after a pause of three years.

“The journey to marriage” presents a unique natural phenomenon in the world. According to some scientists, this path can be brought back to life if artificial side courses filled with water are built, so that eels could make their journey through them. This is believed to be one of the best ways to bring back the biological balance to the Ohrid Lake. Some scientists search for other solutions as well, and they criticize the state of the lake, even saying that people have turned it into an aquarium.

One of the most famous solutions proposed is the project of Prof. Ph. D. Misho Hristovski, who offered a project that would solve the Ohrid Lake eel’s problem. This project was awarded from the European Henry Ford Foundation, in a competition of almost 3.000 projects. It foresees a solution for the problem and a revival of the natural way of breeding for the eels. This is a long-term project, which has an international dimension as well. What makes it even more attractive is that it is economically justified, so that the living standard of the people would not suffer.

Conclusion

The struggle of humanity to improve its living standards sometimes appears to have crossed the limits. In the search for economic prosperity, often an entire ecosystem is damaged and even destroyed. The case of the Ohrid Lake eel is only one of the many examples in the world where the right to economic well-being and higher quality of human life has overtaken the quality of life of other species and the biodiversity.

Even though a lot of damage has been done, there are still chances to save the Ohrid Lake eel by reviving its natural cycle of life. If some of the proposed projects are carried out and they are successful, we can avoid the prospect of the eel dying out and having the opportunity to see it only displayed in a museum.

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ME RASTIN E 130 VJETORIT TË LIDHJES SË PRIZRENIT

Lidhja e Prizrenit në veprën “Lahuta e malcis” të Gjergj Fishtës

Vebi Bexheti, PhD

Lidhja e Prizrenit, ngjarja më e rëndësishme në historinë tonë kombëtare, që bashkë me Kuvendin e Lezhës janë përpjekjet më të mëdha për një shtet real shqiptar, ngjau 34 vjet para shpalljes së pavarësisë së Shqipërisë së sotme dhe 130 para shpalljes së shtetit të dytë shqiptar, Republikës së Kosovës

Shkrepi dielli buzës s’Cukalit,
Eja e t’këndojm, oj Zana e malit,
Eja e t’këndojm më Lahutë t’Malcís,
Si atá Krenët e Shqypтарыs
Në Prizrend na janë bashkue,
Shqypтарыn se si m’ e pshtue
(Lahuta e Malcis, Prishtinë, 1997, kënga IX, fq.141)

Abstract

“The Highland Lute” is the most famous literary work by which Gjergj Fishta is identified; moreover it was prevented for fifty years. Many important Albanian historical events are presented in this literary work, such as The League of Prizren of the year 1878.

The League of Prizren, the most important event in Albanian history, along with Lezha’s Convention, are two major efforts given for one real Albanian state 34 years ago; before the Albanian Declaration of Independence and 130 years before the announcement of the Republic of Kosovo. In the lines dedicated to this event, Gjergj Fishta speaks with the language of Zana from Mountain Sharra and about the White Ora of

Albania. While the “Albanian Association” had started with the work in Prizren, Albanian Ora, who was resting in the top of Mountain Loboten, called Zana to sing with the lute for the fate of Albania. This resembles to those men who were gathered in Prizren to decide for the future of the Albanians and to release their own land from the Slav Occupiers.

Albanian Ora with her song addressed to Zana tells her about the invasion of the Plava and Gucine, then later on Shkodra and Malsia e Madhe till river Drin. When Zana from Sharra understood the message, flying went to her in order to have a discussion regarding those men gathered in Prizren. Zana thought that they were the heroes of “Iliad” whereas Ora told that they are neither Dragons nor Katallajs but they are Albanian depicted men, gathered to oath one another, in order to dismiss the Serb-Montenegrin invading forces.

Many historical characters of the League of Prizren are mentioned in this literary work led by the ideologist Abdyl Frasheri. Apart from the heroes of this event, who were ready to die for their land, Gjergj Fishta also mentions figures of our glorious history such as Leka the Great and Skenderbeg.

