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**Privatization of non strategic sector in Albania as the  
foundation stone in the EU-integration**

**Abstract**

The privatization process after the 90's has laid the foundation stone for Albania's EU integration, not only in the economic, but also in its legal field. In the late 80's an ideological, political, economic system disintegrated and in Albania as in all countries of Eastern Europe, democracy, free market economy and the rule of law, based on private property and free market economy were the foundation of the transformation. But the way this transformation had to be mastered was not clearly defined. For more than 40 years, Albanian citizens were faced with the communist ideology as the basis of state

government regulation. This ideology stated that all citizens had contributed the same way and in the same extent during socialism for the construction of state and social property. In Albania, as in all other countries of Eastern Europe, the so-called "Rent seekers" were transformed into oligarchs and Owners of the privatized state-property for little money. In this context, this process was accompanied by the deficiency of accurate economic statistics, privatization strategies, foreign investors, a bad policy implementation as well as delays in the framework of immediately needed reforms (Åslund 2013). The main objective of this article is the Analysis of the privatization process in Albania as the basis of EU-integration.

**Keywords:** Privatization, Economy, law, Albania, EU.

## **Introduction**

This article is about the privatization process in Albania as the basic principle to free market economy and towards EU. This process will be analysed in an economic- and legal view. In this sense the Albanian state wasn't aware of the difficulties that was going to face as a consequence of free market economy, because the new economic order required for some enterprises the full transformation, for others a restructuring and some had to be completely liquidated. Another problem with economic restructuring was closely connected with two questions: the question of economics and the question of politics. In fact, it can be argued that what has happened in Albania, but also in all the post-communist Balkan states and the new countries that have emerged since 1989, is historically unique (Papajorgji 2013).

The transformation process in South East Europe was unprecedented, significant effect of the legal-economic transformation process and necessary precondition for the introduction of a market economy (Åslund 2013).

Privatization, political democratization and the development of legislation were the core of this transformation (Roggemman 1993). In incredible ten years, more than 150,000 medium and large enterprises, hundreds of thousands of small businesses and millions of apartments and houses in the countries of Southeast Europe have been privatized (Åslund 2013). These figures show the importance of this process in the post-communist states.

As regards to the effect of privatization in Albania, the transformation did not result in stabilization. Rather, it came to a "cross-layer" between central government managed or self-management into an autonomy-based company, which did not permit the full development into the free market economy. No other measure has had a such a serious effect on the creation of new social order such as privatization. This process was the crucial element of the reform process towards EU and was expected to transfer state property (from dwellings to land and enterprises) into the hands of private subjects. Given the fact that the majority of the population in

Albania lived in rural areas it was logical to start the process with privatisation of agricultural land. Land privatisation was followed by the privatisation of dwellings and small units in the trade and service sectors. However, the most important part of the privatization process was the privatisation of SMEs which began with smaller enterprises and was followed by the privatisation of larger enterprises through the mass privatization programme. The process was interrupted in 1997 and restarted in 1998 after the approval of the new strategy for the privatisation of the strategic sectors.

### **Privatisation of land and dwellings**

At the beginning of the 1990s Albania was one of the most socialized economies in the world. All means of production were state-owned and individuals were deprived of any productive private property. The privatisation of land and dwellings had to be undertaken side by side with the restitution and compensation of former owners.

Under the socialist system the state was the owner of state farms and controlled agricultural cooperatives. On the eve of transition there were 492 cooperative farms and 150 state farms in existence producing 50% and 29.2% of agriculture production respectively. Agrarian reform began in the early years of transition and constituted one of the main measures of the reform process. In July 1991 the law regulating the privatisation of land was enacted. According to this law<sup>2</sup> land was to be distributed for free to members of the former cooperatives based on the number of family members. Privatisation of state farms (SFs) was different and more gradual than the privatisation of agricultural cooperatives. SFs were like other state owned firms and the people who worked there were state employees. The land belonging to SFs, in which the state had made large and important investments, was leased to the employees (Cungu and Swinnen, 1997). A part of the state farms'

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<sup>2</sup> Law No. 7501, "On Land".

land was used in joint ventures created in the agricultural sector.

The land law did not recognise the boundaries and ownership of land before collectivisation, thus the restitution of agricultural land to former owners was not allowed, resulting in their strong opposition.<sup>3</sup> Despite the former owners' claims and other problems (such as the over-population of villages and the limited agricultural land), the privatization process proceeded very rapidly. By the end of 1994 most of the agricultural land (96%) was in private hands and all state farms were liquidated (GTZ 1998). In spite of the fragmentation of land, agricultural production increased rapidly and became the most important component of Albanian's GDP.<sup>4</sup>

The land law only gave to the beneficiaries of the reform the right to use the land and prohibited any sale of

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<sup>3</sup> Collectivisation of agriculture land began in 1946 and ended in 1976. In 1976, 99.5% of agriculture land was collectivised (under cooperatives and state farms) and only 0.5% remained in private use (Cungu and Swinnen, 1997).

<sup>4</sup> According to EIU, 1993, the average farm size was 1.05 hectare.

agricultural land. In 1995 Parliament approved a new law<sup>5</sup> to deal with consequences of land fragmentation for future development and the establishment of the land market. This law removed the initial restrictions and allowed the purchase and sale of agricultural land and also established the landed property registration system by setting up registration procedures and registration offices in all cadastral zones. Later, in April 1998, a package of laws were approved which clarified and simplified the legal framework for land transactions (IMF 1999).<sup>6</sup> As a result, by the end of 1998 one third of total agriculture land was registered. Although the registration process sometimes was difficult and problematic due to unresolved restitution issues, a land market is now developed. In the 1998 – 2000 period, e.g., more than 40,000 transactions for the sale or lease of agricultural property were carried out (EBRD 2001).

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<sup>5</sup> Law No. 7983, “For Buying and Selling of Agricultural Land, Meadows and pastures”.

<sup>6</sup> These laws allowed the leasing of agriculture land even to foreigners and also provided that the undistributed state land were to be used to compensate former landowners .

The privatisation of agricultural land in Albania was radical and different from the privatisation in almost all other countries in transition. The choice of this particular privatisation method in Albania was based on economic, legal, social and historical factors, though equity and efficiency considerations were the main reasons for this choice.<sup>7</sup>As Cungu and Swinnen (1997) pointed out, the land reform implemented in Albania provided a quick solution to stop the decline in agricultural production, but it did not establish the basis for long-term development.

***Privatisation of dwellings.*** Housing was a major problem in socialist Albania. Not only were they in short supply but also they had a lower standard compared with other East European countries. Citizens rented their dwellings from the state at very low rates with serious

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<sup>7</sup> Rural population accounted for 65% of the total population while pre-1945 owners were just 3% of total population. Thus land distribution, although politically motivated, caused an equitable asset distribution in the Albanian society. Regarding the efficiency reason, land distribution costs were lower because land distribution was technically easier to implement than restitution. Also, it was more efficient to distribute the land to current users with the know-how and human capital investment (Cungu and Swinnen, 1997).

adverse consequences for the maintenance of the housing stock. In December 1992 Parliament approved the law on the privatisation of houses and apartments and the process started in March 1993. Houses and apartments, according to this law, were to be sold to the citizen who lived in them at the time of privatisation.<sup>8</sup>

Despite various problems, the privatisation of dwellings was very fast and in a very short period (7-8 months) as much as 96% of dwellings were privatised. Dwellings were sold at very low prices (according to GTZ, 1998, the price represented 1-2% of their market value) and the funds collected were not sufficient to construct houses for the people who were classified as unsheltered at the time of privatisation.<sup>9</sup> The government offered bank

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<sup>8</sup> Citizens who lived in dwellings which were to be returned to former-owners were excluded from the right of purchasing the dwelling. Houses with one room built before 1970 and those with two rooms built before 1965 were to be given free of charge to tenants (they paid just the value of land under house) (GTZ, 1998).

<sup>9</sup> Several unsheltered people illegally occupied unfinished state constructions at the time of privatisation and made investment to finish them. Most of them were allowed to buy these flats at the same price as the rest of the population. While others, who seized almost finished flats, were forced out by the police and flats were

credits for people who were homeless as a result of restitution and for former prisoners. The privatisation of housing established a free market for houses very quickly (leasing and selling) where the price of flats rose to their free market value rapidly.<sup>10</sup> The investment made by tenants improved their living conditions and had a great impact on the development of the construction sector.

### **Small privatization**

The so called small privatization process began with the privatization of the service sector (retail shops, the taxi system, intercity transport, repair shops, vehicle repair workshops, bar-restaurants, etc.) through direct sales to workers. The implementation of this small privatization was spontaneous; lacked not only a strategy, but also binding legal requirements. Direct sale to a predetermined selected buyer was the envisaged method

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distributed to the predetermined tenants (tenants predetermined to occupy them during the socialist system).

<sup>10</sup> Within two years of privatisation the price reached US\$ 10,000-20,000 and sometimes even higher (GTZ 1998).

of privatisation of the whole enterprises (either as a whole or in parts).<sup>11</sup> During 1991- 1992, about 12,000 shops, 5000 small units of commercial services and 2000 vehicles, fishing boats, agriculture equipment, etc. were privatised (GTZ 1998). Given the citizens' lack of savings and also the government's greater concern for the speed rather than the revenues of privatisation, the majority of objects were sold at very low prices.<sup>12</sup> Small privatization may be also referred to as a kind of "wild privatization".

### **Privatisation of small medium enterprises (SMEs)**

Small privatisation opened the way for the privatisation of small and medium-size enterprises (SMEs).<sup>44</sup> In 1993, however, the government realised that it was not appropriate to continue the privatisation with low prices. Also, it had become obvious that the lack of resources in the hands of people who had bought the objects had led

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<sup>11</sup> In the Albanian privatisation terminology, these are referred to as 'objects'.

<sup>12</sup> The price of enterprises sold was based on the book value, construction value and the value of the installed equipment. It was ten times less than the market price.

to a lack of investment and that there was not enough know-how to run a business effectively. Furthermore, the shortage of domestic savings and the National Agency of privatization (NAP's) inability to prepare a sufficient number of enterprises for privatisation (because of the limited number of staff in NAP) slowed down the privatisation process further. The "Decision of the CoM No. 284 of 25.6.1992 on the resumption of the privatization process" allowed the transformation of state- into private property by auction. In order to help the workers on the purchase of goods and machinery, a year later in 1993 - the objects and agricultural machinery had to be first offered to the workers. Municipal, commercial, and tractor companies as well as agricultural machinery were offered up to a coefficient of 20 % to the workers of this companies.

The lack of domestic savings and the slow implementation of privatization forced the government to decentralize the process by introducing the so called "privatization boards". They were established with "Decision of CoM No. 248 of 27.5.1993 on some

measures to accelerate the privatization of SMEs" in accordance with the "Law on the restitution and compensation of property to former owners", which provided a platform for facilitating the privatization of former owners without auctions (GTZ 1998).

Although public auction was the chosen method of privatization, it was the newly founded privatization boards that allowed the privatization of these companies through direct sales in favor of selected groups or individuals such as former owners, persons with good connections to the government. Due to various irregularities in the privatization boards, the government was forced to intervene in 1995 and to optimize the process. As a result of these changes, the priority right was maintained only for formal owners, while workers were given permission to discounted purchase of the machinery and vehicles.

After the establishment of the Privatization Ministry in November 1996, the privatization boards were dissolved.

## **Mass Privatization**

Mass privatization serves the privatization of as many companies as quickly as possible. It was intended to promote political and social reform through public acceptance (Süss 2001).

Although most of the SMEs were privatised through public auction, this method could not be used to privatise large and very large enterprises (without splitting them up) due to the low level of domestic savings and the lack of foreign investors' participation. In order to embark on privatisation of these enterprises and speed up the development of the capital market and create a wide class of new owners (GTZ 1998), the government started the new, mass privatisation programme at the beginning of 1995. Before privatisation, enterprises were to be transformed into commercial companies in the form of Anonymous Companies (joint stock companies) or of Limited Liability Companies. The privatisation of these companies was envisaged through the sale of shares in

public auction, by negotiation or by public offerings on the stock market.

Based on the principle of distributing state property to those who have contributed to its creation for years, the government distributed privatisation vouchers free of charge to all Albanian citizens aged over 18. The Ministry of Finance appointed the Bank of Albania as the institution in charge of the distribution of vouchers, while the Saving Bank was charged with the registration and distribution of vouchers to citizens. Privatisation vouchers could be used to bid for shares of companies in the mass privatisation programme and also in the privatisation of other enterprises.<sup>13</sup> Vouchers were distributed in 1996 in two tranches (GTZ 1998):

- The first tranche was distributed from 20.4.-15.6.1995 and
- The second tranche between 1.11.-30.11.1995.

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<sup>13</sup> The people who had already acquired any property for free (such as land) did not receive privatisation vouchers.

This privatization method may also be referred to as "a form of donation" (Klenk & Philipp & Reineke & Schmitz 1994) About 34 % of the population (1,110,000 people) have benefited from this type of distribution. (GTZ 1998). Selected for the mass privatization program companies were medium and large companies in various sectors of economy, such as: construction and building materials industry, services and trade operations, chemical companies, mining companies, transport companies, and energy and food companies.

In order to facilitate the mass privatisation process financial intermediaries, named investment funds (IFs) were created. According to the Albanian law, IFs were commercial companies owned by a large number of persons and were to be engaged in collecting vouchers and using them to buy shares of the companies in the privatisation scheme. The law, however, restricted investment funds' activities – for instance, they were not allowed to collect more than 10% of the general nominal value of all privatisation vouchers issued, invest more than 10% of their net assets in shares of one company,

and posses more than 40% of total capital of a privatised company (GTZ 1998). Three investment funds were created in Albania during 1996: “Anglo- Adriatic” Investment Fund, “New Albania” Investment Fund and “Nobel” investment fund. However, only one of them, “Anglo-Adriatic” Investment Fund, did collect vouchers.<sup>14</sup> Only 41,182 voucher-holders gave their voucher to the “Anglo Adriatic” investment fund but it never participated in the privatisation process. The lack of experience and a culture of these funds as well as the restrictions imposed by law, were the main reasons why they (investment funds) failed to participate in mass privatisation programme (Mema and Koci 2002).

Although auctions was envisaged as one of the methods of transferring shares of the companies to new owners, no auctioning took place. Shares with a face value of 1000 Leks were issued according to the book value of

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<sup>14</sup>The other funds, one with a temporary and the other with a permanent license, were considered as closed according to the Albanian legislation, and did not participate in voucher collection at all. This happened because they did not develop their activities before or due to the social unrest in 1997.

companies. The principle of share transfer was ‘all emitted vouchers buy all available shares’ and was not based on the calculation of share prices in advance. Therefore, shares were distributed to all bidders in proportion to the total number of vouchers or privatisation leks committed by each bidder. Also former owners participated in the process, and they had the right to receive shares of the company in proportion to the value of land in the total capital of the company. From the beginning of the process in July 1995 until the middle of 1997, 97 jointstock companies were privatised, accounting for only 4.6% of the total number of SOEs in the regions selected and 4% of the total number of enterprises in Albania (GTZ 1998). However, enterprises included in the MPP were larger and more important in value terms.

The process of distribution was stopped in 1997 due to the civil unrest in the country and never restarted.

## **Conclusion**

This paper showed one thing in full clarity: Albania or the Albanian authorities were totally overwhelmed with the privatization process. This is largely due to the fact that there were no prescribed legal structures and frameworks, that were able to ensure a proper procedure. Neither existed sufficient legal criterias or a committed administration. To evaluate the process in organizational terms, the adequate word would be "confusion".

In addition, the so called privatization funds that were active from 1995 with their "dubious" activities" led to the collapse of economy (the so called pyramid schemes) and triggered the Civil War. Only then the privatization process can be described "as a normal process". But not only the variety of competent institutions or their rapid establishment and equally hectic resolution were characteristic for the Albanian privatization. The procedures were confusing, often in disregard of clear legal and administrative requirements. There was a variety of indeterminate legal concepts, which opened

the door for corruption, an example of which, was the ability to privatize the state property in favor of “special” persons, by implementing not the procedure prescribed by law (public auction), but through direct sales.

As if the organizational and procedural problems were not enough, another one was added, that included the lack of government financial resources. The Albanian state was nearly bankrupt. In addition the old inherited technology, the lack of investment (savings were in short supply) and especially competition from abroad (imported products) made it hard for privatised and state-owned firms in the industrial sector to survive and grow. Most of them changed their activities or ceased operation altogether. These developments, in the first years of transition, reshaped the structure of the Albanian economy in t favor of agriculture, trade and service sectors.

All in all: Privatization in Albania can serve as a negative example of how legal and economic

transformation processes should not be performed.

Albania

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**International capital flows in the post- global  
financial crises period: implications and changes**

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**Abstract**

In 2008, the world economy suffered the deepest global crisis since World War II. The financial crisis had an impact on the FDI flows, globally. Developed countries were the most affected by the crisis, and its effects on developing countries and countries in transition were indirect, with varying degrees of intensity between regions and countries.

FDI flows have experienced significant changes in terms of the direction of movement and capital structure. In this context, the paper contains an analysis of the international capital flows by groups of economies. In order to research the impact of the crisis on the capital structure, the paper analyzes the sectoral distribution of FDI flow and the structure of FDI by form of investment in the period before and after the crisis.

**Keywords:** Foreign direct investment, financial crisis, international capital flow

## INTRODUCTION

As a form of the world international capital movement, FDI have become more significant after World War II, and ever since the 1990s, as a result of the rapid development of science and technology and the changes in the ownership structure, FDI have a dominant role in the international economic relations. However, in the past century, the global FDI flows have experienced significant changes in relation to the direction of movement and the capital structure.

The 2008 world economic crisis initiated significant changes of the global FDI flows, as well as their structure.

What is characteristic of the period after the global financial crisis? FDI flow from developing countries to developing countries is greater than foreign investment in the direction developed countries - developing countries. At the same time, the crisis also caused changes in the sectorial structure of FDI, and the structure of FDI according to the form of venture capital on a global scale.

These events may have significant implications for the FDI related policies in the world economy.

## **1.1. FDI**

The end of the 20th century launched a new era of internationalization of production and capital - the era of globalization. Globalization implied an intensive increase of the interdependence of the countries in the world initiated by the international movement of goods, services, and capital.

The global changes in the world economy created a new ambience in the development processes.

After the debt crisis in the 1980s, developing countries (DCs) started the processes of liberalization of their national economies. These countries were faced with the challenge of accepting the structural adjustment policy for participation in the global economy.

In the 1990s, countries in transition became open to foreign capital entry. In the conditions of building a new political and economic system, the countries faced a lack of funds to deal with complex problems of political, economic, and social nature, and FDI were imposed as necessary to overcome the problems.

As a result of the developments in the world economy towards the end of the twentieth century, the process of international capital movement in the form of FDI gained dominant importance in the international economic relations.

The growth rate of FDI is even faster than the growth of the world trade and world production. Namely, in the period between 1992 and 2000, the total FDI inflow increased by about 200%, while the world trade increased by about 100% and the world production by 32%.<sup>15</sup>

Despite the long-term trend of FDI growth until 2000, in the period between 2000 and 2003, FDI decreased by more than 50%<sup>16</sup>. The large decrease of FDI in this period is above all, due to the deceleration of the world economy growth rate, as well as the development of geopolitical insecurity after the attack on the USA on September 11, 2001. In 2004, FDI increased globally, for the first time in three years, and amounted to about 648 billion U.S. dollars.

However, despite the regained investors' confidence and the strengthening of the companies, in 2004, FDI in developed countries (which also include the ten new members of the European Union) decreased by 14%.

In 2004, the FDI inflow was the largest in developing countries. In fact, the growth of FDI on a global scale is above all, due to the growth of FDI in

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<sup>15</sup> Hill, C. W.L., "*International Business: competing in the global marketplace*", 6<sup>th</sup> edition, McGraw- Hill/Irwin, New York, 2007, pp. 240

<sup>16</sup> UNCTAD, „*World Investment Report, The Shift Toward Services, UN*, New York and Geneva”, 2004, pp.23

these countries. Namely, in 2004, FDI in developing countries increased by about 40% compared to 2003, and amounted to 233 billion U.S. dollars. The largest FDI inflow is in China, with a record 61 billion U.S. dollars.<sup>17</sup>

The growth of FDI in DCs is a result of the intensification of the structural reforms and the liberalization of their economies. The FDI growth trend in DCs continued in the following period, and reached its peak during the period of the world economic crisis in 2008, when the foreign capital was redirected into these countries in order to avoid the developed countries that were directly affected by the crisis. At the same time, the intensive economic growth, the membership in the WTO, and the completion of the privatization process in this period contributed to an increase of FDI in developing countries.

In 2005, FDI continued to grow globally and amounted to 916 billion U.S. dollars. By regions, in 2005 the FDI inflow increased in the developed countries and in the developing countries, while in the countries in transition the FDI inflow in 2005 remained at the same level as in 2004, primarily due to the fact that in 2004 the CEE countries, which in fact accounted

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<sup>17</sup> UNCTAD, „*World Investment Report, Transnational Corporations and the Internationalization of R&D*”, UN, New York and Geneva, 2005, pp.81

for more than half of the total FDI inflow in the countries in transition, became EU members.

In 2007, the FDI inflow worldwide reached a historic record level of 1.980 billion U.S. dollars.

In 2008 and 2009, FDI decreased globally, following the continuous growth in the period from 2004 to 2007, or they went from 1.980 billion U.S. dollars in 2007 to 1.180 billion U.S. dollars in 2009 (Figure 2.1).

During 2008, the world faced an economic and financial crisis of global proportions. Developed countries were the most affected by the economic crisis, while its effects in developing countries and countries in transition were indirect, with varying degrees of intensity between regions and countries.

The world economic crisis also affected the FDI inflow globally. As a result of the crisis, the FDI inflow decreased globally.

In 2010 and 2011, FDI increased again worldwide, but they were still by about 15% lower than their level before the world economic crisis.

In 2010, for the first time, developing countries and countries in transition together attracted more than half of the global FDI. In fact, the total growth of FDI in

the world is primarily due to the growth of investments in developing countries.

What is characteristic of this period is the intensive growth of interregional FDI. Towards the end of the 1990s, the investments in relation developing countries – developing countries increased at a greater pace compared to the investments in relation developed countries – developing countries. In this period, about one third of developing countries invested their capital in developing countries. In 2011, developing countries invested about 70% of their capital in developing countries.<sup>18</sup>

Developed countries are the largest importers of FDI, but they are also the largest sources of capital worldwide. After 2000, their share in the total inflow and outflow of FDI decreased primarily as a result of the increasingly larger share of the developing countries in the international capital flows.