Dramatics of life and the struggle for liberty described in the whole song is based in one historical event, which includes mythological creatures associated with supernatural abilities, makes this piece of work similar to “Iliad” of Homer..

Abstrakt

“Lahuta e Malcis” është vepra më e njohur me të cilën edhe identifikohet Gjergj fishta, që ishte i ndaluar për pesëdhjetë vjet. Në këtë vepër përfshihen shumë ngjarje të njohura të historisë së shqiptarëve, siç është edhe ajo e Lidhjes së Prizrenit, e vitit 1878.

Lidhja e Prizrenit, ngjarja më e rëndësishme e historisë shqiptare, që bashkë me Kuvendin e Lezhës, janë përpjekjet më të mëdha për një shtet real shqiptar, ngjau 34 vjet para shpalljes së pavarsisë së Shqipërisë së sotme dhe 130 vjet para shpalljes së Republikës së Kosovës. Në këngën e posaçme që i kushtohet kësaj ngjarjeje, Gjergj Fishta flet me gjuhën e Zanës së Sharrit dhe Orës së bardhë të Shqipërisë. Në momentin kur “Lidhja shqiptare” i kishte filluar punët në Prizren, Ora e Shqipërisë, që ishte duke pushuar në majën e Lubotinit, e thërret Zanën që të këndojnë me lahutë për fatin e Shqipërisë,

ashtu si ata burra që janë mbledhë në Prizren për të kuvenduar për ardhmërinë e shqiptarëve dhe çlirimin e tokave të veta nga pushtuesit sllavë.

Ora e Shqipërisë në këngën e vet që ia drejton Zanës, i tregon asaj se si forcat malaziasë me ushtrinë e tyre duan ta pushtojnë Plavën e Gucinë, e më pastaj edhe Shkodrën e Malësinë e madhe, deri në lumin Drin. Kur Zana e Sharrit e kuptoi porosinë, fluturimthi shkoi te ajo për të biseduar për ata burra që janë mbledhë në Prizren. Zana mendonte se ata janë heronjtë e “Iliadës”, ndërsa Ora i tregoi se ata nuk janë as Dragoj, as Katallaj, por janë burrat e zgjedhur të shqiptarisë, që janë tubuar për t’i dhënë besë njëritjetrit që t’i largojnë forcat pushtuese serbo-malaziasë.

Në vepër përmenden shumë personazhë historikë të Lidhjes së Prizrenit, të udhëhequr nga ideologu Abdyl Frashëri. Krahas trimave të kësaj ngjarjeje, që për trojet e veta janë në gjendje ta japin edhe jetën, Gergj Fishta i përmend edhe figurat tjera të historisë sonë të lavdishme siç janë: Leka i madh dhe Skenderbeu.

Dramatika e jetës dhe e luftës për liri, që e përshkon fund e krye këtë këngë që bazohet në një ngjarje historike, ku bëjnë pjesë edhe qeniet mitologjike, kësaj i mveshin edhe veti mbinatyrore, e bëjnë atë të ngjashme me “Iliadën” e Homerit.

Апстракт

“Лахута е Малцис” е најпознатото дело на Ѓ. Фишта со кое се идентификуваше и самиот автор. Во ова дело се опфаќаат многу познати настани од албанската историја, меѓу кои е и Призренската лига од 1878 година.

Призренската лига претставува најпознат настан од албанската историја, кој заедно со Лежанскиот собир претставуваат најголеми напори за создавање на една реална албанска држава. Тој настан се случил триесет и четири години пред објавување на денешна независна Албанија, и сто и триесет години пред независноста на Република Косово. Во посебната песна која е посветена на овој настан, Герѓ Фишта зборува со јазикот на самовилите од Шара и Белата самовила на Албанија која се одмараше во Брдата на Љуботен. Белата самовила на Албанија ја повикува Шарската самовила да дојде да пеат заедно, со гусли за судбината на Албанија, идентично како и мажите кои се

собраа во Призрен да се договараат за иднината на Албанците и за ослободувањето на нивната земја од српско-црногорските окупатори.