The world economic crisis has significantly influenced the reduction of the share of developed countries in the international capital flows. By contrast, after the crisis, developing countries became an increasingly more important factor in the international capital flow.

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<sup>18</sup> UNCTAD, „*World Investment Report, Transnational Corporation, Agricultural Production and Development*”, UN, New York and Geneva, 2009, pp.23

Namely, according to the data from Table 1.1, in 2007 developed countries accounted for about 66% of the total FDI inflow and about 84% of the total FDI outflow worldwide. Yet, in 2011, the share of the developed countries was about 50% of the total FDI inflow and about 70% of the total FDI outflow worldwide. On the other hand, in 2007 developing countries accounted for about 29% of the total FDI inflow, and about 13,5% of the total FDI outflow worldwide. In 2011, the share of the developing countries was about 43% of the total FDI inflow and about 24% of the total FDI outflow worldwide.

In global terms, the share of the countries in transition in the international capital flows is still at a very low level despite the liberalization of the conditions for foreign capital entry in the last few decades.

At the beginning of the transition, it was expected that these countries would attract a greater FDI inflow, as a result of the physical and cultural and historical proximity with the countries from Western Europe, the great market potential, and the relatively qualified and cheap workforce. But this did not happen. According to the data from Table 1.1, it can be seen that in 2011, the share of the countries in transition is about 7% of the total FDI inflow and about 5% of the total FDI outflow worldwide. Such condition occurred as a result of the problems faced by these countries in the period of

transition. The transition period was accompanied by a series of negative effects with catastrophic consequences felt by the countries even today.

**Table 1.1. FDI Inflow and Outflow by groups of countries, 1992-2011**

Share in the global flow of FDI (%)				Share in the global outflow of FDI		
Developed countries	Developing countries	Countries in transition*	World	Developed countries	Developing countries	Countries in transition
58,2	38,1	3,7	100	92,2	7,6	0,2
68,4	28,1	3,5	100	91,9	7,8	0,3
76,2	21,3	2,5	100	92,9	6,9	0,2
79,8	18,2	2	100	91,4	8,3	0,3
69,9	26,9	3,2	100	91,2	8,3	0,5
72,2	23,2	4,6	100	91,8	7,4	0,8
65,5	30,7	3,8	100	93	5,8	1,2
55,7	36,2	5,6 (3,7 CIS and 1,9	100	84,4	13,9	1,7 (1,69 CIS and

		SEE)				0,01 SEE)
59,1	36,5	4,4 (3 CIS and 1,4 SEE)	100	83	15	2 (1,8 CIS and 0,2 SEE)
66,7	29,4	3,9 (3,1 CIS and 0,8 SEE)	100	82,2	16,1	1,7 (1,6 CIS and 0,1 SEE)
66,3	29,1	4,6 (4 CIS and 0,6 SEE)	100	84,1	13,5	2,4 (2 CIS and 0,4 SEE)
55,3	37,7	7 (6,2 CIS and 0,8 SEE)	100	80,7	16,1	3,2 (3 CIS and 0,2 SEE)
51	43,1	5,9 (5,4 CIS and 0,5 SEE)	100	72,7	23,1	4,2 (4,1 CIS and 0,1 SEE)
48,4	46,1	5,5 (5,2 CIS and 0,3 SEE)	100	70,7	24,7	4,6 (4,6 CIS and 0,01 SEE)
49,9	43,2	6,9(6,4, CIS and 0,5 SEE)	100	70,9	24,2	4,9 (4,8 CIS and 0,01 SEE)

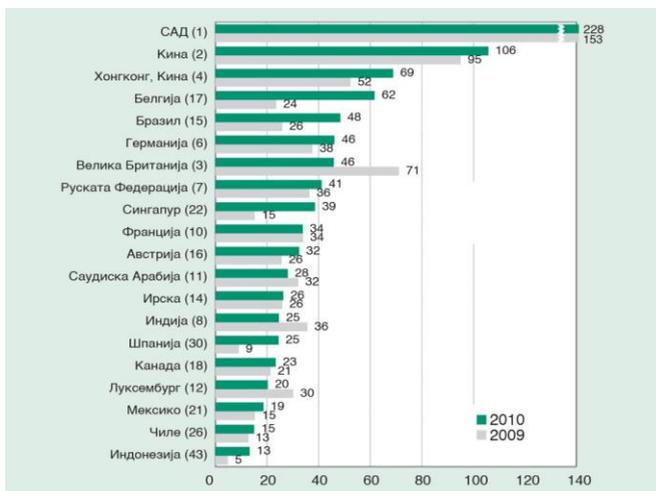
Source: UNCTAD database, [www.unctad.org/stat](http://www.unctad.org/stat), personal calculations

*\* in the period until 2003, the group of countries in transition includes countries from CEE, SEE and CIS*

By countries, the USA, China, Belgium, Brazil, Germany, the Great Britain, and the Russian Federation are the countries with the largest FDI inflow.

According to the data from Figure 1.1., in 2010, on the list of the 20 largest FDI importing countries, half of the countries are developing countries and countries in transition. While the USA and China have maintained their positions from the previous period, many developed countries have gone down in the ranking on the account of developing countries.

**Figure 1.1. Global FDI inflow, 20 countries- largest FDI importers, 2009 and 2010, in billions U.S. dollars**



SOURCE: UNCTAD, „*World Investment Report, Non-equity Modes of International Production and Development*”, UN, New York and Geneva, 2011, p.19

The largest source of FDI, from World War II until today, are the USA. Other more significant sources of FDI are France, Germany, and Japan. In the period from 1998 to 2007, these countries accounted for about 60% of the total FDI outflow.<sup>19</sup> The USA, France, and Germany maintained their positions during the period of the 2008 world economic crisis. What is significant of the period after the crisis is the increased share of

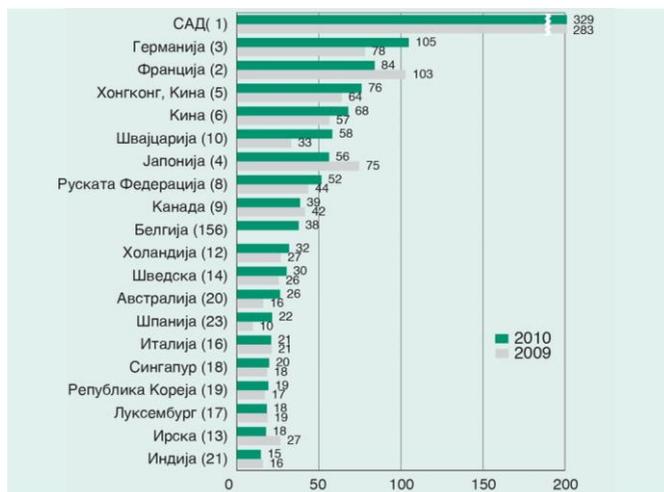
<sup>19</sup> UNCTAD, „*World Investment Report, Transnational Corporation, Extractive Industry and Development*”, UN, New York and Geneva, 2007, pp.15

developing countries and countries in transition in the total capital outflow.

According to the data from Figure 1.2., in 2010, on the list of the 20 largest FDI source countries, six are developing countries and countries in transition. The most important FDI sources among them are China and the Russian Federation.

**Figure 1.2. Twenty countries – largest FDI sources, 2010,**

**In billions U.S. dollars**



Source: UNCTAD, „*World Investment Report, Non-equity Modes of International Production and Development*”, UN, New York and Geneva, 2011, p.23

The 2008 world economic crisis also initiated changes in the FDI structure globally.

In the last two decades, as a result of the global changes initiated by the process of globalization, the sectorial structure of FDI also changed, and it changed from FDI in the industry to FDI in the service sector. In the period from the 1990s until the financial crisis, FDI in the service sector increased four times and accounted for about 50% of the total FDI worldwide. FDI in the primary industry have doubled and amounted to about 8%. FDI in the production have also increased, but their share in the total FDI has decreased to about 40%.<sup>20</sup>

However, the world economic crisis caused changes in the sectorial structure of FDI globally.

According to the data from Table 1.2., in the period after the world economic crisis, FDI in the primary sector and in the production have increased from 8% and 41% in the period before the crisis (2005-2007) to 14% and 50% in 2011. FDI in the service sector in 2011 decreased compared to the period before the crisis

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<sup>20</sup> UNCTAD, „*World Investment Report, Transnational Corporation and the Infrastructure Challenge*”, UN, New York and Geneva, 2008, p.23

and, on average, amounted to about 40%, by which the share of FDI in the production in the total FDI inflow worldwide exceeded the value of FDI in the service sector.

**Table 1.2. Sectorial structure of FDI, 2005-2007, 2008, 2009, 2010, and 2011**

	Value (in billions U.S. dollars)			Share (in %)		
	Primary sector	Production	Service sector	Primary sector	Production	Service sector
<b>2005-2007</b>	130	670	820	8	41	50
<b>2008</b>	230	980	1.130	10	42	48
<b>2009</b>	140	510	630	13	39	48
<b>2010</b>	170	620	490	11	50	39
<b>2011</b>	200	660	570	14	46	40

Source: UNCTAD, “*World Investment Report, Toward a new Generation of Investment Policy*”, UN, New York and Geneva, 2012, p.31

Regarding the type of venture capital in the form of FDI, until the world economic crisis, investments in the form of mergers and acquisitions are dominant over green-field investments.

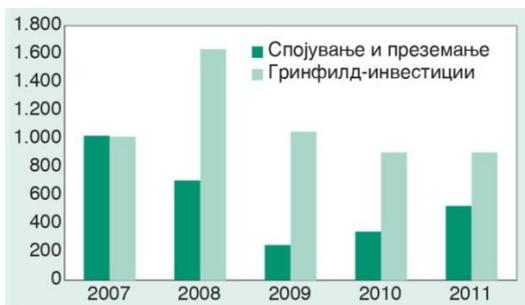
Since the end of the 1990s, FDI in the form of mergers and acquisitions have been growing intensively, and in 2007, they reached a record level of 1.637 billion U.S. dollars.<sup>21</sup> In the period after the crisis, the value of the investments in the form of mergers and acquisitions decreased, by which green-field investments exceeded their value.

According to the data from Figure 1.3., in 2010 and 2011, the value of the investments in the form of mergers and acquisitions increased again by about 30%, but they still remained about one third below their level in 2007. On the other hand, the green-field investments decreased in this period, but their value was still greater than the value of the investments in the form of mergers and acquisitions compared to the period before the crisis.

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<sup>21</sup> UNCTAD, *World Investment Report, Toward a new Generation of Investment Policy*, UN, New York and Geneva, 2012, p.29

**Figure 1.3. Value of green-field investments and investments in the form of mergers and acquisitions, 2007-2011 (in billions U.S. dollars)**



Source: UNCTAD, “*World Investment Report, Toward a new Generation of Investment Policy*”, UN, New York and Geneva, 2012, p.34

## CONCLUSION

The 2008 world economic crisis had a significant impact on the international flows of FDI and their structure.

The data show that in the last two decades, the share of the developed countries in the total FDI inflow decreased as a result of the increasing share of the developing countries in the international capital flows. The increased share of the developing countries in the

international capital flows intensified in the period after the world economic crisis in 2008. At the same time, the crisis contributed to a more intensive growth of the interregional investments in the developing countries.

These events can initiate a change in the direction of movement of FDI on the relation developed countries – developing countries. But whether this trend will persist in the future depends on the further events in the world economy and on the policy of the developing countries towards FDI.

Also, the world economic crisis in 2008 caused changes in the FDI structure globally.

Namely, the sectorial structure of FDI shows that in the period after the crisis, the share of FDI in the production in the total FDI inflow worldwide exceeds the value of FDI in the service sector.

Regarding the type of venture capital in the form of FDI, until the world economic crisis, FDI are more prevalent in the form of mergers and acquisitions than in the form of green-field investments. In the period after the crisis, the value of the investments in the form of mergers and acquisitions decreased, by which green-field investments became the dominant form of venture capital.

The different effects of the crisis on the FDI structure largely indicates the factors that have a particular influence on the FDI inflow, which in turn, can help the countries in the creation of the national policy related to FDI.

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Marketing Ethics and Social Responsibility-Important  
Factors for Successful Business

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**Abstract**

A marketing system should sense, serve, and satisfy consumer needs and improve the quality of consumers' lives. Responsible marketers discover what consumers want and respond with the right products, priced to give good value to buyers and profit to the producer.

Marketing receives much criticism. Some of this criticism is justified, much is not. Social critics claim that certain marketing practices hurt individual consumers, society as a whole, and other business firms.

The purpose of this paper is first to understand the concept of social responsibility. Then, it is essential to

be able to identify factors that influence the adoption of ethical and unethical decisions. Also an important point is finding different ways to improve ethical decisions in marketing. The paper mentioned some strategies that will contribute positively to solving some social dilemmas.

The paper examines the social effects of marketing practices. It put special attention on the most frequent social criticisms of marketing, the steps which have enlightened companies taken to carry out socially responsible and ethical marketing and some arguments for and against social responsibility and ethics in marketing.

**Key words:** Social responsibility, marketing ethics, marketing concept, customer satisfaction, marketing practices, social marketing, value marketing.

## **INTRODUCTION**

Every organization is involved in the society and all actions should be carefully undertaken, taking care to protect the interests of its stakeholders and society at large. Responsibility to the community have schools, hospitals, non-profit organizations, foundations, associations, sports clubs, religious associations, cultural and art organizations, especially companies with their business activities. As a result of the impact the company has on all its stakeholders and society, can positively or negatively to use to achieve their economic and

marketing goals. Cannot pointed out a single definition, but it can be said that social responsibility of the company constitutes its obligation all their activities and actions undertaken to exercise in order to protect the interests of its various stakeholders. This obligation is determined by the prescribed legal norms or is determined by the ethical norms and principles. Essence of enterprise social responsibility is to be aware of the consequences of their own decisions on society. In order to understand the social responsibility of enterprises and their managers, it is necessary to define to whom they are responsible, or which groups of stakeholders whose interests may be affected by the decisions that managers carry.

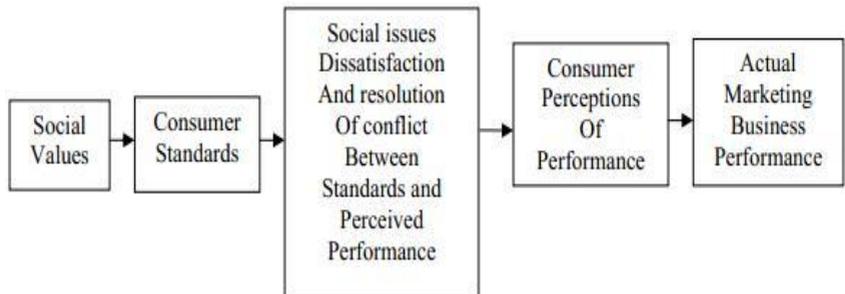
Stakeholders are all those individuals and groups who are directly or indirectly influenced by the company's work. Every company has a number of different stakeholders who need to take into consideration during throughout of their work. However, the company needs special attention should be paid to: the shareholders (owners), employees, customers, suppliers, competitors, banks and other financial institutions, government, union, community, society in general, the international community etc..

## **SOCIAL RESPONSIBILITY AND ETHICS IN MARKETING**

The terms ethical and social responsibility in the everyday use very often replace each other, although each term has a different meaning. Social responsibility in marketing refers to the obligation of the company to maximize its positive impact and more to reduce the negative effects of society. On the one hand, ethics relates more to the decisions of individual persons, and on the other hand, social responsibility refers to the impact of the business decisions of the enterprise on society. Therefore, social responsibility can be considered as a kind of contract between the company and society, ethics refers to the implementing rules and moral values that guide the decisions of individuals or groups.

Problems of the social responsibility of great benefit to contact and consult consumers, industry and government bodies. Also, it is important to investigate whether companies have a policy to resolve the problems related to the social responsibility. Because, if the company's employees justify certain actions that are not illegal and are in line with the positive business practices, then it is likely that these procedures would be acceptable in terms of ethics and the social responsibility.

*Figure 1 Social responsibility and ethics in marketing*



If the court about the ethical issues and social responsibility, which is based on the everyday experience hold a public debate, and if the result of an agreement between the company and the society, then it means that the solution is acceptable. (Cadbury, 1985, page.33)

## **IMPACT OF SOCIAL RESPONSIBILITY ON MARKETING**

Marketing managers are trying to determine what are the acceptable relations, marketing responsibilities and tasks of the organization to society. Becomes more clearly as to the existence of the enterprise and the creation of its competitive advantages on the market, it is more important on long term to act in a socially responsible way, rather than short-term care only for operational

costs. (Stroup et al, 1987, page 23) Aimed at achieving its goals enterprise to behave socially responsible, it has to follow the trends and changes in social values. Also, companies must provide supervision mechanisms in order not to make gaps in the daily deciding and in that way to disrupt relations between companies and the public. Management of the company in the creation and implementation of business policy should predict the certain responsibilities for their employees.

The aim of companies to be socially responsible is not really so easily and simply achievable because it requires solving a number of important problems. Therefore marketing managers must be able to anticipate the long-term consequences of their decisions.

Because the society is composed of different groups of people, it is very difficult or even impossible to determine what the whole society requires. Therefore, the enterprise striving to satisfy the desires, needs and demands of a group of people at the same time may disappoint others. It is difficult to achieve such a balance to the satisfaction of all members of society. Enterprise task is to be able to assess the extent to which the members of society are willing to pay to satisfy their needs and desires. Perhaps consumers want more information about the products, but not willing to pay a price that will include the costs of delivery of such information. Therefore, companies who want to choose a socially responsible way encounter a really complex task.

Marketing receives much criticism. Some of this criticism is justified, much is not. Social critics claim that certain marketing practices hurt individual consumers, society as a whole and other business firms.

## **STRATEGIES FOR SOLVING PROBLEMS OF THE SOCIAL RESPONSIBILITY**

There are a number of strategies, but four basic thorough help in solving the problems of the social responsibility in marketing, such as:

- **Strategy reaction**-enterprises that have implemented this strategy allow certain situations or potential problems (for which the company's management could be or could not be informed), remain unresolved long enough, until the public do not be informed about them. The company is trying to solve the problems in motion, continues its business because they are more concerned with the consequences and try to reduce their negative impact.
- **Strategy of defense**- enterprises that have implemented this strategy try to reduce or avoid additional obligations for certain problems. The usual defense tactics include various legal manipulations and application support of unions that follow the mode of operation of certain industries. This defense strategy often uses lobbying in order to avoid government or legislative measures.

- **Strategy of adjustment**-this strategy companies apply in cases where its business include responsibility for their actions. Adjustment strategy is commonly used when certain groups organize any actions or in situations where it is assumed that the government will bring some laws that businesses will be forced to achieve certain obligations.
- **Active strategy**-enterprises that have implemented this strategy take responsibility for their actions and without pressure or government intervention react to any charges directed towards them. In fact, the application of the active strategy involves taking actions that emphasize social responsibility in the interest of the common good.

## **IMPROVING THE SOCIAL RESPONSIBILITY AND ETHICS**

There are several methods that can be used in attempts to promote social responsibility and ethics in the conduct of the undertakings. Theoretical explanations must be supported by specific actions. Among these methods the following can be stated: follow leaders; ethics specialists; formation of ethical structures; code of ethics; organizing trainings on ethics and acceptance spokesmen.

**Tracking leaders** as a way to promote ethics and accountability to society means that higher level

managers through their behavior must be an example to other managers and other employees. Thus they will enhance a sense of ethics and responsibility of all other employees in the company.

**Ethics specialists** are individuals which aim is to review and process the questions of ethical character and suggest their proper resolution. These are specialists in business ethics that have full membership in the Board of managers and act as a “social conscience” of the enterprise.

**Establishment of ethical structures-** Ethical structures actually consist of various authorities and bodies called committees. Their basic function is to advocate for the practical application of ethical thinking. Companies in every market economy should have such bodies, and as an important are ethics committee and the person responsible for ethical issues (ethics ombudsman).

- **Ethics Committee** is a group of employees assigned to supervise the company’s ethics. The Committee provides solutions to contentious ethical issues. Ethics Committee assumes responsibility for disciplining those who violate ethics to raise the general ethics of the organization.
- **Person responsible for ethics** (ethics ombudsman) has been officially designated person who is responsible for the conscience of the company, which discovers and investigates ethical complaints and highlight and

communicate top management potential ethical failures.

Another form within the ethical structures in the enterprise is the establishment of **open lines** (hot lines), which can concern all stakeholders to respond in terms of the ethics of business decisions made by management of the company. In addition, safety must be guaranteed the entities who called these hotlines in order to express dissatisfaction with the performance of managers.

**Code of Ethics** – Necessity for business to be based on ethical norms and values in companies forcing managers to prepare codes of ethics as a way to institutionalize ethical values in the enterprise.

By its character code of ethics is a formal act which serves as a guideline for decision-making behavior and ethical manner by employees in an organization.

Code of Ethics contains three essential elements:

- Values and principles that should be nurtured in the enterprise;
- The manner in which employees are expected to behave;
- Behavior that would not be tolerated by the top management of the company.

The creation of a code of ethics is initiated by the top management and must cover all organizational structures. It is not enough to initiate the adoption of the Code, but even more important is that to support this

Code through its own reward its observance and individuals to respect, and to apply disciplinary measures for violations of those values.

**Organizing trainings on ethics**-It is about procedures for focusing on the theory of ethics and practical exercises to solve ethical problems. Training and ethics training programs can be organized in the framework of formal management education or they are organized as exercises for employees. Thereby solving the cases can be set individually or through group work. In both cases encourages ethical reflection and decision making.

**Acceptance spokespersons**-Call those employed by the company that determined the unethical behavior of some managers and therefore react to the owner, senior management, ethical structures in the enterprise, to the public media, public interest groups or to the appropriate authorities. This way of promoting of ethics creates a mismatch between the managers in terms of its existence. Some encourage its existence, and for others it is an opportunity to undermine their reputation.

All these ways of promoting ethics and corporate social responsibility have their advantages and disadvantages, and modern companies need to exercise one or more of them.