Белата самовила на Албанија во својата песна пеејќи и се обраќа на Шарската самовила и раскажува како војските на црногорските сили сакаат да ги окупираат Плава и Гуџија а подоцна и Скадар, до реката Дрим. Кога Шарската самовила ја разбра пораката летајќи отиде да разговараат, како што разговараат собраните луѓе во Призрен, за кои Шарската самовила мислеше дека се тие Хероите од Илијада, но Белата самовила им рече дека тие не се Драгои ниту Каталаи, туку се најпознатите мажи на албанскиот свет, кои се собрале да даваат еден на друг збор да се ослободат од окупациските сили.

Во делото се споменуваат многу историски личности на Призренската лига водени од идеологот Абдул Фрашер. Паралелно со тие јунаци кои за нивната земја се подготвени да се жртвуваат, Герѓ Фишта споменува и други големи личности како што се Александар Велики и Скендербег.

Драматиката на животот претставена во делото и борбата за ослободување која се базира на историските настани, каде учествуваат и митолошките личности, ова дело го карактеризираат со натчовечки појави, го прават слично како Хомеровата “Илијада”.

Introduction

Gjergj Fishta në veprën e vetë madhështore “Lahuta e Malcis”, krahas ngjarjeve tjera të historisë shqiptare, i këndon edhe ngjarjes më të njohur të historisë sonë, Lidhjes së Prizrenit, që ishte rezultat i përpjekjes më të madhe për të zgjidhur problemin shekullor të shqiptarëve, një herë e përgjithmonë.

Ashtu si në shumë vepora tjera, edhe në “Lahutën e Malcis”, me theks të posaçëm në këngën që I kushtohet Lidhjes së Prizrenit, Fishta e shfrytëzoi elementin mitologjik. Ky element asryetohej në letërsinë e Rilindjes, por jo edhe në kohën e botimit të plotë të “Lahutës”. Shumë shkrimtarë të rilindjes, duke njohur latinishten dhe veprat e klasikëve grekë e latinë, në veprat e tyre shkruanin për Homerin dhe shumë perëndi që lidheshin me “Iliadën” dhe “Odisenë”. Faik Konica i këndon Helenës së Trojës, Asdreni Fjalës së dodonës, Mjedja Polifemit mitik me një sy, ndërsa Luigj Gurakuqi këtë element e paraqet në poezinë “Deka e Zanave”. (Engjëll Sedaj, Gjurmime albanologjike, Prishtinë, 1983, fq. 148)

Poeti ynë i madh apo Homeri shqiptar siç u quajt, këtë ngjarje nuk e paraqiti vetëm si momentin historik më të lavdishëm. Ai me gjuhën e bukur shqipe të qëndisur me fije ari që vetëm ai dinte ta thurë aq bukur, e ndërtoi veprën monument “Lahuta e Malcis”, ku padyshim shkëlqeu edhe kënga që i kushtohet Lidhjes së Prizrenit. Në pjesën ku bën fjalë për këtë ngjarje ndër më të lavdishmet të historisë sonë, Fishta, përveç faktorit historik, siç janë personazhët e njohur si bartës të aktiviteteve të kësaj ngjarjeje të rrallë të historisë sonë kombëtare, i angazhon edhe figurat mitologjike: Orët dhe Zanat, që me veprimet e veta, me këngën e tyre që shprehin dashurinë dhe përkrahjen për at Kuvend të rrallë, që po mbahej atje poshtë, në Prizrenin e bukur, që atoe e kishin si në shuplakë të dorës. Ora e bardhë e Shqipërisë, që po mrrizonte në freskinë e Majes së Lubotenit, e thërret Zanën e Sharrit për të kënduar në Lahutë, ashtu si ata burra që janë mbledhë në Prizren, për të kuvenduar për fatin e Shqipërisë dhe këmbënguljen e tyre që trojet shqiptare mos t’i lënë nën robërinë sllave: *Si ato krerët shqiptarisë/Në Prizren na janë bashkue,/Për me folë, me bisedue,/Shqiptarinë se si me pshtue/Prej çapojve t’Malit t’Zi.* (Gjergj Fishta, Lahuta e Malcis, Prishtinë, 1997, fq. 141)

Ora e Shqipërisë, në këngën e vet që ia drejton Zanës, e ku e përshkruan këtë ngjarje historike dhe këtë moment vendimtar për shqiptarët dhe trojet e tyre, që mund të mbeten përgjithmonë nën sundimin sllav, i tregon asaj se si forcat malazeze me tërë arsenalin ushtarak, ia kanë msy Plavës e Gucisë për ta pushtuar mëpastaj edhe Shkodrën dhe Malësinë, deri te lumi Drin. Në këngën e vet, që jehonte nga Luboteni, deri në bjeshkët e Sharrit, mbi Prizren, ajo e përshkruante marrëveshjen e Malit të Zi me Mbretin e Stambollit (Sulltanin), sepse Sulltani, si duket i jepte krah Knjaz Nikollës për të sunduar në tokat shqiptare. Për Orën ishte e papranueshme që në këto troje, që ishin shqiptare “den baba den”, të ndezin zjarr, t’i lavrojnë arat, të “bëjnë” dru në zabel dhe t’i ç’nderojnë gratë dhe vashat shqiptare, zaptuesit e huaj. Kënga që në vete përmbante këto konstatime, sipas kësaj Ore të Shqipërisë, që fronin e kishte në majen më të lartë, në Luboten, paralajmëronte se shqiptarët nuk do të qëndrojnë duarkryq dhe se ata do të organizohen edhe në aspektin politik edhe në ate diplomatik e luftarak. Shqiptarët, sipas fjalëve të kësaj mbretëreshe që po i vëzhgonte tërë trojet shqiptare, e që ia drejtonte Zanës së Sharrit, asnjëherë nuk mund ta durojnë armikun, sidomos kur prek në vatrën e zjarrit dhe në nderin e familjes: *Që spo u tutshin këta me dekë,/M’erz a m’tokë me pasë me i prekë.* (Gjergj Fishta, Lahuta e Malcis, Prishtinë, 1997, fq. 142)

Personazhi, që i pari përmendet në këtë këngë, është Ali Pasha i Gucisë. Ai është shumë i hidhëruar me vendimet e Kongresit të Berlinit, sipas të cilit shumë toka shqiptare duhej t’u takonin sllavëve: *Perse qe qaj Ali Pasha,/Fort*

ka vra ato vetlla t'trasha/Ka vra vetllat edhe a idhnue,/Burri i botës kur ka ndigiu,/Se n'Berlin asht ba pleqnia,/Nën kamë t' Shkjaut me vue Shqipnia. (Gjergj Fishta, Lahuta e Malcis, Prishtinë, 1997, fq. 142) Ali Pasha, kur ndjen këtë rrezik, që vjen nga ky Kongres famëkeq për shqiptarët, i thërret të gjithë krerët e Shqipërisë, të gjithë pa marrë parasysh përkatësinë fetare e dialektore, në një Kuvend që do të mbahej në Prizren, si kundërpërgjigje e atij të Berlinit, për të lidhur besën se me çdo kusht do t'i ruajnë tokat shqiptare, edhe sikur të gjithë të farohen:*Besë e fe me lidh Shqiptare,/Se pa dalë Shqypnia fare,/Sa qi n'fushë e n'zabel,/Mos të leh ma qen në stel,/Mos të këndoje as pulë as gjel.* (Gjergj Fishta, Lahuta e Malcis, Prishtinë, 1997, fq. 142)

Këtij kushtimi i përgjigjen të gjithë krerët shqiptarë, të gjithë ata burra që ishin të njohur për urti, pleqësi dhe trimëri. Për një kohë të shkurtër, ata u takuan në Prizren, ku u pritën siç di t'i presë shqiptari miqtë, me bukë, kripë e zemër.