## MARKETING ETHICS

Ethics is a moral evaluation of certain decisions or actions as acceptable or unacceptable from the point of view of the generally accepted principles of conduct. Ethics in marketing consists of all moral principles that determine good and bad behavior in marketing. Most of the basic ethical issues formalized in laws and rules of behavior that adapt one's behavior to the standards of society. At least that is expected of enterprises is to uphold the laws and rules of conduct. However, it is very important to emphasize that ethics in marketing beyond the legal provisions, ethical decisions in marketing, or, the persistence in mutual relations to cherish mutual trust.

Ethics is related to certain people and therefore differs from person to person. Although some enterprises often act according their own interests, there must be some standards of acceptable behavior according that will direct all marketing decisions. Companies must behave in accordance with clearly defined moral principles which will be based on ideals such as respect, justice and trust. (Robin et al, page 44)

Consumers often as unethical marketing activities consider: false advertising, confusing sales tactics, discriminatory pricing deciding, conscious selling harmful products etc. Therefore, consumers often refuse to cooperate with enterprises dealing with such business activities. If the enterprise in future acts contrary to accepted moral principles, in order to fulfill their own

interests but to the detriment of others, than marketing exchange becomes difficult, or even impossible.  
(Loucks, 1988, page 4)

Conscientious marketers face many moral dilemmas. The best thing to do is often unclear. Because not all managers have fine moral sensitivity, companies need to develop corporate marketing ethics policies-broad guidelines that everyone in the organization must follow. These policies should cover distributor relations, advertising standards, customer service, pricing, product development and general ethical standards.

One philosophy is that such issues are decided by the free market and legal system. Under this principle, companies and their managers are not responsible for making moral judgment. Companies can in good conscience do whatever the system allows. A second philosophy puts responsibility not in the system but in the hands of individual companies and managers. This more enlightened philosophy suggests that a company should have a social conscience. Companies and managers should apply high standards of ethics and morality when making corporate decisions, regardless of what the system allows.

The future holds many challenges and opportunities for marketing managers. Technological advances in every area provide abundant marketing opportunities. However, forces in the socioeconomic, cultural and natural environments increase the limits under which marketing can be carried out. Companies that are able to

create new customer value in a socially responsible way will have a world to conquer.

## **CONCLUSION**

Social responsibility obliges the organization to maximize its positive impact and minimize the negative impact on society. Ethics in marketing refers to the moral assessment of individuals, that is, determining what is right and what is wrong in certain decision making situations. So, the social responsibility refers to the final consequences that marketing decisions adopted by enterprises will affect society.

Every organization, whether it is a business entity or other organized community of people is required, along with the realization of their own interests through activities undertaken to protect and promote the welfare of society as a whole.

Several forces are driving companies to practice a higher level of corporate social responsibility: rising customer expectations, changing employee expectations, government legislation and pressure, the inclusion of social criteria by investors, and changing business procurement practices. Companies need to evaluate whether they are truly practicing ethical and socially responsible marketing. Business success and continually satisfying the customer and other stakeholders are

closely tied to adoption and implementation of high standards of business and marketing conduct. Companies that are able to innovate new solutions and values in a socially responsible way are the most likely to succeed.

Ethics in marketing and social responsibility of the enterprise act simultaneously, because the company that creates culture which is acceptable moral philosophy by the society often makes decisions that positively affect the society.

In order, the business of the company to be more efficient, it's necessary on time to be recognized what the buyers, government institutions, competitors, and society in general want or expect from social responsibility.

There are four strategies that seek to solve the problems of the social responsibility: Strategy of defense, of reaction, of adjustment and active strategy.

There are several methods that can be used in attempts to promote social responsibility and ethics in the conduct of the undertakings. Theoretical explanations must be supported by specific actions. Among these methods the following can be stated: follow leaders; ethics specialists; formation of ethical structures; code of ethics; organizing trainings on ethics and acceptance spokesmen.

Ethics in marketing indicates the moral principles that mark what is proper behavior and what is not in marketing. Many marketing decisions could be estimated as ethical or unethical. Ethics is very important when

making marketing decisions, but also is one of the most contentious and often mistakenly understood categories in marketing.

Good marketing is about satisfying and developing a long-term relationship with the customers. Caring about your customers not only results in profits (or achieving your organization's objectives if an organization is not-for-profit), it is the ethical thing to do. Deceiving customers may help a firm's profits in the short-run, but is not the way to build a successful business. The same goes for social responsibility. A firm has to care about all stakeholders: customers, employees, suppliers and distributors, local communities in which they do business, society, and the environment.

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# **The Appliance of Benchmarking in the Strategy of Marketing**

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## **Abstract.**

Having on mind the fact that for many companies the national market becomes too narrow, it is important to keep in touch with the need to expand their activities out of the borders of that national market. But, along that need of expanding their productivity, still the possibility of failure is present. That is because of well built market structure and competition. Basic issues are how to create compatible products and services which would be competitive on those markets from one side, and complete satisfaction of the needs and preferences of the customers are on the other side.

Expanding the business on an international market is a complex activity, which, besides the import and export, comprises from different shapes of business cooperation with foreign companies and investment activities abroad. That means that planning these activities and adapting to different changes which are determined by the factors of the complex surrounding is not only a condition for development and growth, but also for existence of the company, which has a remarkable degree of international orientation.

This paper aims to explain the process of benchmarking and how this process can be easily transferred and applied into the company's strategy for penetrating an international market. But, this is just a broad frame of how benchmarking is defined and should work in practice. It is up to the management of the company to transfer this theoretical frame into practice and to make it effective for the whole company.

Key words: marketing, benchmarking, planning, internationalization.

## INTRODUCTION

The literature reviewed defines the basis of benchmarking as revealing the best practices which give results in certain field and allows amelioration of inner results thru accepting such practice.<sup>22</sup> According to Geber<sup>23</sup> the benchmarking is a process of taking some practical examples from leading companies, their way of working, production and adaptation of their products with the products of those companies and by the time getting better and better.

The benchmarking could be defined as continuous process of identification, comprehending and adapting the products, services, equipment and procedures from the company with best practices with only one goal, and that is betterment of the work of the company.<sup>24</sup>

From the definitions explained above, it can be said that the benchmarking is a process of revealing the

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<sup>22</sup> Zairi, M., *Benchmarking for Best Practice: Continous Learning through Sustainable Innovation*, Oxford, Butterworth-Heinemann, 1996, p. 11

<sup>23</sup> Geber, B., *Benchmarking: Measuring yourself against the best*, Training November, 1990, p-36-44

<sup>24</sup> Harrington, H.J., Harrington, J.S., *High performance Benchmarking, 20 Steps to Success*, McGraw-Hill, Boston, 1996, p.15

best practice which other companies use in that field or branch, and using the same for achieving better results in future working.

Actually, benchmarking is the most powerful technique for conquering and maintaining comparative advantage. And the question is why that is so? That is mostly because thru adaptation of the best practice it is allowed continuing betterment of the whole organizational system. The primary goal is by that achieving better performance aside from the competition.<sup>25</sup>

Depending from the object and way of comparison, mainly there are intern, extern, generic (competitive) and functional benchmarking. According to Kozak<sup>26</sup> the competitive and functional benchmarking actually are subspecies of extern benchmarking, and also is known and relationship benchmarking. The intern benchmarking understands comparison of common indicators, by that results between different parts of the organization. With the extern benchmarking, object for comparison is the whole organization with the strategies of the competition. That is made for searching new ideas, methods, products and services.

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<sup>25</sup> Codling, S., Benchmarking, Gower, Hampshire, 1998, p.3

<sup>26</sup> Kozak, M., Destination Benchmarking: Concepts, Practices and Operations, CABI Publishing, Wallingford, 2004, p.136

The generic benchmarking allows search for the best quality of the products of the company. The competitive benchmarking understands comparison of one organization with the organizations that are their competition, and the functional benchmarking is always on the trace for top practice, the behavior of the world's best companies.

Relationship benchmarking is being used between two partners who cooperate for some time and have the advantage because they don't have to ruin the barriers of non-trusting each other.

All these definitions have one thing in common, and that is continual measuring and betterment of the results of the company intercourse the best practice through gathering information for new working methods or practices which are used daily from any competitive companies in the certain branch.

## **1. THE PROCESS OF BENCHMARKING**

The appliance of benchmarking passes several phases:

1. Determination of the field of appliance and the problems that need to be solved:
  - a. Forming benchmarking team,
  - b. Deciding what should be benchmarked,

- c. Approving the benchmarking process from the top management,
  - d. Defining who will be the final user of the data revealed.
- 2. Planning the whole project:
  - a. Plan for comparing with the competition,
  - b. Plan for collecting data,
  - c. Census of the intern and extern sources of information,
  - d. Census of potential benchmark companies,
  - e. Responsibilities for the key members involved in benchmarking,
  - f. Time deadlines for completing the tasks and assignments,
  - g. Plan for managing with potential organizational and business changes,
  - h. Potential future solution.
- 3. Own analysis of the base juncture:
  - a. Analysis of the indicators for ongoing work,
  - b. Determinants of strategic options.
- 4. Analysis of the relevant subjects:
  - a. Analysis of the customers,
  - b. Analysis of the competition,
  - c. Analysis of the business,
  - d. Analysis of the environment.
- 5. Extracting information from the data collected:
  - a. Fortifying the differences in the performance compared with the practice of the competition,
  - b. Quality data control,

- c. Benchmarking report.
6. Identifying the possible improving:
  - a. Fortifying correctional actions,
  - b. Implementation plan for the new solutions.
7. Appliance of the new solutions and result tracking:
  - a. Getting approval from the top management for application of the new solutions,
  - b. Appliance of the solutions and measuring the influence that they have,
  - c. Providing continual improves.<sup>27</sup>

The benchmarking process passes thru these next phases:

1. Phase of planning the activities:
  - a. Object selection,
  - b. Defining the process,
  - c. Identification of possible partners,
  - d. Identification of data sources and selection of the best method for data collection,
2. Phase for analysis:
  - a. Collecting data and selecting partner,
  - b. Determining common connection with benchmarking,
  - c. Determining future performances,
3. Phase of taking action:

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<sup>27</sup> Renko, N., Delić, S., Škrčić, M., Benchmarking u strategiji marketinga, MATE d.o.o, Zagreb, 1999, str.58

- a. Communication with the management,
- b. Adapting with the target and plan for development and improving,
- c. Implementation,
- d. Control of the achieved improvements.<sup>28</sup>

Successful creation of a benchmarking plan and implementation will lead to improvement of the company's features and performance. Thus, leading to the main goal, profits.

## **2. ADVANTAGES FROM THE APPLICATION OF BENCHMARKING STRATEGIES**

The advantages that come out of the appliance of the benchmarking in the strategy of marketing are as followed:

- better performances and more profit,
- allows more efficient leadership and company management,
- allows external perspectives,
- more efficient business operations,
- open door towards other companies etc.

It is important to mention that an appliance like this in the strategy of benchmarking is possible only after successful creation of international marketing strategy is being made.

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<sup>28</sup> Codling, S., Benchmarking, Gower, Hampshire, 1998, p.16

Because of that, it is very important to be decided where in the process of developing the international marketing strategy is needed the benchmarking.

Whatsoever, incomparable is the fact that on the tourist company itself shall be allowed lot of information not only for the advantages and weaknesses during the creation of the strategy, but also knowledge for that what kind of strategy will be best for creating competitive advantage on the international markets.

## CONCLUSION

This paper gives a broad view of how benchmarking can be used in the creation process of strategies in companies. This process is of crucial importance for companies and managers should take it into serious consideration. And, even though it does not include a research, it gives important guidelines for its understanding and will help providing feedback for those companies which will decide to implement it.

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# **Cheap Labor Force in Kosovo: Advantages and Disadvantages**

**Ardian K. Retkoceri , MBA**

## **Abstract:**

Globalization and internationalization has led to focus being directed to the dynamics of the labor industry in the world. This is because of the fact that with consumer satisfaction taking precedence in operations of an organization, stakeholders in all industries are increasingly becoming concerned about labor trends. With the opening up of the international borders to international influence, comparisons have emerged among the labor trends in different regions. As organizations seek to gain competitive advantages over others in their respective industries, practices such as outsourcing, international labor mobility, and in some cases, brain drains have become a common occurrence. Brain drain has been as a result of workers that are qualified to work but lack the opportunities in their countries, thus seeking employment in the international arena. The advantages and disadvantages of cheap labor force in a region or country have become what investors and organizations mostly consider when setting up

businesses or expanding to new areas. This paper researches on the cheap labor force in Kosovo and reviews the advantages and disadvantages of it being low-cost.

**Keywords:** *Globalization, labor force, Kosovo.*

## **Introduction**

Globalization and internationalization has led to focus being directed to the dynamics of the labor industry in the world. This is because of the fact that with consumer satisfaction taking precedence in operations of an organization, stakeholders in all industries are increasingly becoming concerned about labor trends. With the opening up of the international borders to international influence, comparisons have emerged among the labor trends in different regions. As organizations seek to gain competitive advantages over others in their respective industries, practices such as outsourcing, international labor mobility, and in some cases, brain drains have become a common occurrence. Brain drain has been as a result of workers that are qualified to work but lack the opportunities in their countries, thus seeking employment in the international arena. The advantages and disadvantages of cheap labor force in a region or country have become what investors and organizations mostly consider when setting up businesses or expanding to new areas. This paper researches on the cheap labor force in Kosovo and

reviews the advantages and disadvantages of it being low-cost.

## **Cheap Labor Force in Kosovo**

The European continent boasts of having some of the richest and most powerful nations in the world. However, it harbors several States which can be said to be struggling economically. While examining the poorer States, one cannot fail to note several factors which could label Kosovo as one. These factors may among others include the high unemployment rate and the poor living standards in which the people live. It therefore, becomes necessary to describe the State of Kosovo in terms of its labor dynamics, especially the causes, advantages, and the negative effects of cheap labor (Moalla-Fetini, Hatanpaa, Koliadina, & Hussein, 2005).

Unemployment in Kosovo is and has always been highest in the regions that made up the former Socialist Republic of Yugoslavia. The average number of people that applied for single positions was 79 job seekers for each vacancy. According to Moalla-Fetini, Hatanpaa, Koliadina, and Hussein (2005), unemployment was not a new situation in the country because it was swamped with the problem of unemployment even in the 1960s and 70s. The situation was so in the past due to poorer labor skills, strong demographic pressures, and the regional policies of the time which made it uneconomical for people in Kosovo to seek work elsewhere. Political problems such as

discrimination that was practiced in the 1990s against Kosovar Albanian workers led to their layoff, hence increasing the rates of unemployment at the time. Their discrimination extended to acquisition of education, hence, the workers' conditions in terms of qualifications worsened (Moalla-Fetini, Hatanpaa, Koliadina, & Hussein, 2005).

Approximately 60% of the population in Kosovo lives in the rural areas hence practices agriculture on the 588,000 ha of the cultivatable land in the country. This has made agriculture one of the most significant sources of income to the country's population. Due to the seasonal nature of agricultural practices and the fact that most of the farmers only produce what is enough for subsistence, reliance on agricultural as a form of employment risks the welfare of the citizens. This is because agriculture is by nature a seasonal employer; hence, people remain unemployed when not working on the farms. This is in addition to the fact that the 40% of the people that live in the part of the country's land that is not suitable for agriculture also need employment (Warrander & Verena, 2010).

Kosovo is a small mountainous European State located in the Balkan Peninsula. Having attained independence from Serbia in February 2008, one can refer it as a young nation. It is a landlocked country with Serbia, Macedonia, Albania, and Montenegro as neighbors. The population of Kosovo stands at approximately 2.2 million who consist of immigrants from her neighbors including Albanians, Serbians,

Bosnians, Turkish, Montenegrins, and Roma. Although the rate of unemployment has been seen to decrease to 35.1% in 2012 from 45.4 in 2007, it can still be said that Kosovo has one of the highest unemployment rates in Europe. Looking at the distribution of the employed population, one cannot fail to notice the disparity between the working men compared to the women. The level of participation lies at 10.3% for women compared to that of men who rank at 32.4% (International Business & Diplomatic Exchange, 2011).

The young population forms an important aspect of a countries' economy, and in Kosovo, more that 70% of the population is made up of people below the age of 35 years. This has made the country be regarded in many circles as the young Europeans. In Kosovo, youth unemployment is very high. According to Warrander and Verena (2010), of the population aged between 15 and 24, only 27% are employed. This means that unemployment for youths stands at 73%. By any standard, this is very high and is hurting to any economy as the youth are the most energetic people and should channel their energy towards nation building. This, however, is not the case in Kosovo since most of the youths do not gain employment due to the market conditions where the demand for labor is far less than the labor supply in the country.

Liberalization of the markets in Kosovo, especially in terms of labor, has made the country one of the best places to hire employees in the world. This is because of the fact that apart from the country having a

large supply of young workforce which has a significant degree of training, the flexibility of the labor industry in the country has led to the simplification of the hiring process. Apart from most of the citizens of Kosovo being multilingual and talking a variety of languages which most are of the neighboring countries, the young population is attending formal trainings more than ever before. According to the International Business & Diplomatic Exchange (2011), approximately 29,000 and 19,000 students were in State and private universities respectively at the beginning of 2011. This shows that although the number is small considering the fact that more than 70% of the country's citizens are below 35 years, the continued influx of the trained potential employees in the market has made the country a goldmine in terms of labor.

If there is any hope of redeeming the economy of Kosovo, then this question of what causes the situation is what ought to be answered. Relevant remedies would then be sought to improve wage rates for the employees and structural changes put in place in order to ensure that such changes in wage rates are sustainable. Investments would then be seen to increase, resulting to improvement of the economic performance and the general living standards of the citizens. Underemployment would therefore, be corrected due to the additional jobs created as a result. The gap between the poor and the rich would then be bridged and bring equality to the distribution of incomes in the country (International Business & Diplomatic Exchange, 2011).

Kosovo is one of the European states that have the highest rates of immigration. According to International Business & Diplomatic Exchange, (2011), one in every four households has at least one member living outside the country. In most cases the most productive member of the family is one who opts to move outside the country. This leaves behind the people who do not have much potential in terms of job acquisition and whenever they get one, chances are that the job will be low paying. With this prevailing throughout the country, the general cost of labor in Kosovo will be low. In 2008, the percentage of the working population which became immigrants stood at 0.6% and in 2007, about 11000 of Kosovo's population left to the Diaspora. The majority of the people who leave the country come from the rural areas with them forming 73% of the immigrants. They are first seen to migrate from their places of origin and settle in the areas of Prishtina and Prizren from where they migrate outside the country. This has been seen as the worldwide interim stage towards immigration whenever citizens first move to a location within their country then outside (International Business & Diplomatic Exchange, 2011).

Kosovo has also seen influx of population to the country. They consist of the refugees who had left the country during the time of crisis. They have been seen to return majority coming from Germany (47%), 18% from Switzerland and 8% from Sweden of the 39000 returnees in 2003. This is according to the International Business & Diplomatic Exchange, (2011). The effect of this is competition for the available jobs. Whenever demand

surpasses supply, the price of labor becomes low as has been the case in Kosovo.

Child labor is another cause of cheap labor force in the Republic of Kosovo. It is estimated that a high percentage of children aged between seven and fifteen are working on Kosovo firms especially in farms and construction sites. The textile industry is another sector of the Kosovo economy which has witnessed prevalence of child labor. This is brought about by the high illiteracy level of the parents who see no reason to take their children to school. The lack of education eventually leads to high poverty levels. The consequence of this will be parents sending their children to work sites to supplement the family income. The fact that each person in a household earns less than should be the norm leads to a situation where the households cannot sustain themselves. This leads to all people capable of working being encouraged to work out of necessity, hence the structural paradigms that support child labor in the country. In most cases, the cases of child labor are concealed in the agricultural practices (International Business & Diplomatic Exchange, 2011).

The government has the responsibility of protecting its citizens as well as defending their human rights. Among the various tasks of human rights protection performs in the society, protection of children forms a significant part. They should be protected from unfair treatment by the adults who should be their guardians. The situation in Kosovo can be blamed on the failure of the government to protect the children and abolishing child labor. With the problems the country

has experienced in the past in terms of civil war, the practice of child labor puts the country in a bad light in the international community, hence affects international relations (Moalla-Fetini, Hatanpaa, Koliadina, & Hussein, 2005).

The employers prefer child labor because children do not demand much in terms of remuneration. They will as a result be reluctant to pay higher wages to the grownups for the same job. Due to this, the adults will have to contend with the meager salaries with little difference from what the children are paid if there is any at all. With this spreading throughout the country, the overall wage rate will be low, save for a few industries which require specialized skills.

Kosovo imports labor to fill in the specialized positions that cannot be handled by the workforce in the country due to insufficient training and experience. Specialization is hard in a country where people are ready and willing to do any available work. This happens in instances where there is demand for skilled labor which is not available in the country. In so doing, the natives will be left jobless due to the fact that they do not have the necessary skills required by the employers. The result of this is a higher demand of jobs created by the native population. The effect of this is cheap labor due to the unavailability of jobs in the market. Necessary steps should be taken to enhance the competence of the Kosovo citizens in their own job market. This will reduce the importation of labor, hence reduction the

expatriate community (Moalla-Fetini, Hatanpaa, Koliadina, & Hussein, 2005).

With the low level of education, the Kosovo population consists of people with no specialized skills in any field. Children in Kosovo get around 2.5 hours of lesson per day. This coupled with the fact that the vocational training facilities in Kosovo has the ability to train about 3000 people in a year, it can be said that the level of education is low in the country. The end result will be people looking for any job available. The business people are known to be opportunistic individuals and will take advantage of any window to reduce the cost of doing business. They will result to offering the unschooled people very low wages in exchange of their hard labor. This is the case in Kosovo and any other part of the world where the work force is uneducated (International Business & Diplomatic Exchange, 2011).

With the available workers not having the necessary skills and knowhow, it is expected that they will produce substandard products or perform poorly in their work place. The employers will as a result be reluctant to pay high salaries to the workers. It can also be possible that they will not even be able to pay such because the particular products will not fetch much in the market for them to break even. It can then be concluded that low education levels lead to low wages, hence cheap labor force.

## **The Disadvantages of Cheap Labor**

The worrying fact is that even the employed persons hardly earn enough to support themselves comfortably. This is because of the low wages offered to the working population and the high inflation rate of the economy which places prices of the household commodities at a very high level. It is sad to note that most workers are not able to afford to buy the commodities which they are employed to make which mostly consists of basic products. This generally leads to the low standards of living and, hence, eventual poverty (Moalla-Fetini, Hatanpaa, Koliadina, & Hussein, 2005).

The minimum wage rate has been set at 170 Euros. This has been one of the moves to combat the problem of cheap labor although it has had little if there has been any effect. The wages are low for an average worker in Kosovo rendering savings and investments impossible for the employee who can hardly afford to sustain his livelihood. The employees in Kosovo are, therefore, forced to work for the same exploitative employers due to lack of alternatives. The capitalists can then be said to be exploiting the labor force with regard to the inadequate compensation offered to the proletariats. The liberalization of the markets means that there are little if any safeguards protecting the employees. This is because of the fact that with liberalization, the labor industry is regulated by the market forces of demand and supply. This means that since the supply is more than the demand, the prices of labor are low and will continue being low until the

supply-demand ratio changes or the government comes up with ways of regulating the labor industry in such a way that the employees can benefit (International Business & Diplomatic Exchange, 2011).

When the workers are not adequately compensated for their services, the economy suffers numerous setbacks. The most important ones are that technological stagnation cannot be achieved and yearned for either consciously or unconsciously. Technology is embraced whenever it lowers the overall cost of production, especially in terms of labor cost in which case entrepreneurs would replace labor with machinery. With the emergence and continued proliferation of technology, organizations have sought to ensure that they are more efficient and effective by adopting technology. In countries where the cost of labor is low, the entrepreneurs will not see the need to seek technological improvement. In the case of Kosovo, labor has become so cheap that it would not be sensible to adopt technology in production. This has led to low industrialization and overall technological stagnation of the country as technical machinery loses more market as preference for human workers is widespread (Moalla-Fetini, Hatanpaa, Koliadina, & Hussein, 2005).

Lack of motivation and innovation is the expected outcome among the workers that are paid meager salaries. Education is what enables one to create new ideas on how to improve the way things are done. The improvement leads to efficiency and overall performance and, hence, high quality products. As

witnessed in Kosovo, much has not been done in terms of invention and innovation among the workers since the issue of job security is not assured. Employees know that they can easily be replaced, hence seek to only perform their share of responsibilities. The activities of the employees lack the need to excel and make the company successful that is mostly seen in the companies that treat employees as assets (International Business & Diplomatic Exchange, 2011).

Motivation is a very important contributor to the performance of the employees of any organization. Monetary remuneration is one way of motivating the workers. Where the cost of labor is cheap, it means that the employees are not adequately compensated for their effort. Loss of morale will be witnessed in such organizations because the employees will feel that they are not getting their sweat's worth. In retaliation, the level of performance will be seen to drop as is the case in Kosovo. The overall impact is production of low quality product and substandard services delivered. This will adversely affect the economy as its products will not be worth much in the international market.

The cheap labor force has seen the growth rate of the economy being very slow. This is caused by the unproductiveness of the industries. Division of work and specialization leads to high performance in the workplace. When this is practiced throughout the country, overall productivity will be increased. This, however, cannot happen where the employees do not possess the necessary skills. Looking at Kosovo, the

population does not have adequate education to warrant skilled labor. In this case, specialization will not be a practical endeavor, hence low performance in the industries. This will slow economic growth, and it can only be blamed on cheap labor (International Business & Diplomatic Exchange, 2011).

Cheap labor force has the impact of increasing the population of a country. This will be brought about by lack of adequate education which will lead to ignorance. The citizens of such a country will, hence, be guided by the traditional beliefs that children equals to wealth. This will have adverse effects such as lack of enough food, poor housing, and decline in health services among many other social evils such as crime and prostitution. Population growth also has an impact of slowing the economy in terms of growth and development. This is because population increase has the impact of increasing unemployment and poverty (Moalla-Fetini, Hatanpaa, Koliadina, & Hussein, 2005).

Brain drain will be witnessed in the countries where the wage rates are low. The few professionals who will have attained some level of education will feel the need to go and search for greener pastures abroad instead of serving their mother countries. This has an adverse effect because to educate such people, their countries incurred some expense. It will, hence, be seen as a waste of resources to educate such people. This is an impact of cheap labor (Belleqa, Harizi, & Demaj, 2010).

Underemployment is one of the most significant impacts of cheap labor. This is caused by the fact that the people will not see the need to be employed due to the little gains realized therein. They will, hence, prefer to stay home rather than go waste their effort working for someone for income which will hardly pay their bills. It is not profitable to stay home since the same people will need a source of livelihood which in this case is not forthcoming. Frustration and poverty will follow which will lead to social evils such as crime and prostitution (International Business & Diplomatic Exchange, 2011).

The exports of Kosovo include metals, minerals and food products. The minerals include lead, nickel, chromium and bauxite among others. The exports have averaged to 14552.35 thousand Euros between 2003 and 2013 (International Business & Diplomatic Exchange, 2011). This forms a small volume when compared to the imports that the country makes in a year. The trend has lead to adverse effects such as dumping by the countries from which it imports. This is because the substandard or excess products from the countries abroad will be sold at a cheaper price which will attract the buyer with little choice like Kosovo. Black markets may, as a result of dumping, lead to loss of revenue by the government. The adverse effects of importation would not have been witnessed and steps to be taken to increase the wages for workers. Investments would have been witnessed leading to exports and, hence, a favorable balance of payment (International Business & Diplomatic Exchange, 2011).

The Kosovo economy is a young economy which is hardly stable and is struggling to stand on its own. It depends mostly on foreign aid to finance the major government projects. Just recently, the country joined the World Bank and the International Monetary Fund at least to help pay the huge debt it owed Yugoslavia. It is threatened by unemployment and underemployment which affects the countries GDP. Immigration is another factor which has to be taken care of to redeem the Kosovo economy. To achieve this, it would be necessary to put up legislations to prevent such. Child labor can be taken care of also by improving the education system and creating laws to curb the vice. The trade unions in Kosovo should emulate the example of the metalwork's federation and energy sector trade and establish strategic plans to ensure their functionality. The government should also step in and put in place structures and legislations to ensure that the employers have adhered to the set minimum wage for all the employees. Such measures will be aimed towards improvement of the wages for the employees (International Business & Diplomatic Exchange, 2011).

Looking at the bad consequences that a country suffers as a result of cheap labor, it is evident that low wages bring nothing else apart from economic stagnation. Kosovo should consider observing the recommendations outlined above in order to arrest the situation. The government should step in and put up regulations to curb the immigration problem by enacting legislations against it. Child labor can be reduced by improving the education system and enacting laws

protecting the children against exploitation by the older population. Investments should be encouraged to reduce importation and increase exports. This will improve Kosovo's diplomatic standing and improve the balance of payments. Improved wages will earn the government revenue; hence reduce the need for foreign aid (International Business & Diplomatic Exchange, 2011).

Although the cheap labor in the country has many disadvantages, some of its advantages include attracting foreign investments into the country. Lack of collective bargaining powers of the workers will cause the wage rate to remain low. In Kosovo, the trade unions are not active to a level that they can have much influence on the employers. The lobby groups and trade unions have the responsibility of engaging the employers and the government with an aim of increasing the wages for the employees. This has been caused by the privatization of the once government firms decreasing the trade union membership. In instances where this is not practiced, the workers will not have any powers or any ability to influence their remuneration. This has been one of the factors that have led to the recognition of Kosovo as a potential investment destination by international investors. This is because of the fact that such organizations are assured of having labor force for their operations at prices lower than the average international remuneration standards (International Business & Diplomatic Exchange, 2011). The fact that the country has sufficient manpower has led to the increased capability to increase development since the labor to drive development is available. Just like China

which has benefited from the abundant labor force, Kosovo has utilized its population to drive developments (Belleqa, Harizi, & Demaj, 2010).

## **Conclusion**

Cheap labor in Kosovo has been an existing situation in the country since the 1960s, and the factors that have perpetuated the situation have varied from time to time but range from demographic factors such as the composition of the population to political factors like discrimination against the Albanians. While the situation has caused many disadvantages for the company, many of which are economical and social, the presence of ready-to-work labor force has helped the country attract foreign investments and has provided labor for the development of the country.

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**Double Taxation and Personal Income Tax, the case  
of Republic of Macedonia**

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**Abstract**

Double taxation is a problem faced by almost every modern tax system . The methods , procedures and mechanisms that can be solved this problem in a big case will determine the extent and degree of legality and free transfer of earned income . The subject of this paper is not only an elaboration of the problem of double taxation of the example of the Republic of Macedonia but also suggested measures that would successfully overcome it

specifically in personal income tax.

Keywords : double taxation , personal income tax , tax system , the Republic of Macedonia

### **Definition**

What is double taxation ? Suppose that a person is a citizen of the Republic of Macedonia is working in Greece. The same person has income from work in Greece. Of the earned income person is required to pay personal income tax . Now the question is , which tax authorities this person will pay personal income tax ? Whether it will pay the country of his nationality or to pay the tax authorities in the country in which he has earned income ?

A key factor in determining the tax authority that the person is obliged to pay the tax is certainly national legislation . If Macedonia in its tax legislation applies the principle source of income ( territoriality ) , then the person will pay tax in Greece. If it Macedonia in its legislation in the calculation of taxes starts from the principle of citizenship then that person is required to pay the tax in Macedonia .

This means that if two countries apply the aforementioned principles in calculating personal income tax then the person must pay tax on their income

they earned in Greece and the Greek tax authorities and tax authorities in Macedonia . So the same person for the same income he earned , paid personal income tax , the same month or year , and the tax authorities in Greece and in Macedonia . This is double taxation .

### **Terms of double taxation**

So we can talk about double taxation is need to be cumulatively met several conditions , including:

- It is about the same taxpayer ( in our case it is the same person . However , if it is a different person then there is no double taxation ) ;
- It is about the same tax subject or object ( in our case it was about the same income that was earned in Greece. )
- If it were a tax equivalent ( in our case a question of personal income tax to be paid both tax authorities . Practice in can occur name carry two taxes are different in different countries , but it case is not about different taxes , but different names or different methodology of calculating . To avoid this problem usually determining the equivalence of tax most easily done with the help of the tax object identification ) . ;
- Yes it is the same time period for which the tax is calculated ( in our case it came in the same month or year . If the person pays the same tax on both countries but for a different time period i.e month or year then it is

double taxation . )

- Yes it is a payment of two independent tax authorities ( in our case it had to pay tax and the tax authorities in Greece and the tax administration in Macedonia ) .

### **Forms of double taxation**

Double taxation can occur in three basic shapes:

1. *Internal double taxation* . This kind of double taxation existing in cases where there despite the state at the same time for the same tax object , the same taxpayer pays the same type of tax and any other government ( local government). So the internal double taxation is a matter of taxation within a state ;

2. *Double taxation within the boundaries of a federal state* . It is a tax on the same taxpayer , the tax base , the same income and the same time period but the tax is payable on the republican and federal authorities ;

3. *International double taxation* . Earlier elaborated example shows exactly the essence of international double taxation . This form of double taxation due to the application of the fiscal sovereignty of each country and finding that each country sovereign and independent governing principles , methodology and types of taxes within its tax system .

## **What is not included in double taxation?**

In theory and practice, there are cases in which much resemble the double taxation but by its essence is not included in the forms of double taxation. Such occurrences are:

- Abovetaxation
- Accumulating of taxes
- Economic double taxation

In practice there may be a situation in which a taxpayer is obliged to pay the same tax for the same period and central and local government , ie the two tax authorities of different rank . For example , this may be a case where a taxpayer is obliged to pay personal income tax, the same as 2010 , at the same time in local and central government . In this case it refers to abovetaxation. So as you can see from the previously stated example itself does not have those same harmful effects that have double taxation , on the contrary , this way can be justified if local and central government tend to collect more money from their bonds funding for their needs .

However , quite often in daily life use the term double taxation in cases where the same person (

taxpayer ) for the same time period , the same tax source pays more types of taxes . This is not double taxation , but rather the so-called accumulation of taxes . The taxpayer in most cases as a tax source uses its income could pay the same source of personal income tax, estate tax, gift and inheritance , VAT , customs duties , excise taxes , etc. at the same time . Thus is not comes to double taxation because the taxpayer is not aboutthe some taxes but it comes to tax so-called cumulated income tax burden .

The third concept that is similar to the notion of double taxation is economic double taxation . Economic double taxation occurs when two people taxpayers pay two different taxes for the same period , the same tax authority belonging to different states or different federal entities subject to the same tax . For example , where a company at the end of the business year profit for the same is required to pay income tax . Since so taxed profit company later paid their assets to its shareholders as dividends for which they need to pay personal income tax . So in this case the same income tax is paid twice and it showed when a company gains and pay tax on the gain and the second time when shareholders receive dividends and pay personal income tax . In this case there is the so-called economic double taxation .

## **Consequences of the problem of double taxation in Macedonia**

Pursuant to the Personal Income Tax in the Republic of Macedonia, taxpayer registration and possibly payment of personal income tax is any person who has his domicile or resident in the Republic of Macedonia for at least 183 days, day by day or cumulative during the year. Under the same law, the taxpayer is only obliged to report the income they earned in Macedonia, but also has an obligation to report revenues and eventually earned abroad.

Depending on the domestic tax legislation ( including international agreements in this area ) are calculated or liability to pay personal income tax . The problem arises in relation to the fact that local people generate income from abroad have no interest to declare such income because of them already pay taxes in the state in which they exercised , and for inaccuracy or omission of the state system , now in rule should again pay tax in their own country . Thus , on the one hand practiced tax evasion for failure to report income from abroad earned incomes and ground state after losing millions on behalf of outstanding income tax , and on the other , the state does not control the volume of funds that

temporary workers earned abroad and entered Macedonia .

This in itself is a big handicap and thus affect the inaccurate statistics regarding the total inflow of foreign funds in the current year . It is not a small number of seasonal workers who usually offer their services to market our southern neighbor , Greece . The tens of thousands of workers each year are included in the labor market in Greece, whether it comes to their tourist industry , agricultural , manufacturing or other service activity (most of these workers are students , but not a small percentage of other seasonal workers ) . All these people assume that remain in Greece seasonal 3-6 months (according to existing visa regime , our citizens can stay the maximum 6 months within a year ) , realize some revenues that pay personal income tax in Greece , but because that we haven't the bilateral agreement on the avoidance of double taxation and prevention of fiscal evasion , they did not report their revenues . Thus also entered money , failing to invest ( if they make PRO origin will ask for money to exist legality of the investment money ) , and thus keeping the money under the pillow , the state lost huge sums of fresh money if they did not exist the problem of double taxation to complete the accounts of our banks , the opening of a small or medium sized companies , the purchase of

shares in the capital market or in a word to represent direct active factor in improving the overall economy.

The problem does not end just here , knowing the fact that many of our citizens working in other Asian and African countries such as Afghanistan , Iraq , Saudi Arabia and so on and in the absence of accurate and reliable statistics regarding the total number and total assets there earned by performing temporary work can only assume that it was a million dollars , which did not enter legally right way to Macedonia due to the above described problem . If we compare the amount of foreign Inward Direct Investment in our country pass years moving in an average of 200 to barely 300 million, then , the importance of these resources and their millions of legal entry into multidimensional Macedonia would have a positive meaning . All this money for them for the people who earned that income should be taxed in the country and would transferring through their foreign accounts of domestic accounts , legally , through bank transactions , and thus would have the same legality tomorrow to make money or a bank deposit in the name , or open your own business and employ several people and develop their own business , or buy shares on the stock exchange , or in any other way may input fresh remittances in the development of the overall domestic economy .

## **Proposed measures to avoid double taxation in Macedonia**

To overcome this situation , Macedonia should take several actions .

One measure is to start preparing and signing bilateral agreements on avoidance of double taxation with respect to taxes on income ( including capital taxes ) and avoid fiscal evasion . Namely , in this context, the Republic of Macedonia has concluded over 50 bilateral agreements and treaties among which all the EU countries , Russia , Ukraine , Belarus , Norway , Egypt , Iran , Italy , China , Latvia , Moldova , Serbia, Croatia , Turkey , Switzerland , etc. . The intention of our country should be if it is to eliminate the negative consequences of the problem of double taxation , access to the rapid conclusion of such bilateral agreement with the largest possible number of countries in the world , especially in those countries where there are significant number of our citizens who earn income .

In conditions when caused by inability for political or other reasons, as is the case with Greece , when bilateral agreements are excluded as an option , the state has available and other opportunities and ways to eliminate this problem as a system of repatriation and

compensation . The system of repatriation and compensation as one of the measures to overcome the problem of double taxation means, for example , of the total income tax paid in one country , rejecting already paid tax on that income in the other country . And this way is a real practical application in overcoming the problem of double taxation that occurs in relations between the two countries . This means that those countries that have political or other problems as removing this issue on a bilateral basis , have in themselves legal solutions to provide opportunity to people if the revenues from abroad they pay once personal income in our country you can register and enter legally as revenues without repeated taxes.

The third way to overcome the problem of double taxation is carrying a system of measures and regulations incorporated into their own legislation which restricts the state's own law regarding the taxation of foreign relations. In this context it can be applied the following methods:

- Method of exemption;
- Method of credit;
- Method of reduced rates.

Exemption method consists in exclusion from the tax base in the country of residence of the part of the

income or property which is made in the territory of another country , which is called the country of source , in which they tax buildings are taxed . So the country of residence in which taxation is carried out according to the principle of global income , which includes unlimited use of the tax liability for its residents , absolve or exempt from tax subject to taxation , so that tax facility with appropriate taxable income only country where the income is generated or where the property is located .

The method of loan that is also called the method of calculation consider this : in the first phase of the residence country that taxation is performed according to the principle of global income or which imposes obligations too unlimited tax bonds for their income they make at home and abroad , the tax is calculated on world income or property worldwide . In the second stage , the taxpayer is given a tax credit or be allowed a reduction of the calculated tax amount of tax paid to another state or country of source . Thus complying with the principle of taxation according to world income but avoids double taxation . This means that if the person had income abroad and who are obliged to be taxed in Macedonia , if the foreign country has already paid a certain amount of income but at a lower tax rate than in Macedonia , then to calculate the amount of tax in that percentage that could simply supplement the amount of tax to the rate determined in Macedonia .

The method of reduced rates consists in applying the dual rates: regulated tax rates applicable to income or assets, generated in the country, the income or assets on the principle of unlimited tax liability are taxed in the residence country of in the country of source applying tax rates that are lower than the regular, for example, 50 % (instead of 20 % applied at 10% ). Are double taxation shall be eliminated or mitigated depends on the amount of the tax rates in the country of source. If the country of source rates are the same as in the residence country then double taxation will only be mitigated. But if the applied rate abroad is worth 50 % of that in the residence state ( where it is 20 % ), then the application of a reduced rate of 50 % ( ie the rate of 10 % ) in the residence country practically eliminate double taxation.

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**International Contracts: Rules governing  
international transactions of sale of goods**

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This paper will study the rules applicable to international sales contracts and to international commercial arbitration.

**MAJOR CONVENTIONS**

**Vienna Convention on Contracts for the International  
Sale of Goods**

Several international organizations aim at creating uniform standards for international trade. Amongst them, the UNCITRAL (United Nations Commission on International Trade Law) is the most prominent, and has fulfilled a key role in developing uniform standards for trade. Specifically in the case of contracts for sale of goods, the most important convention on the subject is certainly the Vienna Convention on Contracts for the

International Sale of Goods (CISG), established under the auspices of UNCITRAL in 1980.

In its preamble, its universalizing purpose is clear: [The States parties to this Convention] BEING OF THE OPINION that the adoption of uniform rules which govern contracts for the international sale of goods and take into account the different social, economic and legal systems would contribute to the removal of legal barriers in international trade and promote the development of international trade (...) Currently ratified by 74 countries<sup>29</sup>, representatives of more than 90% of global trade in goods (GAMMA JR, 2009), the CISG is the most successful trade treaty in history. In fact, it has been classified by some authors as the Magna Carta of international trade (ZELLER, 1999), or as an "unexpected success story" in Professor Schlechtriem's<sup>30</sup> words.

Some of the topics covered by the CISG are: formation and execution of international contracts of sale of goods<sup>31</sup>; the seller's obligation to deliver the goods and

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<sup>29</sup> CISG's status can be found at UNCITRAL's website:  
<[http://www.uncitral.org/uncitral/en/uncitral\\_texts/sale\\_goods/1980CISG\\_status.html](http://www.uncitral.org/uncitral/en/uncitral_texts/sale_goods/1980CISG_status.html)>

<sup>30</sup> Peter Schlechtriem; *Requirements of Application and Sphere of Applicability of the CISG*; *Victoria University of Wellington Law Review* (2005/4) 781-794

<sup>31</sup> *Part II – Formation of the Contract*

the buyer's obligation to pay the price<sup>32</sup>, the rights of the parties in case of breach of contract<sup>33</sup>; exceptions from liability for breach, as the occurrence of force majeure<sup>34</sup>, among others<sup>35</sup>. The goal of the CISG rendering the regulation of such issues was to establish core standards on which there could be a reasonable consensus between countries of different legal backgrounds.

The position of each of the BRIC countries towards the CISG will be further analyzed. International Arbitration and Recognition of foreign arbitral awards International commercial arbitration is a tool of enormous relevance in international trade agreements. Arbitration has advantages in relation to national courts. It is not only a mechanism generally faster and more economical than the traditional procedures, but often a more convenient and specialized one. It can be carried out secretly, and allows the parties to choose the applicable law. There are two main international conventions on arbitration, both covered on the following topics:

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<sup>32</sup> *Part III, Chapters II and III – Obligations of the Seller and the Buyer (from articles 30 and 53, respectively)*

<sup>33</sup> *Part III, Chapter V, Section II – Damages (art. 74)*

<sup>34</sup> *Part III, Chapter V, Section IV – Exemption (art. 79)*

<sup>35</sup> *For instance, provisions on passing of risk and obligation over the quality of the goods sold.*

*It should be noted that the CISG applies only to the sale of tangible goods, excluding from its rule the sale of services, financial services or workforce.*

UNCITRAL Model Law on Arbitration Procedures  
Aiming at harmonizing the various national laws on the subject, a committee consisting of representatives from 58 countries and 18 international organizations, chaired by the UN Commission for International Trade Law, was formed to discuss a model law on arbitration procedures. The UN General Assembly, through Resolution n.40/72 of December 11, 1985, approved the final text of the Model Law on International Commercial Arbitration at the end of the 18th annual meeting of the committee.

The General Assembly recommended that:

All States give due consideration to the Model Law on International Commercial Arbitration in view of the desire for uniformity in arbitration laws and the specific needs of the practice of International Trade Law (UNCITRAL, 1985). The Convention received accession of countries that move two thirds of the global trade. Its text has solved several flaws from previous Conventions, as well as influenced the review of arbitration rules from the major arbitration chambers. It also influenced a great part of domestic laws on arbitration, especially those promulgated after its approval. The Model Law covers arbitration since its formation until the execution of the final decision, constituting a relatively complete code.