E tërë kjo do të ishte vetëm një histori e bazuar në dokumente arkivash të ndryshme, poqese këtë realitet Fishta nuk do ta rriste në nivelin më të lartë artistik. Fishta nuk shruajti histori, ai e këndoi këtë ngjarje me gjuhën e Zanave, e ngiti ate në qiell dhe me artin e tij të madh krijues, e krahasoi me ngjarjet dhe personazhet e “Iliadës” që u këndua aq bukur nga Homeri i pavdekshëm. Këtu edhe qëndron vlera më e madhe artistike e letrare. Ashtu siç vepruan personazhet mitologjikë grekë: perënditë ose gjysmëperënditë, në Iliadën e Homerit, në këtë pjesë të “Lahutës” veprojnë Ora e Shqipërisë dhe Zana e Sharrit.

Në momentin kur sapo ishin tubuar këta burra në Kuvendin e Prizrenit, Ora e bardhë e Shqipërisë paska qenë duke u larë në burimet e bjeshkëve të Lubotenit. Këtë gëzim, për tubimin e këtyre burrave që i shihte nga lartë, ajo dëshiroi t'a ndajë me shoqen e saj të dashur, Zanën që e quan edhe motër. Ajo e thirri me një zë kumbues në gjuhën e ëmbël shqipe motrën e vet, që të shkojë sa më shpejt në majën e Lubotenit për t'i treguar diçka shumë të rëndësishme, diçka që kurrë nuk e kishte parë as ndër turq e as ndër sllavë. Me të dëgjuar këtë thirrje që kumboi nga bjeshka në bjeshkë, Zana fluturimthi, për një çast, sa çel e mbyll sytë, u gjend në maje të Lubotenit: *Zana mirë ate e ka ndie,/Fluturimi asht lshue n' ajri,/I ka behë m'bjeshkë t'Lubotenit,/Sa rre'i herë qepalli i synit.* (Gjergj Fishta, Lahuta e Malcis, Prishtinë, 1997, fq. 144) Kur u takuan Ora e Zana në majen më të lartë të Lubotenit, prej ku dukej Prizreni, Ora iu drejtua Zanës së bukur me vetullat si ngjala, dhe i tregon se edhe sot ka trima shqiptarë, ashtu siç kishte dikur në të kaluarën. Këta trima, vazhdon ajo, nuk i tremben as flakës së barotit e as grykës së topit, kur atdheu është në rrezik:*Desha t'thrras moj vetull-*

njalë,/Mbi këtë bjeshkë një herë me m'dalë,/Për me t'thanë se edhe u n'ditë t'sotit,/Po kisht burra porsit motit,/Mos me u tremë në flakë të barotit. (Gjergj Fishta, Lahuta e Malcis, Prishtinë, 1997, fq. 145)