## New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards

This convention is of paramount importance, since it provides that arbitration shall be recognized as a valid and legal instrument for the settlement of conflicts, and establishes the enforcement of foreign arbitration awards by local courts of each contracting State. In short, the New York Convention allowed individuals to escape the relative insecurity of national courts, since the choice of jurisdiction and governing laws became virtually free. Therefore, its importance cannot be underestimated. According to the United Nations<sup>36</sup>:

The Convention is widely recognized as a founding instrument of international arbitration and requires courts of contracting States to give effect to an arbitration agreement and also to recognize and enforce awards made in other States, subject to specific limited exceptions. The Convention entered into force on 7 June 1959.

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<sup>36</sup> Available at:

[http://www.uncitral.org/uncitral/en/uncitral\\_texts/arbitration/NYConvention.html](http://www.uncitral.org/uncitral/en/uncitral_texts/arbitration/NYConvention.html) 13 Requirements of Application and Sphere of Applicability of the CISG; Victoria University of Wellington Law Review (2005/4), pg. 781-794, Peter Schlechtriem

## THE BRICS' LEGAL SYSTEM AND THE VIENNA CONVENTION ON THE INTERNATIONAL SALE OF GOODS

### BRIC's domestic laws on International Commercial Contracts

Despite the many advantages of CISG, only Russia and China among the BRICs have ratified it to date. And yet it is worth noting that both countries have made reservations, as will be discussed below.

Application of the CISG in China. China ratified the CISG in December, 1986. However, it has adopted a significant reservation to the text: it compromised to apply the CISG only if the other country involved in the transaction has also adopted the convention. Regarding this reservation, the renowned author Peter Schlechtriem weaves interesting comments:

The consequence of article 1(1) (b), which meant that parties in non-contracting states could be subject to the application of the CISG, (a law that their country had not ratified), met with serious objections in Vienna, and it was accepted only on account of a compromise allowing

a reservation, that is a ratifying state could declare that it would not be bound by article 1(1) (b)<sup>37</sup>.

In the immediate aftermath of the Chinese position, it is clear that instant application of the CISG to contracts between China and other BRIC countries is limited to agreements with companies in Russia. Put in another way, as noted by CHEN Weizuo in an article entitled "The conflict of laws in the context of the CISG: A Chinese perspective",<sup>38</sup>:

In accordance with Article 95 of the CISG, the People's Republic of China declared, at the time of the deposit of its instrument of ratification with the UN Secretary-General on 11 December 1986, that it did not consider itself bound by Subparagraph (1) (b) of Article 1 of the CISG. As a result, situations where the CISG is directly applied by Chinese judges are relatively limited but certain; the CISG applies practically to contracts of sale of goods only if the parties have their places of business in different Contracting States. In consequence, in contracts between Brazil and China and between India and China that are brought upon Chinese courts there is a strong possibility that the applicable law will be deemed

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<sup>37</sup> *This Convention applies to contracts of sale of goods between parties whose places of business are in different States (a) when the States are Contracting States*

<sup>38</sup> Available at:

<http://www.mondaq.com/article.asp?articleid=59722>.

to be the Chinese internal legislation, especially the "Law on Contracts of the People's Republic of China of 1999" and the "General Principles of Civil Law of People's Republic of China". If this is not the wish of the parties, they must study the conflict of law rules applicable to the case and adopt preventive measures. Regarding the application of Chinese law, it is interesting to note that Chinese law allows parties to choose the rules applicable to international contracts. Such possibility is always interesting since it allows the parties to choose a neutral legal system or, in some cases, the one most favorable to the transaction at hand.

However, we must understand that, in a contract between a Brazilian trader and a Chinese exporter, the parties cannot choose the application of the CISG, because the Chinese law explicitly says that CISG would not apply. Nevertheless, it would be possible choose it indirectly, by stating the applicable law as being the Russian Law, for example. Finally, the application of the CISG would still be possible in a Sino-Indian or Sino-Brazilian contract if the parties adopted arbitration, as will be discussed in a specific topic. Application of the CISG in Russia In accordance with the provisions of Article 1, paragraph (a) of CISG, international contracts for the sale of goods between Russian and Chinese parties will be governed by the CISG. Regarding the other two countries, Russia took no reservations to paragraph (b)

of article 1 (1). Thus, contracts between Brazil and Russia and between India and Russia may be governed by the CISG, provided that, after examining the case, the conflict of law rules indicate the Russian legislation as dominant in that particular case. This possibility adds to the fact that Russia accepts that the parties choose the applicable law, which allows the legal planning of agreements entered into with companies in the country.

In the words of the authorized doctrine<sup>39</sup>:

According to the Russian conflict of law rules the parties to a contract, when one party is a foreign entity, may choose the law applicable to their rights and duties under that contract including sale agreements provided that such a choice does not affect the operation of mandatory rules of the country with which the contract is actually related. In the absence of an agreement between the parties on the applicable law, the law of the country with which the contract is most closely connected shall apply to the contract. Generally, the law of the country with which the contract is most closely related shall be considered the law of the country in which the party performing execution of crucial importance for the contract has its place of residence or main place of

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<sup>39</sup> Available at:

[http://www.friendspartners.org/partners/fplegal/jrlaw/Russian\\_FID\\_IC.htm](http://www.friendspartners.org/partners/fplegal/jrlaw/Russian_FID_IC.htm)

activity (the seller in the sale and purchase transaction, the lender in a loan agreement, financial agent in a contract of financing against assignment of a monetary claim etc.)

The same can be envisioned for the comment below<sup>40</sup>: Under Clause 166 of Fundamentals, the parties to the construction contract are free to choose the governing law for their contract.

However, absent the express agreement of the parties, the governing law will be that of the country where the works are being constructed (the project country). This corresponds to the customary practice of selecting the law of the project country as the governing law of contract. In short: in contracts between Russian and Brazilian and Indian and Russian parties, the CISG can be elected as the applicable law, provided that the conflict of law rules does not demand it to be applied and that the parties do not wish to allow Brazilian or Indian Law to rule the case.

### Application of the CISG in India and Brazil

Neither of these countries adopted the CISG. However, the Indian law allows the parties to choose the applicable law for the agreement. Therefore, when entering into a

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<sup>40</sup> *Patel Roadways v. Prasad Trading Company*, AIR 1992 SC 1514)

contract that is expected to be enforced before Indian Courts, the parties may specify the law of a CISG adopter.

The strategy, however, faces some limitations, clearly summarized in the following excerpt:

In the circumstances, parties entering into contracts with Indian companies enforceable under a foreign law must note that if an action is brought under such contract in an Indian court, foreign law will have to be pleaded like an ordinary fact and proved by experts. Further, parties cannot, by agreement, confer jurisdiction on a court which does not have any jurisdiction over the subject matter<sup>41</sup>. Moreover, in order to select one out of two courts by an agreement, both the courts must have jurisdiction, and the agreement should be clear and unambiguous as regards the forum selection clause<sup>42</sup>.

In Brazil, on the other hand, the parties are not allowed to choose the applicable law. Under Brazilian conflict of laws rules (Decree-Law No. 4657 from 1942, entitled "Civil Code Introduction Law"), contracts between

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<sup>41</sup> Available at:

[http://www.majmudarindia.com/pdf/Validity%20of%20choice%20of%20law%20and%20forum%20selection%20claus es.pdf](http://www.majmudarindia.com/pdf/Validity%20of%20choice%20of%20law%20and%20forum%20selection%20claus%20es.pdf)18 CISG art. 4(a)

<sup>42</sup> Available at:

<http://www.cisg.law.pace.edu/cisg/countries/cntries.html>

absente parties – understood as those that are not face to face at the moment of signature -are always governed by the proponent's domicile law. (The proponent, in this case, being the one who sent the last draft accepted without alterations of any kind) Therefore, entrepreneurs making business in the BRIC countries should pay attention to the following situations:

In contracts with Brazil, where the final proposal is sent by a party located in Brazil, the law applicable should be the law of the subject to be judged by Brazilian courts shall be the Brazilian law. In this case, the CISG can never be applicable. On the other hand, whenever the final version of the proposal is sent by Indian, Russian or Chinese parties, the law of the respective country will be applied by the Brazilian courts. That is to say, in contracts governed by Brazilian law, any clause specifying the applicable law is void. Although, if the same contract is governed by the law of other BRIC countries, it will be deemed valid and may be enforced before Brazilian courts.

## RECOGNITION OF UNWRITTEN AGREEMENTS IN CHINA AND RUSSIA

The CISG does not address the issues concerning the "validity of contract or any of its provisions or of any

usage”<sup>43</sup>. Even so, the convention has, in its articles 14 to 28, several provisions concerning the formation of international trade contracts, which include the use of verbal and written offers, the conceptual definition of offer and its binding power.

In this sense, the Convention adopts a liberal stance, by not limiting the expressions of willingness to a written form, as provided by Article 11: "A contract of sale need not be concluded in or evidenced by writing and is not subject to any other requirement as to form. It may be proved by any means, including witnesses".

However, this provision is virtually ineffective in the scope of application of the CISG in the BRICs, since both Russia and China adopted the reservation of Article 96 of the Convention, which bans recognition of any expression of intent designed to celebrate, modify or accept a contract of sale which is not expressed in writing<sup>44</sup>. Therefore the negotiations between these two countries must be rigorously documented in writing.

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<sup>43</sup> Section 3, Indian contract Act, 1872 -Communication, acceptance and revocation of proposals

*The general principle is that all private commercial disputes may be submitted to arbitration.*

<sup>44</sup> A translated version of the 1994 Arbitration Law of the People's Republic of China can be found at:

<<http://adlerweb.blogspot.com/2007/10/lei-chinesa-de-arbitragem.html>>

## **RECOGNITION OF UNWRITTEN AGREEMENTS IN BRAZIL AND INDIA**

Under Brazilian Law, the Civil Code provides for the binding power of commercial proposals, regardless of the means used to convey it.

Article 427 of the Brazilian Civil Code stipulates that "The offer binds the offeror, if the contrary does not result from the terms of the proposal, the nature of the business, or the circumstances of the case". Moreover, according to Article 429, "The public offer (note: an offer to the public) is deemed as equivalent to a proposal whenever it presents the essential requirements necessary to establish a contract, unless the opposite results from the circumstances or usages". As one can perceive, the law sets a protective tone towards the prospective buyer in Brazilian law. In theory, there is no requirement of written form to the formation of purchase and sale of goods in Brazil, so the manifestation of will can occur by any means. Even so, in order for a promise or offer to gain binding force, it should contain the essential elements of the contract of sale: a lawful and possible object, a determined or determinable value and a determined or determinable recipient.

Consequently, a promise of sale made in electronic formats, such as email, can bind the parties.

However, Brazilian law does not provide specific rules to this sort of trade and, unlike China, has not ratified any of UNCITRAL's conventions on electronic commerce such as the 1996 Model Law on Electronic Commerce and the 2001 Model Law on Electronic Signatures. However, a number of practical problems may arise if an international agreement or a promise of international sale has no written form, especially with respect to its effects upon third party or regarding the production of evidences before a national court. Article 227 of the Brazilian Civil Code, for instance, limits the possibility of using solely witness deposition to make proof of contracts or deals with a value superior to ten times the minimum wage effective in the country.

In 2010, that was roughly equivalent to USD 2,830.00. India also has a very wide approach to the evidence applicable to contracts. According to Indian contract Act of 1872: The communication of proposals the acceptance of proposals, and the revocation of proposals and acceptances, respectively, are deemed to be made by any act or omission of the party proposing, accepting or revoking by which he intends to communicate such proposal acceptance or revocation, or which., has the effect of communicating it.

In general, this article has been interpreted by Indian courts in a liberal fashion. It could be said that India tends to accept as many evidentiary sources of transactions as possible.

## THE BRICS' LEGAL SYSTEMS AND INTERNATIONAL COMMERCIAL ARBITRATION

At a first glance, one realizes that all BRIC countries recognize the validity of the contractual arbitration clause, and even possibility of execution of foreign arbitral awards. To further explore the topic, some punctual considerations are due:

### Arbitration in China

Arbitration in China is regulated by the 1994 Arbitration Law of the People's Republic of China<sup>21</sup>. This law is clearly inspired by the UNCITRAL Model Law. Themes prohibited by the Act are listed in its article 3. Article 3

The following disputes shall not be subject to arbitration:

Disputes over marriage, adoption, custody, maintenance and child inheritance and; Administrative dispute encompassed within the jurisdiction of the governing body relevant in accordance with the Law. Under Article 5 of the Arbitration Law and Article 257 of the Law of Civil Procedure, resorting to domestic courts in cases

subject to arbitration is strictly prohibited Article 5 A people's court shall not accept an action initiated by either party if the parties have concluded an arbitration agreement, unless the arbitration agreement is invalid.

Chinese law does not request all arbitrations to be conducted in domestic grounds and allows foreign arbitral awards to be promptly enforced (without prior approval/validation by a court). Exceptionally, the judge might deny enforcement of an award if it considers that the decision violates peremptory domestic rules. China discourages the refusal of enforcement of foreign arbitral awards based on public policy, though. Chinese courts adhere to a mechanism whereby, prior to refusing enforcement of a foreign arbitration award, they must obtain authorization from a superior court. After this system has been adopted, in 1995<sup>22</sup>, very few foreign awards had their enforcement denied on the basis of contradiction with public policy. Another notable point is that Chinese law, in order to encourage the use of arbitration institutions and improve the legal support received by the parties, prohibits ad hoc arbitrations. The parties should always take their dispute to a regularly constituted arbitral institution, rather than only appointing one or more arbitrators or taking care of the procedure themselves.

Article 6 An arbitration commission shall be selected by the Parties agreement.

Established by an interpretation by the Supreme People's Court of China, the highest organ of its judiciary. His interpretations are similar to precedents from Brazilian higher courts, and have the function of guiding judges in interpreting the law. The jurisdiction by level system and the system of the district court did not apply to arbitration. The CIETAC -China International Economic and Trade Arbitration Commission -is one of the best-known arbitration institutions.

### Arbitration in India

In India, the law governing the arbitration is the Arbitration and Conciliation Act of 1996, which replaced the previous arbitration law, issued on 1940, to better suit the rules of UNCITRAL Model Law and the dynamics of international business. In addition, other domestic laws are also relevant, like the 1908 Civil Procedure Act.

The modernization character of the Arbitration Law of 1996 was recognized by Indian Supreme Court on *Konkan Railway Corporation v. Mehul Construction Co.:*

"To attract the confidence of International Mercantile community and the growing volume of India's trade and commercial relationship with the rest of the world after the new liberalization policy of the Government, Indian Parliament was persuaded to enact the Arbitration & Conciliation Act of 1996 in UNCITRAL model and therefore in interpreting any provisions of the 1996 Act Courts must not ignore the objects and purpose of the enactment of 1996. A bare comparison of different provisions of the Arbitration Act of 1940 with the provisions of Arbitration & Conciliation Act, 1996 would unequivocally indicate that 1996 Act limits intervention of Court with an arbitral process to the minimum',<sup>45</sup>.

The Arbitration & Conciliation Act of 1996 also applies to international arbitration. Article 2(1)(f) defines International Commercial Arbitrations as those relating to disputes arising out of legal relationships considered commercial under the Indian law, and in which at least one party is (1) a national of another country or living in another country; (2) a legal person registered in another country; (3) a company or association whose central management and control are a country that not India; or (4) if one party is the government of a foreign country or

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<sup>45</sup> *Sumeet Kachwahas; THE ARBITRATION LAW OF INDIA: A CRITICAL ANALYSIS; Asia International Arbitrational Journal, Volume 1, Number 2, Pages 105-126.*

one of its offshore bodies. India law allows the parties to apply for enforcement of foreign arbitral awards directly before the competent court, without need for previous approval by any superior court.

Indeed, Article 4724 of the Arbitration & Conciliation Act of 1996 explicitly mentions that, to be able to enforce decisions regarding international arbitrations that are in accordance to the New York Convention, the party may simply submit the court the original award, the arbitration agreement and proof that it constitutes an international arbitration.

Indian law foresees the possibility of refusal of enforcement of an international arbitration award, although only in seldom cases, all in line with the principles of the UNCITRAL (Ex: if the parties were incapable or in cases of arbitration over matters concerning Indian public order).

### Arbitration in Russia

Commercial arbitration in Russia has a history of more than a century. Currently, there is a law designed specifically to international arbitration procedures: the 1993 Federal Law on International Commercial Arbitration, largely inspired by the UNCITRAL Model Law and by the UNCITRAL Arbitration Rules. Ad hoc arbitrations are allowed in Russia, although it is more

common to recur to arbitration institutions, such as the Court of International Commercial Arbitration of the Chamber of Commerce and Industry of Moscow. Interestingly, the Chamber of Commerce in Stockholm, in Sweden, is also a traditional option for those seeking resolution of disputes concerning foreign investment in Russia

### Scope of Application

Article 1, §2 of the Federal Law on International Commercial Arbitration delimitates the scope of application of international arbitration:

#### Article 1 – Scope of Application

2. Pursuant to an agreement of the parties, the following may be referred to international commercial arbitration: - disputes resulting from contractual and other civil law relationships arising in the course of foreign trade and other forms of international economic relations, provided that the place of business of at least one of the parties is situated abroad; as well as -disputes arising between enterprises with foreign investment, international associations and organizations established in the territory of the Russian Federation; disputes between the participants of such entities;

## 24 47. Evidence. –

(1) The party applying for the enforcement of a foreign award shall, at the time of the application, produce before the court (a) the original award or a copy thereof, duly authenticated in the manner required by the law of the country in which it was made; (b) the original agreement for arbitration or a duly certified copy thereof; and (c) such evidence as may be necessary to prove that the award is a foreign award. as well as disputes between such entities and other subjects of the Russian Federation law.

## Matters not subject to arbitration

Although the Federal Law on International Commercial Arbitration allows for arbitration of a virtually unlimited number of commercial matters, the domestic law of arbitration in Russia (The Arbitration procedural Code of the Russian Federation) lists several cases in which it is not possible to exclude the regular state jurisdiction.

As an example<sup>46</sup>25:

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<sup>46</sup> Available at:  
<http://meetings.abanet.org/webupload/commupload/IC855000/relatedresources/EnforcingArbitrationAwardsinRussiaandUkraineCLEMaterials.pdf>

1. administrative and public order issues (e.g., disputes with government bodies regarding tax;
2. competition issues, etc;
3. bankruptcy;
4. incorporation and liquidation of legal entities;
5. disputes between a company and its shareholders;
6. protection of goodwill.

If a party to the conflict is a foreign entity, the list of exclusive jurisdiction further extends to disputes over: disputes over state property, including its privatization; disputes over real estate located in Russia; disputes over registration of trademarks and patents in Russia; disputes on invalidation of entries in the state registers (e.g., the real estate register).

The assessment of these matters is of great importance when one is trying to enforce foreign arbitral awards.

### Choice of law

Article 28 of the Federal Law on International Commercial Arbitration enables the parties to choose the substantive law applicable to the conflict. The wording of the article deserves praise, for it embeds other extremely useful rules. For instance: (i) if the parties do not specify the applicable law, the tribunal shall apply the conflict of laws rules to determine which material

law is appropriate to govern the arbitration and, (ii) in all cases, the tribunal must decide according to the terms and usages applicable to the transaction.

### Enforcement of international arbitration awards

The Russian law is favorable to the enforcement of foreign arbitral awards. Both its own arbitration law and the New York Convention of 1958 play a role on this.

The reasons for rejection of a foreign arbitral award are basically the same as the ones listed by UNCITRAL model law, including incapability of the parties and irregular composition of the tribunal.

Two exceptions, however, present concern. Paragraph 2 of Article 36 states that awards dealing with issues that are not capable of settlement by arbitration under the law of the Russian Federation or that would be contrary to the public policy of the Russian Federation shall not be enforced. These last two exceptions were, in many cases, used by Russian courts to deny enforcement of awards which were, *prima facie*, legitimate. Situations like these yielded the national courts the reputation of being hostile to awards rendered in other countries. To illustrate the

point, an article published under the auspices of the American Bar Association<sup>47</sup> says:

Since the list of the grounds for refusing enforcement is limited by the New York Convention, contravention of public policy often serves as the ultima ratio for rejecting enforcement. In some instances, public policy is understood by the courts too vaguely. One notorious court case has been mentioned so many times among lawyers and in the mass media that it has virtually become a joke. In the *United World Ltd. v Krasny Yakor (Red Anchor)* case, the court denied enforcement of an arbitral award in the amount of less than USD 40k on the grounds that its enforcement would lead to bankruptcy of Red Anchor and would consequently cause serious damage to the regional economy where the debtor was domiciled and to the economy of Russia, so such damages were in contravention of Russian public policy. Although the example is quite dramatic, the fact is that, recently, enforcement of foreign arbitral awards in Russia has become more frequent and free of surprises, indicating improvements in the courts' perception on the importance of arbitration.

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<sup>47</sup> *Enforcement of Arbitration Awards in Russia and Ukraine: Dream or Reality?* Available at: <http://meetings.abanet.org/webupload/commupload/IC855000/relatedresources/EnforcingArbitrationAwardsinRussiaandUkraineCLEMaterials.pdf>

## Arbitration in Brazil

The Brazilian arbitration law (Law No. 9.307/1996) is clearly inspired by UNCITRAL Principles. His most controversial point is the differentiation between the arbitration clause and the submission agreement. To begin the study of the peculiarities of arbitration in Brazil, it is necessary to go through the preliminary definitions brought by the law. Article 3 The parties can submit their disputes to arbitration through an arbitration agreement, understood as the arbitration clause and the submission agreement. Article 4 The arbitration clause is the convention through which the parties in a contract agree to submit disputes which may arise with respect to that contract to arbitration. § 1 The arbitration clause shall be in writing and may be contained in the contract or as an appendix. Where there is an arbitration clause (which must be in writing), the arbitration procedure begins with the desire by one party to establish an arbitration procedure. In response, the other party or parties should manifest themselves. Should the parties agree to meet the terms of the arbitration clause, they shall celebrate another document: the submission agreement. Only then, the parties may proceed to the appointment of arbitrators according to the terms of the arbitration clause. The law considers arbitration as instituted when the parties “accept the appointment by

the sole arbitrator, or by all, if there are several”. Hence, if the other party refuses to adhere to the proceedings by entering into a “submission agreement”, the institution of the arbitration will remain barred.

The remaining option to the interested party is to provoke the national courts, by filing a lawsuit, requesting the judicial summoning of the reluctant party to sign the submission agreement. This lawsuit follows the ordinary rite and is subject to appeal. However, under Article 520 of the Civil Procedure Code: Article 520 The appeal will be received in suspensive and remanding effect. It will, however, be received only in remanding effect, when brought over a decision that: VI -allows the request for institution of arbitration. As it can be seen, any appeal will have no suspensive effect, thus enabling the continuation of the arbitration while there is no final ruling in the judicial sphere. In practical terms, however, there is evidence that parties rarely start an arbitration procedure when there is no certainty about the decision validity and subsequent enforceability.

It can be concluded, therefore, that the Brazilian Arbitration Law did not eliminate the need for a submission agreement. This fact is widely criticized by the doctrine, which considers this model contrary to the most advanced legislation. At this point, doctrine highlights an exception, pointing out that, if the

arbitration clause establishes that arbitration shall observe the rules of a specialized entity, the arbitration clause shall prevail even without the subsequent “submission agreement”.

As an example of arbitration rules, one can mention the Rules of the Câmara de Arbitragem Empresarial Brasil - CAMARB<sup>28</sup>, located in Belo Horizonte, which states:

If the other party does not fulfill its obligations in time (i.e: sign the “submission agreement”, the Claimant may: II) demand CAMARB<sup>48</sup> to promote the continuation of the arbitration, provided that the arbitration clause determines the application of Arbitration Rules of CAMARB, being the default party summoned to all the procedural acts and being able to, at any time, present itself to the arbitration.

Enforcement of international arbitration awards in Brazil

According to item IV of article 34 of the Brazilian Arbitration Law, arbitration will be national or international depending on the place of issuance of the award: Art.34 A foreign award shall be recognized or enforced in Brazil in accordance with international treaties effective in domestic law and, failing that, strictly in accordance with this Act. Sole Paragraph. An

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<sup>48</sup> [www.camarb.com.br](http://www.camarb.com.br)

arbitral award issued outside the country shall be deemed a foreign one. The national or international character of the arbitral award is important because the foreign arbitral awards must be approved by the Superior Court of Justice to be allowed enforcement in Brazil. The reasons for denial of enforcement are roughly the same as the ones in UNCITRAL Model Law. On the other hand, an arbitration award issued in Brazil in accordance with the Law No. 9.307/1996, even one dealing with an international contract, need not be approved by the Supreme Court and may be executed promptly. Thus, if the execution of an arbitral award in Brazil is desirable, the award should be issued in Brazil. This indeed has been the practice adopted by several companies.

Recognition and Enforcement of Arbitral Awards by the BRIC countries according to the New York Convention of 1958 In relation to this treaty, Russia, China and India have adopted the reservation that they only recognize arbitral awards issued on States Parties to the convention.

Fortunately, that does not implicate lack of enforceability among BRIC countries, since all are parties to the Convention. China and India, however, also adopted a provision according to which they would only recognize foreign arbitral awards if they were related to trade contracts, defined as such according to their national law. Brazil has not adopted any reserve,

but its domestic law only recognizes the arbitral awards on disposable rights, although no limited to trade related subjects. One should note that the provisions above does not necessarily mean that these arbitral awards can be recognized immediately, since, according to the basic principle of private international law, foreign judgments can not violate the internal public order. It follows that fundamentals, such as the summoning of the other party, the adherence of the decision to the limits of the arbitration agreement and the observance of matters that cannot be subject to arbitration<sup>49</sup>. Russia has accepted the possibility of recognition of arbitral awards made in non-signatory countries, as long as reciprocal treatment was granted.

## CONCLUSIONS

Recently, the BRICs suddenly realized its importance and similarity, as if awoken by an outside observer. It is a matter of concern that there is still no unanimity among these countries regarding various conventions on international trade. Fortunately, all countries demonstrate receptivity towards arbitration, which is a way around that setback. In this sense, one might say that entrepreneurs have a safe and reliable option to resolve conflicts in their contracts. Lawyers must observe the pioneering voices that explore ways to

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facilitate, with the existing tools, a higher level of integration. We claim that the UNIDROIT Principles should be used by judges from around the world as universal principles of law. The mere dissemination of this doctrine would enormously facilitate the legal relationship between the BRIC countries. I believe we must seize the momentum created by the recent celebration of cooperation agreements and the joint statements issued by BRICS to fix the yet poor legal infrastructure that governs the relationship between them. And, as a result, improve the legal relationship inside this promising economic block.

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## **Strengthening the Rule of Law and Accountability/Responsibility of Institutions**

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### **Abstract**

The improper law enforcement or application of the norms of positive law in certain state (Constitution, the law and its bylaws) is causing damage to each citizen, and the entire society collectively. Through the adoption of the abovementioned acts, the state should provide and ensure equal civil rights and protection of all the citizens. State institutions are obliged to prevent and punish any violation of legal norms applicable in society. The balanced activity of the authority (legislative, executive and judicial) should be aimed at developing the rule of law, that will lead to the realization of the

principle of legal state. Achieving the rule of law will prevent arbitrariness of certain entities in society, and will limit the power of certain state institutions. Prior to this goal, it is assumed that all parties in the society will participate and contribute willingly in founding the institutions of the Republic of Macedonia, so it could become a legal state where the law rules, and where the international standards are respected and applied in various spheres of life and work. States that respect and implement the principle of the rule of law are considered democratic and more successful in settling the problems that arise.

Institutions, despite the responsibility they have towards the law and higher authority, need to demonstrate accountability to the citizens, since their existence and functioning is in the service of the citizens. The responsibility of institutions does not only refer to their tasks concerning the regulation, but also to the citizens' education. That education can prevent certain problems that might occur in the society. Due to the irresponsibility of the institutions and the damages incurred at work, consequences are mostly felt by the everyday citizens. Responsibility for the appearance of particular problem should be assumed by competent institution, which should not self-exclude its liability for solving the problem. In order to achieve a responsible functioning of the institution, it is supposed that legal

provisions should be adopted, as well as internal regulations that will regulate and provide mechanisms for accountability of every employee in detail, and that will prescribe sanctions for misconduct. Through proper functioning of institution's responsibility, it will be easier to attain the goals, and respect the basic principles of democracy.

*Keywords: rule of law, legal state, institutions, accountability, transparency;*

## **LEGAL STATE**

Legal state (German: Rechtsstaat) is a doctrine in continental European legal thinking, originally borrowed from German jurisprudence, which can be translated as a “state of law”, “state of justice”, “state of rights” or “state based on justice and integrity”. It is a “constitutional state” in which the exercise of governmental power is constrained by the law<sup>50</sup>, and is often tied to the Anglo-American concept of the rule of law, but differs from it in that it also places an emphasis on what is just (i.e. a concept of moral rightness based on ethics, rationality, law, natural law, religion or equity). Thus it is the opposite of authoritarian state (German: Obrigkeitsstaat, a state based on the arbitrary use of power).

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<sup>50</sup> [Carl Schmitt](#), *The Concept of the Political*, ch. 7; *Crisis of Parliamentary Democracy*

In legal state, the power of the state is limited in order to protect citizens from the arbitrary exercise of authority. In a legal state the citizens share legally based civil liberties and they can use the right to protect in courts. A country cannot be a liberal democracy without first being a legal state.

## History

German writers usually place [Immanuel Kant's](#) theories at the beginning of their accounts of the movement toward the legal state<sup>51</sup>. The legal state in the meaning of “constitutional state” was introduced in the latest works of the German philosopher Immanuel Kant (1724–1804), after US and French constitutions were adopted in the late 18th century. Kant’s approach is based on the supremacy of a country’s written [constitution](#). This supremacy must create guarantees for implementation of his central idea: a permanent peaceful life as a basic condition for the happiness of its people and their prosperity. Kant proposed that constitutionalism and constitutional government ought to be sufficient to guarantee this happiness. Kant had thus formulated the main problem of constitutionalism: “The constitution of a state is eventually based on the morals of its citizens, which, in its turn, is based on the goodness of this constitution”.

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<sup>51</sup> [Friedrich Hayek, The Constitution of Liberty.](#)

According to Friedrich Hayek: Kant's political teaching may be summarized in a phrase: republican government and international organization. In more characteristically Kantian terms, it is doctrine of the state based upon the law (legal state) and of eternal peace. Indeed, in each of these formulations, both terms express the same idea: that of legal constitution or of “peace through law”. Taking simply by itself, Kant's political philosophy, being essentially a legal doctrine, rejects by definition the opposition between moral education and the play of passions as alternate foundations for social life. The state is defined as the union of men under law. The state rightly so called is constituted by laws which are necessary a priori because they flow from the very concept of law. A regime can be judged by no other criteria nor be assigned any other functions, than those proper to the lawful order as such<sup>52</sup>.

The most important principles of the legal state are:<sup>53</sup>

- The state based on the supremacy of national constitution and exercises coercion and guarantees the safety and constitutional rights of its citizens:
- Civil society is equal partner to the state:

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<sup>52</sup> History of Political Philosophy, edited by Leo Strauss and Joseph Cropsey, The University of Chicago Press, 1987, pp.581-582, 603

<sup>53</sup> Klaus Stern, Das Staatsrecht der Bundesrepublik Deutschland, I 2nd edition, § 20, Munich 1984, [ISBN 3-406-09372-8](#); Reinhold Zippelius, Allgemeine Staatslehre/Politikwissenschaft, 16th edition, §§ 8 II, 30-34, Munich 2010, [ISBN 978-3-406-60342-6](#)

- [Separation of powers](#), with the executive, legislative and judicative branches of government limiting each other's power and providing for checks and balances:
- The [judicature](#) and the [executive](#) are bound by law (not acting against the law), and the legislature is bound by constitutional principles:
- Both the [legislature](#) and democracy itself are bound by elementary constitutional rights and principles:
- [Transparency](#) of state acts and the requirement of providing a reason for all state acts:
- Review of state decisions and state acts by independent organs, including an appeal process:
- Hierarchy of laws, requirement of clarity and definiteness:
- Reliability of state actions, protection of past dispositions made in good faith against later state actions, prohibition of [retroactivity](#):
- Principle of the [proportionality](#) of state action.

The [Russian legal system](#), born out of transformations in the 19th century under the reforms of Emperor [Alexander II](#), is based primarily upon the German legal tradition. It was from here that Russia borrowed a doctrine of legal state. The concept of “legal state” ([Russian](#): Правовое государство, pravovoe gosudarstvo) is a fundamental (but undefined) principle

that appears in the very first dispositive provision of Russia's [post-Communist constitution](#): "The Russian Federation - Russia - constitutes a democratic federative legal state with a republican form of governance".

Valery Zorkin, President of the Constitutional Court of Russia, wrote in 2003: "Becoming a legal state has long been our ultimate goal, and we have certainly made serious progress in this direction over the past several years. However, no one can say now that we have reached this destination. Such a legal state simply cannot exist without a lawful and just society. Here, as in no other sphere of our life, the state reflects the level of maturity reached by society"<sup>54</sup>.

Some Russian researchers are supporting an idea that, in the 21st century, the concept of the legal state has become not only a legal but also an economic concept - at least for Russia and many other transitional and developing countries.

[Constitutional economics](#) is a field of [economics](#) and [constitutionalism](#) which describes and analyzes the specific interrelationships between constitutional issues and functioning of the economy including [budget process](#). The term "constitutional economics" was used by American economist [James M. Buchanan](#) - as a name for a new academic sub-discipline that in 1986 brought him the [Nobel Prize in Economic Sciences](#) for his "development of the contractual and constitutional bases

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<sup>54</sup> [The World Rule of Law Movement and Russian Legal Reform](#), ed. Francis Neate and Holly Nielsen, Justitsinform, Moscow (2007).

for the theory of economic and political decision-making”. According to Buchanan the ethic of constitutionalism is a key for constitutional order and may be called “the idealized Kantian world” where the individual “who is making the ordering, along with substantially all of his fellows, adopts the moral law as a general rule for behaviour”<sup>55</sup>.

Buchanan rejects “any organic conception of the [state](#) as superior in wisdom, to the individuals who are its members”. Buchanan believes that a [constitution](#), intended for use by at least several generations of citizens, must be able to adjust itself for pragmatic economic decisions and to balance interests of the state and society against those of individuals and their constitutional rights to personal freedom and private happiness. The standards of constitutional economics when used during annual [budget](#) planning, as well as the latter's [transparency](#) to the civil society, are of the primary guiding importance to the implementation of the [rule of law](#). Also, the availability of an effective court system, to be used by the civil society in situations of unfair government spending and executive [impoundment](#) of any previously authorized appropriations. It becomes a key element for the success of any influential civil society<sup>56</sup>.

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<sup>55</sup> James Buchanan, *The Logical Foundations of Constitutional Liberty*, Volume 1, Liberty Fund, Indianapolis, 1999, p. 314

<sup>56</sup> Peter Barenboim, Natalya Merkulova. "[The 25th Anniversary of Constitutional Economics: The Russian Model and Legal Reform in Russia](#), in [The World Rule of Law Movement and Russian Legal](#)

Today the term “legal state” indicates the degree of association of the state and law (understood as the sum of all laws and regulations) that the state with the help of law governing relations between individuals, relations within their (state) organization and relations between the state and citizens who thus become citizens. While it must be noted that in this sense the state does not care about the quality of legislation, but its only task is to ensure their compliance and enforcement.

The legal state applies and that the Constitution, laws and other regulations equally treat all entities in the state (as individuals and legal entities). So in this sense the state is obligated to act legally and fair to all parties in the country. The very existence of regulations and transparent way of making them, citizens and other subjects in advance will be familiar with them and know how they should behave if they want to avoid legal consequences that will perform, if they do not respect legal norms.

One free democracy, which confirms the participation of social components in the formation of a political will, there is a need for state-legal creation. Democracy and legal state form inseparable unity. Legal state implies those principles and behaviors that guarantee freedom of the individual and his participation in political life. The legal state is a radical contrast to the police state and the arbitrary state.

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[Reform](#)", edited by Francis Neate and Holly Nielsen, Justitsinform, Moscow (2007).

In a police state the individual lives constantly monitored by “up”, and under the constant threat of sudden interference from everywhere around the apparatus of state security. In all this he feels controlled and continuously monitored with suspicion, which pollutes the entire human co-existence. Despite all precautions, citizens can never get rid of the hand of the state. The one that causes dissatisfaction among the powerful, is threatening arrest or harassment, loss of employment or carrying in camp, without him having to exercise his right to a proper trial. But even if he is brought before a judge, the judge is approaching toward this as an official of the political leadership, because there is no principled independence of the judiciary. The judiciary in these systems is just one of many organizational techniques for the “human material” that may be available. Thus, an ordinary citizen never knows if he fell in the eyes of the rulers, and that insecurity involves him in dependence and non-freedom. In addition, the right still may normally function in the private sphere, namely in dictatorships punish thieves or those who have committed a traffic offense. But we cannot rely on this, because all law applies equally if called. Ultimately the dictator or the state party determines what is right.

## **RULE OF LAW**

Rule of law and legal state are two conceptions of limiting and controlling state power. Often times daily,

but also in political speech, terms rule of law and state law link them-selves and does not distinguish between these two terms and they completely equal. What really connects these two terms, and makes them similar is that they are hiding behind the two concepts that are aimed at achieving political ideal of limited and controlled government.

The rule of law (also known as nomocracy) primarily refers to the influence and authority of [law](#) within society, especially as a constraint upon behavior, including behavior of government officials. The phrase can be traced back to the 16th century, and it was popularized in the 19th century by British jurist [Albert Dicey](#). The concept was familiar to ancient philosophers such as [Aristotle](#), who wrote “Law should govern”<sup>57</sup>. Rule of law implies that every citizen is subject to the law, including law makers themselves. It stands in contrast to the idea that the ruler is above the law, for example by [divine right](#).

Although credit for popularizing the expression “the rule of law” in modern times is usually given to [Albert Dicey](#), development of the legal concept can be traced through history to many ancient civilizations, including [ancient Greece](#), [China](#), [Mesopotamia](#), [India](#) and [Rome](#)<sup>58</sup>.

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<sup>57</sup> Aristotle, [Politics 3.16](#)

<sup>58</sup> Black, Anthony. A World History of Ancient Political Thought(Oxford University Press 2009). [ISBN 0-19-928169-6](#)

The Oxford English Dictionary has defined “rule of law” this way<sup>59</sup>:

*“The authority and influence of law in society, esp. when viewed as a constraint on individual and institutional behaviour; (hence) the principle whereby all members of a society (including those in government) are considered equally subject to publicly disclosed legal codes and processes”.*

According to political theorist [Judith N. Shklar](#), the phrase “the Rule of Law” has become meaningless thanks to ideological abuse and general over-use, but nevertheless this phrase has in the past had specific and important meanings<sup>60</sup>.

At least two principal conceptions of the rule of law can be identified: a [formalist](#) or “thin” definition, and a substantive or “[thick](#)” definition. Formalist definitions of the rule of law do not make a judgment about the “justness” of law itself, but define specific procedural attributes that a legal framework must have in order to be in compliance with the rule of law. Substantive conceptions of the rule of law go beyond

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<sup>59</sup> The Oxford English Dictionary has defined "rule of law" this way: “The authority and influence of law in society, esp. when viewed as a constraint on individual and institutional behaviour; (hence) the principle whereby all members of a society (including those in government) are considered equally subject to publicly disclosed legal codes and processes”.

<sup>60</sup> Shklar, Judith and Hoffman, Stanley. [Political Thought and Political Thinkers](#), page 21 (University of Chicago Press, 1998).

this and include certain substantive rights that are said to be based on, or derived from, the rule of law<sup>61</sup>.

Most legal theorists (the formalists) believe that the rule of law has purely formal characteristics, meaning that the law must be publicly declared, and possess the characteristics of generality, equality, and certainty, but there are no requirements with regard to the content of the law. Others, including a few legal theorists, believe that the rule of law necessarily entails protection of some or all individual rights. Within legal theory, these two approaches to the rule of law are seen as the two basic alternatives, respectively labelled the formal and substantive approaches. Still, there are other views as well. Some believe that democracy is part of the rule of law<sup>62</sup>.

The formal interpretation is more widespread than the substantive interpretation. This formal approach allows laws that protect democracy and individual rights, but recognizes the existence of “rule of law” in countries that do not necessarily have such laws protecting democracy or individual rights.

The functional interpretation of the term “rule of law”, consistent with the traditional English meaning, contrasts the “[rule of man](#)”<sup>63</sup>. According to the functional view, a society in which government officers

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<sup>61</sup> Craig, Paul P. (1997). "Formal and Substantive Conceptions of the Rule of Law: An Analytical Framework".Public Law: 467.

<sup>62</sup> Stephenson, Matthew. "[Rule of Law as a Goal of Development Policy](#)", World Bank Research (2008).

<sup>63</sup> Ibid

have a great deal of discretion has a low degree of “rule of law”, whereas a society in which government officers have little discretion has a high degree of “rule of law”<sup>64</sup>. Upholding the rule of law can sometimes require the punishment of those who commit offenses that are [justifiable](#) under [natural law](#) but not statutory law<sup>65</sup>. The rule of law is thus somewhat at odds with flexibility, even when flexibility may be preferable<sup>66</sup>.

## Macedonia

In order for a society to properly and efficiently function, it needs the law. The rules that make up the law can be written (norms) or unwritten (customs). They are not the product of the modern society, because even in the oldest human communities existed rules that regulate human behavior (what is allowed and what is forbidden). Even in the history of Macedonia, in the former communities, ruled unwritten laws. Regardless of the form, people need to know and to obey the laws, as there would be law and order in society. The main purpose of the laws in democratic societies is to serve the citizens in the exercise of their rights and regulate the obligations.

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<sup>64</sup> Ibid

<sup>65</sup> Heidi M. Hurd (Aug 1992). "Justifiably Punishing the Justified". *Michigan Law Review* (The Michigan Law Review Association) 90 (8): 2203–2324. [doi:10.2307/1289573](https://doi.org/10.2307/1289573). [JSTOR 1289573](https://www.jstor.org/stable/1289573)

<sup>66</sup> Stephenson, Matthew. "[Rule of Law as a Goal of Development Policy](#)", World Bank Research (2008).

Laws should allow the principle of “rule of law”, so the citizens can enjoy all the benefits of modern living.

The Constitution is the basic legal act that set the foundations of a state. This Act has the strongest legal action. Unlike many laws which are numerous and regulate only certain issues, the Constitution is one. The first democratic Constitution of the Republic of Macedonia was adopted by the first plural and multi-party Assembly of the Republic of Macedonia on 17 November 1991, after the independence of the Republic of Macedonia.

The Constitution is composed of:

- preamble;
- Constitutional text of 134 articles;
- 32 amendments.

The preamble is a brief introduction to the Constitution, and is situated at the very beginning. In it historically determines, the time of the adoption of the Constitution and its objectives. The preamble states:

*“The Constitution of the Republic of Macedonia is a result of commitment and struggle for an independent state of the Macedonian people and the citizens living within its borders who are Albanian, Turkish, Vlach, Serbian, Roma, Bosniak and other nations. Big dream becomes reality with the referendum on September 8, 1991, when Republic of Macedonia declared itself independent and sovereign state”.*

Preamble speaks for the objectives of the Constitution, and they are: Republic of Macedonia to be

a sovereign, independent, civil, democratic state, a state in which there will be rule of law, citizens would be guaranteed basic civil liberties and rights, peace and security coexistence of the Macedonian people with the nationalities living in the Republic of Macedonia, as well as providing social justice, economic prosperity and progress of individual and community life of all citizens.

In countries where there is a high degree of democracy, the citizens are the ones who rule the country. This type of governance is manifested so that citizens elect representatives to government bodies and they transfer their rights in terms of direct state government. Thus, representatives of citizens in state institutions acquire certain authority or power. However, despite the rule of law in the country, there is the obligation to respect the laws of the representatives of the citizens (no one is above the law).

EU is open to any European state which respects the principles of liberty, democracy, basic human rights and fundamental freedoms and the rule of law.

This basic prerequisite for applying for EU membership is determined along with other basic criteria for membership in the Union, at a meeting of Heads of State and Government held in 1993 in Copenhagen. These criteria known as the Copenhagen criteria require, before they become full members of the EU, candidate countries to:

- have stable institutions that guarantee democracy, the rule of law, human rights and respect the rights of minorities;
- a functioning market economy, with capacity to face the competition of market forces in the EU;
- ability to meet the obligations of membership, and the acceptance and fulfillment of the aims of political, economic and monetary union.