Kur Ora ia tregoi ata burra që ishin mbledhur në Kuvendin e Prizrenit dhe e pyeti se a po e njej ndonjërin, Zana iu përgjigj se i sheh por nuk i njej mirë e mirë. Ata si duket, janë akejt e Trojës (heronjtë e Iliadës së Homerit) të cilët, për çudi, na qenkan ringjallur. Ai trimi, vazhdon Zana, që qëndron në krye të vendit, si duket qenka njëfarë dragoi që i ngjaka Agamemnonit (një ndër heronjtë më me zë të Iliadës), e ai trimi tjetër, me mustakë të mëdhenj, të lëshuar krah m'krah, më duket si Diomedi (hero nga Iliada e Homerit, i përmendur për urti). Ora, kur i dëgjoi të gjitha këto, qeshi me zë të lartë duke i treguar se ata nuk janë akej as dardanë (Dardanët, fis ilir që shkuan për t'i ndihmuar Trojës), por burra të zgjedhur të shqiptarisë si: Ali Pasha, Marash Vata, ndërsa ai burri zeshkan, i veshur me kollçik (lloj pantallonash që toskët i mbajnë nën fustan) e me fistan të cilit të gjithë i thonë “tungjatjeta”, është Abdyl Frashëri, burrë i mençur, i urtë dhe tepër i kujdesshëm kur flet, të cilit nuk ia kthejnë fjalën as mbreti e as krajli: *Aj ishte trimi Frashër begu,/Qi gjithkund, ku e qiti shtegu,/I la nam aj toskërisë,/Faqe t'bardhë i la Shqypnisë.* (Gjergj Fishta, Lahuta e Malcis, Prishtinë, 1997, fq. 148) Ora e bardhë vazhdon t'ia prezantojë të gjithë ata burra që janë mbledhë në atë Kuvend për t'i dhënë besën njëri tjetrit. Ajo e përmend trimin Preng Bibë Dedën që ishte një burrë zotni i cili edhe pse i ri, është shumë i pjekur dhe i urtë: *Për kah mosha mjaft i ri,/Por i vjetër për pleqni.* (Gjergj Fishta, Lahuta e Malcis, Prishtinë, 1997, fq. 141) Më pastaj vijnë trimat tjerë si: Gjetë Gegë Shllaku, Begolli, Çun Mula, Mar Lula, Dedë Preçi, Vrijoni i Beratit, Deralla, Shan Deda i Dedë Jakupit etj.

Nga të gjithë trimat që i përmendën Ora e Zana, në qendër të vëmendjes ishte Abdyl Frashëri, ky tosk i mençur që e hapi Kuvendin duke përmendur pyllin e Kapitolit, vendin më të lartë të Romës, prej ku doli ulkonja për t'i dhënë gji Remulit, themeluesit të Romës. Këto momente dëshmojnë edhe njëherë se elementi mitologjik që e përshkon tërë “Lahutën”, edhe këtë ngjarje e lartëson në nivel mrekullie. Nëpërmjet kësaj vepre, Lidhja e Prizrenit paraqitet tjetërfare, si te asnjë autor tjetër që shkruan vepra me karakter historik. Kjo këngë paraqet një imazh shpirtëror e mitik, e krijuar, e pasuruar dhe e ngritur mbi bazën e ndodhisë historike që mbetet në qendër të përpjekjeve të vazhdueshme të shqiptarëve, për çlirim nga sllavët, nga Perandoria Osmane dhe për bashkimin e trojeve të tyre etnike.

Shqiptarët, sipas fjalëve të Abdyl Frashërit, si popull i moçëm, me kulturë të lashtë dhe qytetërim të hershëm, nuk duhet të ishin rrobër të sllavëve të cilët erdhën nga Urali si bisha të egra, erdhën nga andej ku e kishin mbajtur

shpirtin me molla të tharta, për të zaptuar tokat pjellore të të parëve tanë, dhe për të shkatërruar këtë civilizim të hershëm.

Derisa Zana e Ora bisedonin “krye me krye e dora dora”, Abdyl Frashëri, edhe në këtë këngë është kryepersonazh, ashtu siç ishte në realitet, vazhdon me oratorinë e vet duke e përmendur edhe Zeusin që ndër të parët u vendos në këto toka shqiptare, duke i bashkuar dhe edukuar ata. Banorë të hershëm në këto troje ishin edhe Zanat e Orët të cilat: *Nisen vallen me vallzue,/E nëpër vrrije e fusha t’gjana,/Zu pegazi me lodrue (kali mitologjik i Pernasit).* (Gjergj Fishta, Lahuta e Malcis, Prishtinë, 1997, fq. 152) Nga këto troje, vazhdon ligjërimin e vet Abdyli, Leka i Madh e nisi rrugën e vet për t’i dalë botës “fund e krye” me shpejtësinë e vetëtimës e rrufesë, për të arritur deri në Hindinë e largët, ashtu si edhe Pirroja, Mbreti i Epirit, që nga ky vend e mprehi shpatën për betejat që e pritnin: *Këtu Leka mati hapin/Me i dalë botës n’fund e n’krye,/Edhe n’Hind e çpori hapin,/Rrufenë n’dorë e vetimën n’sy.* (Gjergj Fishta, Lahuta e Malcis, Prishtinë, 1997, fq. 152) Këto fjalë të Abdyilit, në vehte përmbanin tërë historinë shqiptare, nga koha e Lekës, në ate të Skenderbeut, për të ardhur në kohën kur mbahej Lidhja e Prizrenit.