Also, state candidate should have functional and administrative and judicial capacity to implement commitments undertaken by EU membership.

Nowadays the term “rule of law” means that two conditions must be provided: all acts and actions of the authorities must be based on the provisions contained in the highest legal act of the state i.e. the constitution and laws (application of the principle of constitutionality and legality) and subjecting all authorities and all individuals under the constitution and the law (submission to all to the legal order).

The state must adhere to the laws, but laws must be in accordance with human rights and liberties. State in its activity must have into account the view that the rights and liberties of the people are their natural rights, and the state's role is not to give or revoke those rights

but to ensure them and create conditions for the people to enjoy their natural rights.

The rule of law is opposing the arbitrariness and makes responsible and criminal proceedings for all, even for those in power. While certainly the most important institutional prerequisite for the realization of the principle i.e. the concept of the rule of law is the independence of the judiciary.

One of the main criteria for Macedonia's integration into NATO and the European Union, is the rule of law which is the basic foundation to be set up and operate a democratic society. The revival of this principle has special importance in the functioning of the democratic society. Developed system which is characterized by elements of independence, efficiency and quality should be a commitment to every citizen and government. The consequences of this would be an increased level of democracy in which would be guaranteed the rights and liberties of man and other legal entities as well as complete security and legal protection in the exercise of their rights.

To ensure equality and freedom, it is necessary to organize a democratic governed legal state and proper rule of law.

State legal constitution of a community rests first of institutional independence of the judiciary. In relation to other authorities it must rule strictest separation of powers. The representatives of the executive and the legislature must be barred from interfering with the activity of judges or to put pressure on the performance of their work. Personal independence for the judge understands that he should not be removed nor moved from his service against his will. Only for non-application or incorrect application of law or corruption may be deprived from his office, but after previously conducted trial. Administrative independence guarantees the judge that his action is not subject to any ad hoc orders. He serves only and only to the law and the right, it should be applied without public prosecution, a higher court or the government to prescribe his decisions.

In its essence, the term legal state insists on the supremacy of law and legality of the actions of the authorities, referring to the supremacy of law in relation to the state government. It's commitment to the protection of human liberties and rights reflect its goal of inviolability of these rights by limiting government intervention and interference of the state into the private sphere of citizens.

Measurability and predictability of the whole state acting as an elementary assumption for the legal state requires commitment of the government and the administration to the law. Each state act must be reduced

to the law, which in turn must be democratically legitimate. The principle of legality says that the administration can be active only in those frames which are opened by the parliamentary majority. It certainly does not mean that underlies each separate administrative act should be located clear statutory command. But the frames of the legal authority and jurisdiction must be given when undertake any action. The legal state does not preclude creative suite responsibility of the administration. But in case of collision, the law has advantage, not the individual dynamics.

However, with the independence of judges is described only one of the conditions for the existence of a legal state. It rests nothing less to the general principle that all state activity is measurable and predictable. Legal security can exist only where citizens know with certainty what the state has the right to do, and what is prescribed as a right and prohibition for the citizens. This includes state and the fundamental legal principle that no one should be punished without legal basis - *nulla poena sine lege* - and in this context no less fundamental prohibition of retroactive laws. Besides the prohibition of retroactive effect from the same cause comes the preference for clarity of laws. "Loose articles" are inadmissible in a legal state, because they burrow the legal security.

Therefore legislation which is bound to a legal state must strive for maximum precision and clarity. Because it we often give up from short formulations, if they would compromise the unification, because that is the only way to obtain legal security. But precisely it cannot give up any democratic country that wants its citizens to give to the maximum extent of their actions.

Democratic habits are not hereditary, and they should be practiced by every generation. The fact is that we need peace and security, further development of democracy, the real rule of law and legal state, economic development, social justice, environmental protection and now last, we need clean air in large quantities. This should be a challenge to our country if we want to succeed in our path towards EU integration and NATO<sup>67</sup>.

The adoption of the Law on Public Servants and Law on Civil Servants launched the first phase of reforms in the administration of Republic of Macedonia. With these laws were laid the foundations for building administration at the service of citizens. In the laws were defined more principles to which the officials must adhere such as: the principle of legality, principle of professional conduct, the responsibility principle,

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<sup>67</sup> Тасева Викторија, Предизвиците на слободата, правната држава и владеењето на правото, јануари 30, 2014, <http://www.pravdiko.mk/predizvitsite-na-slobodata-pravnata-drzhava-i-vladeeneto-na-pravoto/>

principle of ethical behavior and protection and economical use of resources for work.

Servant is obliged the work and tasks to perform conscientiously, professional, efficient, orderly and in time in accordance with the Constitution, law and ratified international treaties. The Servant shall perform its work impartially, not to be guided by their own personal financial interests, not abusing powers and its status they have as a public servant and to protect personal reputation and the reputation of the institution in which he is employed.

The servants respond disciplinary, if they violate the working discipline, not perform or negligent and untimely perform the work and tasks. Disciplinary responsibility of the servant is not excluded if it is established that there is responsibility for a crime or offense.

After the adoption of laws and regulations follows the hard part, that is changing the mentality of working on part of the servants in which everyone should be responsible for the work done (if he will be rewarded or punished depends on the servant).

The Copenhagen criteria are very important because they represent the core values on which the EU

is founded, and among them is the rule of law, democracy and respect for fundamental rights.

According to Mr. Aivo Orav, in the EC strategy for expanding published reports on the progress of the candidate countries and potential candidates clearly states that the rule of law is at the heart of the expansion. That means, he says that states should deal with issues regarding judicial reform and the fight against organized crime and corruption in the early period of the accession negotiations.

One of the biggest challenges of Macedonian society is the application of good management practices based on the rule of law and democracy, participation, efficiency and effectiveness, transparency and responsibility and equality. This issue has not been seriously addressed by civil society actors and is obvious the lack of capacities of the same.

Therefore it is necessary to increase the awareness and capacity of citizens for responsibility and participation in building strong social values.

In Macedonia, between the citizens there is a general lack of respect for the law, lack of civic

responsibility and consistently low public confidence in the bodies of law enforcement.

The current lack of respect for the law and lack of civic responsibility are general consequences of the basic problem of mentality. First, citizens do not believe that they really benefit from obeying the law, especially when they see that others benefit from his breach. Second, those in charge of law enforcement do not see the long term benefits that a fair and equitable application of the law will bring them or to society in general.

Through the implementation of a public awareness campaign for the rule of law, can expect increased civil liability; increased public confidence and overall respect for state institutions; increased awareness of public institutions that consistent enforcement of the law inevitably result in long-term social benefits for all.

It is obvious that there cannot be a change of mindset, to respect and follow the rule of law immediately, it takes time and sustained effort from everyone. The problem with disregard for the law and lack of civic responsibility is present in other countries. However, the difference would be that in countries that stick to the rule of law the citizens who breach the law are minority.

## Conclusion

Instead of cultural and ethnic element, Cicero underlines law and morality as the most important constituent of the state, but also the people. According to him if the state lack laws that is considered “non-existent state”<sup>68</sup>. The force of law, and not the “right of force”, that is imperative that permeate through Cicero’s works! Law must be equal for all citizens - regardless of their abilities or financial situation: “If wealth is impossible to be equally, if natural abilities cannot all be the same - the mutual rights of citizens of the same state it can certainly be. What is the state is not a community of citizens right?”.

Often comes to injustice and for twisting the law and order and that it is interpreted cunning and malicious. Therefore occurred and that the well-known maxim - *Summum ius summa saepe iniuria*<sup>69</sup>! Actions of the administrative bodies must be in accordance with the law. Rulers of state throughout history, could have ordered just what was “fair, lawful and useful” (according to their free will), and then the state law was “silent control” in the service of the rulers.

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<sup>68</sup> Цит. сп.: С. Шкарик и Ѓ. Иванов, Политички теории - Антика, Скопје, Правен факултет „Јустинијан Први“, 2006, 415.

<sup>69</sup> Во превод: “Најголемото право може да биде и најголема неправда”!

In translation: “The greatest law can be at the same time biggest injustice”

The state is owned by the people, and the people are not any set of people gathered randomly, but is a set of multiplicity united by a joint decision to adopt regulations and to enjoy mutual benefits from it.

Rule of law should represent the rule of regulations, while emphasizing the law as a tool for social governance in the social life of supremacy, and affected values and goals such as democracy, human rights and freedoms. Thus, the legal system is the prerequisite and basis for the rule of law. If there is no legal system, there will be no rule of law.

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**The impact of Sovereignty, Non-intervention and  
Human Rights Considerations on the Debate  
Concerning Humanitarian Intervention**

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**Abstract**

The concept of humanitarian intervention by an outside state concerns intervention that occurs for the purpose of protecting citizens of the target state as well as those of the intervening state (states) and any third state (states), who may be exposed to massacres, brutality, religious or racial persecutions, and when these sort of acts are of such nature that they shock the conscience of mankind. In such cases, it may be argued that, the right of intervention is legally and morally justified. However, such intervention, although seeking to enforce human rights protection, must be viewed in the light of traditional principles of sovereignty and non-intervention.

These general principles are set out in the United Nations Charter. The principle of sovereign equality forms the cornerstone of the whole body of international relations under the United Nations Charter. Any threat or use of force by any state against another state is

considered to be illegitimate and prohibited by contemporary international law, unless it is provided for under the United Nations Charter. Arguably the doctrine of humanitarian intervention militates against the principle of non-intervention as set out in article 2(7) of the United Nations Charter, the principle of non-use of force in article 2(4) and also violates the principle of state sovereignty. There are always tensions between these concepts. The reconciliation between the principle of non-intervention, the principle of state sovereignty and humanitarian intervention is the problem. In this article I will highlight the meaning of each notion and the relationship between these concepts and the doctrine of humanitarian intervention. I will examine the definition of sovereignty and its origins, will examine the concept of domestic jurisdiction and non-intervention under customary international law and under the United Nations Charter. In this article I will also examine the definition of the concept of humanitarian intervention and it will be dedicated to the concept of human rights and which rights should be taken into account for the purpose of humanitarian intervention. I will address the issue whether unilateral humanitarian intervention is to be regarded as an exception to the prohibition of the use of force under article 2(4), or in other words whether such action is permitted by international law and, therefore is consistent with the present international legal order. Also I will look first at the "fear of abuse" argument and the failure of the United Nations to act quickly to remedy human right violations, the right of humanitarian intervention and its limitations. And in the end, I will draw together the conclusions on these issues.

Key words: sovereignty, human rights, principle of non-intervention.

When discussing the concept of humanitarian intervention it is important to set those discussions against a background of the traditional principles of international law. Central to these is the concept of state sovereignty. Without an understanding of this concept, and its central place in the development of international law, the controversies surrounding the acceptability of humanitarian intervention are difficult to appreciate. Humanitarian intervention involves, to some degree, a claim that one or more states are entitled to assert their authority over another state, and to intervene in the internal affairs of that state. Such assertions involve substantial inroads into the concept of state sovereignty. International law is built on the concept of the state.

The state in its turn relies upon the existence of the doctrine sovereignty. Sovereignty is one of the fundamental concepts of international law. It is considered to be an integral part of the principles of equality of states, territorial integrity and political independence referred to in article 2(4) of the United Nations Charter. Internally sovereignty implies the supremacy of the governmental institutions, and

externally it implies the supremacy of the state as a legal person<sup>70</sup>.

According to this concept every state under international law has to give its consent to any act that would touch upon its sovereignty. No state can be obliged to accept a rule of international law (other than jus cogens) unless that state has accepted that rule, either by a treaty or by the recognition of a customary norm through public pronouncements and state conduct<sup>71</sup>.

One commentator maintained that: "sovereignty as a concept of international law has three major aspects: external, internal and territorial<sup>72</sup>. He went on to say that:

The external aspect of sovereignty is the right of the state freely to determine its relations with other states or other entities without the restraint or control of another state. This aspect of sovereignty is also well known as independence. It is this aspect of sovereignty to which the rules of international law address themselves primarily. External sovereignty of course presupposes internal sovereignty.

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<sup>70</sup> M. N. Shaw, *International Law*, (Cambridge, 1991, 3d ed), at p. 276.

<sup>71</sup> See Ronald A. Brand, "External Sovereignty and International Law", 18 *Fordham Int'l. L. J.* (1991), at p. 1685

<sup>72</sup> M. Serenson, (ed), *Manual of Public International Law* (1968) at 523. See also Henery Burmester, "National Sovereignty, Independence and the Impact of Treaties and International Standards", 17 *Sydney. L. Rev.* 127, (1995), at pp. 130-131

The internal aspect of sovereignty in the state's exclusive right or competence to determine the character of its own institutions, to ensure and provide for their operation, to enact laws of its own choice and ensure their respect.

The territorial aspect of sovereignty is the complete and exclusive authority which a state exercises over all persons and things found on, under or above its territory. As between any group of independent states the respect for each other's territorial sovereignty is one of the most important rules of international law.

Although the external aspect of sovereignty often appears to be the only one which is implied whenever sovereignty is discussed in international law, in fact, sovereignty in international law is the sum total of all three aspects. Sovereignty as so defined is the most fundamental principle of international law because nearly all international relations are bound up with the sovereignty of states. It is the point of departure of international relations<sup>73</sup>.

One writer defines internal sovereignty as the "absolute control of the authority and internal affairs of a country by the government of that country, however, that government obtained power and no matter what it did with that power with respect to its own citizens"<sup>74</sup>

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<sup>73</sup> M. Serenson, at p. 131

<sup>74</sup> Howard Adelman, "Humanitarian Intervention: The Case of the Kurds", 4 Int'l. J. of Refugee L. (1992), at p. 11

Sovereignty also means the capacity of the government of that state to use coercive power within the territory under its authority and jurisdiction.<sup>75</sup>

Every state has the responsibility to respect the sovereignty of other states. So far as concerns the relations between states, sovereignty signifies independence. Independence in regard to a portion of the globe is the right to exercise therein, to the exclusion of any other state, the functions of state<sup>76</sup>. Judge Dionisio Anzilotti in his individual opinion in the Austro-German Customs

Regime case stated that "independence... is really no more than the normal condition of states according to international law, it may also be described as sovereignty, or external sovereignty, by which is meant that, the state has over it no other authority than that of international law<sup>77</sup> Such independence cannot be understood as an absolute and entirely unbounded principle. Unlimited states power manifests itself in the absence of higher authority over the states when the state

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<sup>75</sup> Howard Adelman, *Ibid.*,

<sup>76</sup> See Luzius Wildhaber, "Sovereignty and International Law", in MacDonald, R& Johnston, D, *The Structure and Process of International Law*, (1983), at p. 433

<sup>77</sup> See Luzius Wildhaber, *Ibid.*, p. 437.

is not subordinated to the authority of the other governments."<sup>78</sup>

From the above one may say that the concept of sovereignty, which expresses the power of a state to govern its affairs without any interference from other nations, is a well known and long-standing concept within customary international law. The Supreme Court of France emphasized in 1849 that "the reciprocal independence of is one of the most universally respected principles of international law."<sup>79</sup> The British Courts followed the French view in this respect "... the absolute independence of every sovereign authority, and of international community... induces every sovereign state to respect the independence and dignity of every other sovereign state..."<sup>80</sup>

Since the beginning of the 20th century the concept of sovereignty has dramatically changed.

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<sup>78</sup> Nikolai Krylov, "Humanitarian Intervention: Pros and Cons", 17 *Loy. L. A. Int'l & Comp. L. J.* 365, (1995), at p. 373.

<sup>79</sup> Quoted in Barry E Carter & Phillip R. Trimble, *International Law*, (1991) at p. 550 (quoting *Spanish Government V. Lambige et Pejol*, D. P. I. 5,9 (1849). See for further details Steve G. Simon, "The Contemporary Legality of Unilateral Humanitarian Intervention", *Cal. Wes. Int'l. L. J.* 117, (1993), p. 125.

<sup>80</sup> Quoted in Barry E Carter & Phillip R. Trimble (quoting in the *Patlement Bdge.*, 5. P. D. 197, 217 (1880)

This concept which was traditionally considered to be absolute and unlimited has today become a limited one. "This `relativist approach' appeared in its turn in various forms, some of which had the more modest ambition of curbing the most "absolutist" expressions of sovereignty i. e. of "de-absolutizing" sovereignty within the framework of the prevailing subjective concepts, while other went as far as to seek its complete elimination"<sup>81</sup>. This approach to sovereignty prevailed in the period between the world wars. The supporters of this approach referred to the Fauchille's description which provides that "while a sovereign state is the sole master of its actions; all actions are not permitted to it"<sup>82</sup>. Thus a sovereign state is not allowed to take any action which is inconsistent with the sovereignty- also a relative sovereignty- of other states. In this regard it has been said that "the theory of relative sovereignty acknowledges the fact that the individual states are included in a pattern of relationships which necessarily imposes certain limitations upon their will to be autonomous"<sup>83</sup> So, for example the Permanent Court of International Justice recognized in the Wimbledon case in 1923 that "the right to enter into international engagements is an attribute of state sovereignty".

It therefore, decline[d] to see in the conclusion of any treaty by which a State undertakes to perform or refrain

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<sup>81</sup>Djura Nincic, *The Problem of Sovereignty in the Charter and in the Practice of the United Nations*, (Martinus Nijhoff, the Hague, 1970), at p. 9.

<sup>82</sup> Quoted in Djura Nincic, at p. 9.

<sup>83</sup> Quoted in Djura Nincic, *Ibid.*, at p. 9

from performing a particular act an abandonment of its sovereignty. No doubt any convention creating an obligation of these kind places a restriction upon the exercise of the sovereign rights of the State, in the sense that it requires them to be exercised in a certain way. But the right of entering into international engagements is an attribute to State sovereignty.<sup>84</sup>

In the Customs Union with Austria case, Judge Anzilotti J ruled that: restrictions upon a State's liberty, whether arising out of ordinary international law or contractual engagements do not as such in the least affect its independence. As long as these restrictions do not place the State under the legal authority of another State, the former remains an independent state however extensive and burdensome those obligations may be.<sup>85</sup>

It is reasonably clear that the Charter of the United Nations and customary international law have not recognized the absolute sovereignty of states. However, the United Nations Charter has emphasized the concept of sovereignty in article 2(1), which provides that "The organization is based on the principle of the sovereign equality of all its members." Chapters 7, 8, and 9 of the Charter are also concerned essentially with issues of sovereignty.

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<sup>84</sup> (1923) PCIJ Ser A, No 41 at p. 25; Quoted also in Burmester, at p. 133.

<sup>85</sup> (1931) PCIJ Ser A/B No 41 at p. 58; Quoted also in Burmester, at p. 133

It is suggested that the position taken by the supporters of the "relative sovereignty" view is more appropriate and more logical than the recognition of state sovereignty as absolute and unlimited. Since states cannot live isolated from each other, they, like human beings, cannot also be free to act or to do whatever they want. States as members of the international family have to act according to international law which in its turn governs the relationships among states.<sup>86</sup>

Therefore, states are required to respect the international constraints which are usually imposed by international law. This can be pursuant to treaty obligations voluntarily entered into or in accordance with customary international law. These obligations or constraints not only affect the external sovereignty of a state, for example, the right to interfere in the internal affairs of other states, but also affect its internal sovereignty, such as the way in which a state deals with diplomats or aliens.<sup>87</sup> Today states are increasingly bound in relation to the way they act towards their own nationals. One author maintains that:

Modern discussions of sovereignty have often addressed the questions of whether one can speak of "absolute sovereignty" for states, a power above international law. Few, if any, would support such a view today, and the very concept of the equality of states at least implies that the sovereign rights of each state are limited by the

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<sup>86</sup> See Mark W. Janis, "International Law, " 32 *Harvard. Inte'l. L. J.* (1991), at p. 369

<sup>87</sup> Henery Burmester, at p. 131.

equally sovereign rights of others. "[S]overeignty in its original sense of "supreme power" is not merely an absurdity but impossibility in a world of states which pride themselves upon their independence from each other and concede to each other a status of equality before the law.<sup>88</sup>

In conclusion sovereignty is more or less the internal self-determination and independence from any superior powers. That does not, however, mean that sovereignty is independent from the international law. All authoritative modern authors and commentators are in favor of this fundamental point.<sup>89</sup> Hence, the sovereignty of states must be exercised in accordance with international law, and the concept of "an unlimited, unlicensed law- making and law-breaking power of states by virtue of their sovereignty would not only be immoral, but also illogical, because it would defeat law itself. Sovereignty must therefore always mean a merely relative supremacy, subject to international law<sup>90</sup> The international protection of human rights provides one of the clearest examples of the changing nature of state sovereignty. Traditionally, human rights were regarded as matters entirely within the domestic jurisdiction of states and not subject to international law. Today, human rights are no longer considered as merely an internal state matter. The establishment of the United Nations and the adoption of the Universal Declaration, the

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<sup>88</sup> See H. Hannum, *Autonomy, Sovereignty and Self-Determination* (1990); Quoted also in Burmester, at p.131.

<sup>89</sup> See Luzius Wildhaber, at p. 437

<sup>90</sup> See Luzius Wildhaber, *Ibid.*, at. 438

United Nations Covenants and the other regional conventions such as the European and the American Conventions of Human Rights have led to the recognition of the universality of human rights. Respect for human rights has become an obligation ergo omnes similar to the obligation to abstain from acts of genocide or aggression<sup>91</sup>

The Charter of the United Nations provides for the concept of sovereignty, non-use of force, nonintervention and human rights. There is always tension between these concepts. The non-use of force, the non-intervention principle and the sovereignty principle could be classified as one pole, and the recognition of human rights as another. It has been also said that the doctrine of humanitarian intervention violates both the non-intervention and sovereignty principles. If state X does not respect human rights principles, state Y, according to the humanitarian intervention argument, could violate state X's sovereignty by intervening in its territory to stop human rights violations. But the question may arise here is which is more important, human rights principles or the established principles of sovereignty and non-intervention? This dispute leads to another question about the legality of humanitarian intervention, in particular unilateral humanitarian intervention. This question has been subject to wide discussion among

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<sup>91</sup> See generally Bogdan Wierzbicki & Ganapala Welhengama, "The Problem of Humanitarian Intervention: Developments and Trends", *The Liverpool L. Rev* [Vol. XVI(2) [1994], pp. 154-158

jurists. In fact, there are two different schools of thoughts regarding the question whether the United Nations Charter allows or rejects the use of armed force for the purpose of protecting human rights. The first is the "classicist" school which contends that the United Nations Charter prohibits any kind of intervention except on grounds of self-defense and collective self-defense. This school accordingly prohibits the use of force as a means of protecting human rights. In other words this school gives priority to the concept of state sovereignty and the principle of non-intervention.