Shkathtësitë luftarake të Skenderbeut, ky orator i krahason poashtu me rrufenë që veton për së kthjellti, krahasim që shpesh përdoret në tërë “Lahutën”: *Skenderbegu ‘i rrfë prej qiellit/Pallën zier atje në Krue,/Seç vetue ka n’rreze t’diellit.* (Gjergj Fishta, Lahuta e Malcis, Prishtinë, 1997, fq. 154)

Në Kuvendin e “Lidhjes”, të gjithë krerët janë të mendimit se edhe në ato momente që sillnin lajme ugrurzeza nga Berlini, për qenien kombëtare, duhet të bëheshin një, dhe tu dalin zot tokave të veta, për mos i lënë kurrë të ndara e të përçara: *N’at Berlin n’Kuvend barrkue,/E kanë ba pleqninë n’mjet vet,i/Malcinë Knjazit me ia lshue,/Me na nda ne vlla me vlla,/Me na lanun rob nën Shkja.* (Gjergj Fishta, Lahuta e Malcis, Prishtinë, 1997, fq. 156)

Fjala e të parit të Shalës, Mar Lulës, ishte gjithashtu me peshë dhe domethënëse për t’i bindur të gjithë të pranishmit se nuk durohet “gjuni mbi bark”, prandaj duhet luftuar për liri, për nderin e familjes e të atdheut kundër dy armiqve shekullorë pushtues, Perandorisë Osmane dhe sllavëve, sepse nuk ka ndonjë dallim mes tyre: *Për shqiptarë si jemi na,/Turk e shkja të dy jan nja,/Pse të dy, si turk si Shkja,/Ne me sy s’duen me na pa.* (Gjergj Fishta, Lahuta e Malcis, Prishtinë, 1997, fq. 159)

Kënga e Lidhje së Prizrenit, ashtu siç filloi me fjalët e Ali Pashë Gucisë kur i thirri të gjithë të parët e Shqipërisë se nga Berlini nuk po vijnë fjalë të mira për fatin e kombit, mbaron poashtu me fjalën e tij, kur propozon që t’i shkruajnë një letër, që do t’u drejtohej shtatë fuqive të mëdha, pjesëmarrëse

në Kongresin e Berlinit, të kobshëm për shqiptarët, që tua bëjë me dije se asnjë herë nuk do të rrijnë nën sllavë, sikur edhe të farohen të gjithë për një: *Me shkruet i' letër n'kanu t'vjetër/Për shtat krajlat mbledhë n'Berlin,/Qi pa u shterrun Dri e Shkumbin,/Edhe Buena për pa u tha,/Na për t'gjallë nuk rrimë nën Shkja.* (Gjergj Fishta, Lahuta e Malcis, Prishtinë, 1997, fq. 160)

Kjo këngë e “Lahutës së Malcis”, që i kushtohet Lidhjes së Prizrenit, ashtu si edhe shumë pjesë të tjera që shqiptohen nëpërmjet ngjarjeve, veprimeve e akteve të trimërisë dhe personaliteteve të kohës, nuk ishte thjeshtë historike, por edhe një jehonë e qenësisë shpirtërore e mitike. Dramatika e jetës dhe e luftës për liri, që e përshkon fund e krye këtë këngë, të bazuar në një ngjarje historike ku bëjnë pjesë edhe qeniet mitologjike, e në këtë rast Ora dhe Zana që këndojnë për këtë Kuvend të lavdishëm, kësaj ngjarjeje i mveshin edhe veti mbinatyrore, e bëjnë të ngjashme me “Iliadën” e Homerit.

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