The second is the "realist" school which has criticized the classicist position and called for the use of force for humanitarian purposes. This school argues that the United Nations Charter allows such intervention and considers it as an exception from the prohibition on the use of force. This school gives a humanitarian dimension in its understanding of the United Nations Charter.<sup>92</sup> The difference between the two schools is known as the classicist-realist schism.<sup>93</sup>

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<sup>92</sup> See generally Simpson Gerry J, "The Diffusion of Sovereignty: Self Determination in the Post Colonial Age", 32 *Stanford. J. Int'l. L.* (1996), p. 685. See also Urquhart Brian, "Sovereignty vs Suffering", *The New York times* (April 17,1991), p. 23

<sup>93</sup> Tom J. Farer, p. 118. The classicists support the general prohibition on the use of force while the realist support a liberal interpretation permitting the use of force for humanitarian reasons.

The question whether humanitarian intervention is legal or not was exhaustively discussed in the United States intervention Panama which led to over-throw of General Noriega. There are two opinions regarding this question. One view rejects this intervention on the ground that it is in violation of the non-intervention and sovereignty principles. The second one accepts it as an example of humanitarian intervention.

Among those who reject this intervention is Nanda who accepts that Noriega's regime was of an autocratic character, but who also observes that no international legal instrument allows an intervention to maintain or impose a democratic form of government in another state.<sup>94</sup> Despite the fact that the United States argued that the nationals of Panama were being deprived of the right to political independence, Oscar Schachter has argued that the self-determination principle does not take priority over well-established and important legal principles- such as non-intervention and state sovereignty.<sup>95</sup> Tom Farer has also argued in this regard that if sovereignty means anything, it means that one

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<sup>94</sup> V. Nanda, T. Farer, and A. D'Amato, "U. S. Forces in Panama: Defenders, Aggressors or Human Rights Activities?" *AM. J. Inte'l. L.* [Vol 84: 2, 1990] p.498. See Also V. Nanda, "The Validity of United States Intervention in Panama Under International Law", in "United States Forces in Panama: Defenders, Aggressors or Human Rights Activities?" *AM. J. Inte'l. L.* [Vol 84: 2, 1990].

<sup>95</sup> See O. Schachter, "The Legality of Pro-Democratic Invasion", *AM. J. Inte'l. L.* [Vol. 78, 1984), pp. 645-650.

state cannot compromise another state's territorial integrity or dictate the character of the occupants of its governing institutions.<sup>96</sup> On the other hand D'Amato welcomed the United States' intervention in Panama and rejected at the same time the idea that international law only organizes relations between the states. Instead he suggests to adopt a new approach towards the international law. Therefore, D'Amato is in favor of the opinion which provides that only peoples are subject to this law. He further argues that human rights law demands intervention against tyranny and dictators. This kind of intervention in his view is not only legally permitted but morally required.<sup>97</sup>

## **CONCLUSIONS:**

This Article has implied the conflict between the concepts of sovereignty and domestic jurisdiction and the concept of human rights. Furthermore, I have defined the meaning of each notion in international law. It has been argued that the traditional principles of absolute sovereignty and domestic jurisdictions of states have lost their privileged status when there is gross violation of human rights. The conflict between these notions is obvious when one discusses the legality of humanitarian intervention, in particular unilateral humanitarian intervention under the United Nations Charter.

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<sup>96</sup> See Tom. Farer, Panama, "Beyond the Charter Paradigm", at p. 514.

<sup>97</sup> See Nanda, Farer and D'Amato, "The Invasion of Panama Was a Lawful Response to Tyranny", at pp. 519-522. See Ann Michalska, p. 399-400

It has been argued that unilateral humanitarian intervention is not very well accepted by all states and scholars. In fact, there are two schools of thought concerning the argument as to whether the United Nations Charter allows or prohibits unilateral use of force for humanitarian reasons. The first is the "Classicist" school, which argues that the United Nations Charter prohibits the use of force for all reasons except in case of self-defense or collective action empowered by the United Nations Security Council. The second is the "Realist" school, which argues that the United Nations Charter may make an exception for unilateral humanitarian intervention. Both schools have derived their arguments from the text of the Charter and other sources in order to justify their theories. The different arguments mainly revolve around the United Nations Charter since the Charter could be considered as an international constitutive document.<sup>98</sup>

It has been argued here that the Classicists in their textual interpretation and approach could be described as narrow minded positivists to the extent that they interpret the text with a degree of narrow-mindedness, leaving no scope for purposive interpretation.

The arguments of the Realist school are more convincing today because this school of thought concentrates on

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<sup>98</sup> Vienna Convention on the Law of Treaties 1969, article 31 (1). See generally Attwool Elseph, "William Galbraith Miller, Humanitarian Intervention and International Law", the Juridical Review, (1994), p. 36.

human rights values in its understanding of the United Nations Charter and considers them more important than the traditional principles of sovereignty and non intervention. The arguments of the Realist school in this regard are to be considered of great importance. The scholars of this of thought school refer to the United Nations Preamble and articles 55 and 56. Moreover, the supporters of this school also refer to article 2(4) and they conclude that the use of force for the purpose of humanitarian intervention is justifiable on the basis that it is not against the "territorial integrity", and "political independence" of states. The proponents of this school argue that the use of force to put an end to gross human rights violation is consistent with the aims and purposes of the United Nations Charter.

The debate and conflict between these two schools of thought also arises when they come to discuss other arguments. The Classicist school refer to abuses that would occur if one allowed humanitarian intervention. They argue that if one permitted such kind of intervention, then the most powerful states would use it as pretext to achieve political and economic gains. The supporters of this school refer to some examples in which states abused this doctrine, such as American interventions in Granada, Panama and Haiti. It has been argued that the Realist school rejects this argument as a basis to outlaw the concept. The supporters of this school maintain that even if states abuse humanitarian intervention doctrine that should not mean that one has to abolish this concept. There are, for example, countless

abusive claims of the right of self defense, but that does not mean that there should be no right of self-defense. The supporters of the Realist school put forward another argument in order to justify the humanitarian intervention doctrine.

They argue that states keep the right of humanitarian intervention because of the United Nations' failure to act effectively to remedy human rights violations.

The debate, as has been mentioned, still exists between these two schools of thought and each school vigorously tries to bring more arguments to the debate to support its position. However, it seems that the arguments of the Realist school, in particular those which are based on the United Nations Charter, are more realistic and convincing today. Since, human rights values and ideals are coequal with the value of peace, in other words, the protection of human rights is equally as important as the maintenance of peace. Another conclusion one may reach is that the United Nations is not capable of acting to provide assistance when there are gross violations and abuses of human rights or otherwise when it is urgently needed. And until the United Nations is capable of acting in an efficient way when it is asked to do so, states should recognize the unilateral use of armed force as a last resort to relieve peoples from unnecessary suffering.

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**Regional cooperation as a tool for rapid  
implementation of the migration policy of the  
Western Balkan**

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**ABSTRACT**

Commission continuously repeated commitment of the EU to the Western Balkans , in order to bring the countries closer to the EU and to make their European perspective visible through establishment of new initiatives.

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EU accession and strengthening regional cooperation are priority activities of EU institutions. The convergence process is founded on respect for the Copenhagen criteria and the Stabilisation and Association Process, including regional cooperation, good neighborly relations and cooperation with the International Criminal Tribunal for the former Yugoslavia, achieving the priorities set out in partnerships, and the conclusion and implementation of the Stabilisation and Association Agreement.

The article will analyze the progress of each country in that direction and activities to enhance regional cooperation among other things, the responsibility of the countries of the region for the simple reason that collaboration can positively reflect the establishment of standards of migration policy. This is essential in one of the crucial policies of the Union - Justice Freedom and Security. Also the subject of this paper will be the results of the analysis of the situation in the field of border management, regional and cross-border cooperation, asylum, illegal migration and visa policies which are relevant for migration policy of each country in the region.

*Keywords : European Union , Regional Cooperation , Migration and migration policy in the Western Balkans.*

## **INTRODUCTION**

One of the key goals of the process of regional cooperation is the establishment of greater security and stability in the region made of countries that got their independence after the dissolution of the former Yugoslav Federation. Initially led by the Stability Pact and then as a result of the improved climate and trust among countries in the region, regional cooperation is ceded to the Regional Cooperation Council based in Sarajevo. Essential component of this "tool" for improving trust and good neighborly relations of states originally referred to the resolution of issues that were inherited from the past and referred to the resolution of the consequences of military action, with measures that encourage the processes of political stabilization and economic processes in the states and with the sole intention of overcoming intolerance, discrimination and hate speech that can largely be cause of violation of the corpus of human rights of peoples and national minorities living in the countries of the Western Balkans.

The regional collaboration as a process and its deepening has a crucial role in overcoming the problems faced by the countries of the Balkans, organized crime, corruption, illegal migration, asylum and migrant smuggling. But it must be stressed that this is only one of the important segments of regional cooperation in the countries of this region.

Although until now major progress is made in regional cooperation in the countries of Southeast Europe and in particular ones that belong to the region "Western Balkans" still much has to be done to restore confidence and to achieve full cooperation on economic and political plan that will contribute to the continuous development of the countries belonging to this geographical region. Improvement of the cooperation will positively reflect the integration processes of all countries, irrespective of their status.

## **1. POLITICAL AND SECTORAL DEVELOPMENT OF REGIONAL COOPERATION AMONG SOUTHEAST EUROPE COUNTRIES**

From the documents relating to the integration of each country in the region continuous development process of regional cooperation can be seen, but cooperation of political elites, as an important segment, unfortunately is not following this process on the same level. However the development of cooperation in specific sectors such as economic, social and cooperation in the field of justice, freedom and security will positively reflect on favoritism of political cooperation of the Balkan countries.

Financial insolvency of member states, as a result of the recession that they experience, at some point in the recent past<sup>103</sup> have reflected negatively on regional cooperation, primarily due to a decrease in foreign investment, capital flows, the stagnation of the activities of all projects funded by international financial institutions, including the Structural funds of pre-accession assistance (IPA). The global economic crisis include some of the Western Balkans countries which directly reflect the economic and commercial processes in the region, depending on to what extent the economies of these Balkan countries were integrated in the global market of products and capital.

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<sup>103</sup> *Consequences of the financial crisis are still being felt*

The intention to the European Union through various projects for supporting the process of regional cooperation was primarily geared towards strengthening the regional peace and prosperity of countries by implementing that intention through connecting this process with the process of stabilisation and association that was only an essential tool for encouraging reform processes of the states and development of their institutions, legislation, economic and industrial capacity for the future association to the European Community member states.

From the analysis of the development of regional cooperation it can be concluded that in the last ten years, despite the causes of a financial nature, which resulted in slowing down of this process, it still has some progress. Despite these developments, some issues related to military activities in the territory of the countries of the former Yugoslav Federation, still remained open and are reflected in the functioning of institutions in each of them and their bilateral relations .

One step in overcoming the situation were the efforts of the Union and the United Nations for the progress of the process of reconciliation between Serbia and Kosovo, with the sole intention to promote cooperation, achieve progress for the states in their efforts to become full members of the European Union and to improve conditions for the quality of life of people in these areas.

This progress in terms of reconciliation is also crucial for Bosnia and Herzegovina, not only for the functioning of state institutions, but also for the realization of its Euro-Atlantic aspirations. In Macedonia international efforts were made towards the full implementation of the Ohrid Framework Agreement, in order to start its full membership in Euro-Atlantic organizations. Respect and protection of ethnic minorities in the region, the return of refugees and cooperation with the International Criminal Tribunal for the former Yugoslavia (ICTY), and the corresponding trial for war crimes in the country were one of the essential factors for successful implementation of this process.

Resolving these issues represented the foundation for further development of the political component of the process of regional cooperation because efforts made by governments on certain issues in the countries, such as the development of civil society, the fight against poverty and social inclusion, is just an evidence that they can be solved only by promoting regional cooperation .

Regional Cooperation Council , which plays a key role in the providing and monitoring of regional cooperation is focus on projects that will mean better economic development of the region by creating a free trade zone, the establishment of a single energy market , with the sole intention of better preparation for integration into the European energy market and improve standards in

the areas of safety, security and air traffic management through the signing of a European Common Aviation Area.

Member States that support the process of regional cooperation with mild diplomatic pressure found a way to get the countries of the region, in the spirit of good neighborliness, to resolve outstanding bilateral issues relating to border disputes, cross-border incidents and recognition of legal personality. In this direction, of essential importance is the fight against organized crime, particularly in the prevention of illegal migration movements, smuggling migrants, vehicles, drugs, psychotropic substances and precursors and excise goods. The Commission, through its affiliate engagement, expects from countries in the Western Balkans to resolve these open issues through the principle of peaceful settlement of disputes contained in the Charter of the UN, by involvement of the International Court of Justice, but only if it is a necessity.

Basically, unresolved bilateral issues should not represent a brake for starting the process of accession of the candidate countries to the EU, but in practice we have witnessed that this theoretical framework is often violated, and efforts of the Union remain within the help for creation of the necessary political incentive in finding solutions for the implementation of the already existing initiatives for their future association.

Western Balkans now comprises eight countries compared to the former two<sup>104</sup> that existed in this area, however, it must be said that for several features<sup>105</sup> the region is always subject of analysis as a whole. However, it must be stressed that despite some progress in relations between the countries of this region, it can not be reliably predicted yet that there will be continued political and socio-economic development<sup>106</sup> in the future. Increasing economic and financial transactions, as well as organizing joint cultural events only indicates the positive effect of the established regional cooperation. Stressing the benefits of regional cooperation is not only a political philosophy but a reality and its benefits will be recognized by many countries in the future.

### **1.1. The Initiatives of the Western Balkans and the European Union in the development of regional cooperation**

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<sup>104</sup> *Yugoslavia and Albania*

<sup>105</sup> *Its common history and similar problems and prospects*

<sup>106</sup> *Reform cooperation in the Western Balkans- regional cooperation: experiences, constraints and opportunities: Joakim Anger, Final Report December 2012 SIDA*

One aspect of this process of collaboration is its external management system, although the activities are carried out by the Regional Cooperation Council however the role of the EU in this process is essential. Its clearly defined agenda for the integration of the Balkan countries in the European Union over a broad incentive for generating a network of regional relations between the countries of the Western Balkans, is seemingly contrary to the Union's activities in the process of stabilization and association, and the process of negotiations for integration of each state separately in the Union<sup>107</sup>. Cumulativeness of these two processes lead to a small lag in the cooperation of the countries in the region because some uncertainty appeared in all of them due to the new developments, especially from the bilateral approach of the Union to the Western Balkans in terms of their aspiration for membership. Yet, despite the generated uncertainty, most of the international forums, regional tables and policy initiatives over the last fifteen years are covering many initiatives which is evidence of the progress in relations between the countries of the Western Balkans, especially among those that comprised the former Yugoslav Federation, now known as part of south-sphere.

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<sup>107</sup> *Regional Cooperation in Western Balkans in Times of Political and Economical Uncertainty*, Simona Mameli, Institute for Central and Eastern Europe and the Balkans

Because of the intention of the governments of all the countries of the Western Balkans to be members states, it is increasingly insisted on areas of regional cooperation: a) trade through the signing of the Free Trade Agreement (CEFTA), b ) and small businesses through compact development help from foreign investment and use the experience of the countries of Southeast Europe, c) public administration reforms that are expected to establish new technological processes founded on information and communication technologies in order to systemic functioning and related to minimum number of resources as an administrative capacity, d) transport which is one of the most developed sectors of regional cooperation through signing of many agreements and memoranda of navigable road and air traffic between the region and the international and intergovernmental organizations, e) fight against organized crime and corruption and f) strengthening cross-border cooperation for greater border security.

In order to strengthen the effectiveness of this cooperation, the European Union through encouraging companies from developed countries to invest in the region of Southeast Europe, with emphasis on those of the Western Balkans sends a clear signal that it is ready to support this cooperation to strengthen national economies of these countries, which will positively reflect on the economies of the countries of the Union.

Specifically, this determination of the Union is verified through various financial investments, grants , loans, particularly for infrastructure projects, access to finance for the development of SMEs and energy efficiency projects.

Despite all the obstacles that were the cause of the amplitude character of the development of regional cooperation, it must be noted that from this perspective the political evolution of the region is evident, especially new opportunities for investment and trade that are a reality among the countries of the Western Balkans. The most important emerging areas are transport<sup>108</sup> and trade that despite the global financial crisis that was reflected in the SEE countries, its market remained and is expected to be one of the most dynamic in the future. From this we can conclude that the enlargement process must not stop because the long-term stability of the union is closely correlated with the integration of the countries of Southeast Europe.

## **2. IMPACT OF THE REGIONAL COOPERATION ON THE DEVELOPMENT**

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<sup>108</sup> *Railway companies from Croatia, Serbia and Slovenia have signed a formal agreement to create a joint company, based in the Slovenian capital in order to reduce cargo transportation from Ljubljana to Istanbul, which at this period is up to 35 hours through the Corridor X*

## **OF MIGRATION POLICY OF THE COUNTRIES OF SOUTHEAST EUROPE**

Macedonia has always had a positive contribution to regional and sectoral cooperation. Its participation in all regional and bilateral meetings with neighbors, and part of that was the host, is evident, especially for issues related to the field of justice and home affairs. In the framework of police and customs cooperation Macedonia has established joint contact centers, and joint mixed patrols with Albania, Serbia, Kosovo and Bulgaria to joint border controls are established practice. In this context it must be highlighted the police cooperation agreements that the Republic of Macedonia has signed with Serbia and Kosovo, as well as with Croatia and Montenegro. Macedonia also has agreements with Montenegro, Serbia and Albania for traveling of citizens only with biometric ID cards for identification. In terms of migration Macedonia stands for efficient management of migration processes and build an active and consistent migration policy, taking account of national, social, economic and cultural development of the country, using the advantages of legal migration movements in the direction of expansion of free economic initiative and the free flow of capital. With such a policy, Macedonia creates assumptions to reduce the intensity of emigration and guarantees

foreigners respect of fundamental freedoms and human rights, allowing them to remain temporarily or permanently and to integrate into the Macedonian society<sup>109</sup>.

Taking consideration to the Commission's report that describes the progress of Macedonia in the context of its association with the European Union, it can be concluded that there is some progress in this area. Changes to legislation regulating migration enables simplified access to temporary stay permit of labor migrants from foreign companies that are of essential importance to increase investment in the country. However much still needs to be done in this area to achieve the standards of the Member States, while Macedonia has quite done in the field of justice, freedom and security. The database for foriners which includes asylum, migration and visa is in testing phase and much work has to be done on strategic capacity to manage migration flows, because personnel and equipment are not sufficient for the country to deal with the increasing number of migrants passing through Macedonia's territory. In this regard, the need is stressed for greater efficiency of border controls for prevention of illegal

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<sup>109</sup> *More: Resolution on Migration Policy of the Republic of Macedonia 2009-2014*

migration that takes place through the north- south corridor<sup>110</sup>.

Unlike in Republic of Macedonia, there has been some progress in Montenegro in the area of regional policy and coordination of structural instruments, but generally, preparations in this area are still at an early level. From substantial importance is the staffing of the IPA operating structures, organizational structure, as well as the operational and financial independence of the audit office.

According to the Commission's Report on Montenegro's progress in the area of justice, freedom and security it can be concluded that the country is working to develop certain segments of the migration policy but still needs time to complete the process. Namely, in this area the Government of Montenegro adopted a new action plan for implementation of the 2013-2014 strategy for the integrated management which will greatly assist the development of migration policy because the measures will positively affect to prevent illegal crossings. In terms of readmission agreements, Montenegro has signed agreements with the Benelux and Slovakia and

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<sup>110</sup> More: Report from the Commission to the European Parliament and The Council: The Former Yugoslav Republic of Macedonia: Implementation of reforms within the framework of the high level accession dialogue and promotion of good neighbourly relations, Strasbourg, 16.4.2013, COM(2013) 205 final.

agreements are ratified with Moldova, Turkey, Serbia, while the agreement with Kosovo still to be signed. Although preparations for the harmonization of Montenegrin legislation with the EU are advanced, however it is necessary to ensure full compliance with the EU *acquis* in the field of legal migration<sup>111</sup>. In terms of the Integrated Border Management a new strategy is adopted and the legal framework in relation to asylum is completed and the progress is evident in this area as one of the essential for migration policy.

According to estimates of experts of the European Commission for Bosnia and Herzegovina situation in the field of migration is satisfactory because it has made good progress in this area, and this is evident if we consider that the Centre for stay of illegal migrants is operational, the Readmission Treaty with the Union the country has fully implemented and has signed readmission agreements with Turkey and Moldova. However Bosnia and Herzegovina must implement certain activities to realize priorities of the strategic documents that were set among which remains the implementation of the strategy for reintegration of returnees, to resume activities concluding readmission agreements with countries that are not members of European Union and to continue its efforts to promote the cooperation of foreign services with other law

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<sup>111</sup> *More: Montenegro 2013 Progress Report*

enforcement agencies<sup>112</sup>. Although progress has been made in the areas of visa, border management, asylum and migration Bosnia and Herzegovina needs to improve its infrastructure of border crossings, improve the system of influx of legal and illegal migrants particularly from illegal migrants as well as the asylum system, which means it needs more financial and administrative capacity for the normal functioning of these systems.

Serbia, unlike other countries in the region, due to the commitment of its political leadership of the reform process and the improvement of relations with Kosovo, has the ability to lead the accession negotiations with the EU for its association membership. Serbia also favors relations with its neighbors, which provide a positive contribution to the development of regional cooperation. Serbia should continue to mobilize its intellectual capacities in order to achieve full compliance with the membership criteria, especially in judicial reform, fight against corruption and the fight against organized crime, public administration reform, independence of key institutions, freedom of media, anti - discrimination and

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<sup>112</sup> *More: Commission staff working document, Bosnia and herzegovina 2012 progress report accompanying the document Communication from the commission to the european Parliament and the council, Enlargement strategy and main challenges, 2012-2013 {com(2012) 600 final}, Swd(2012) 335 final, Brussels, 10.10.2012.*

protection of minorities<sup>113</sup>. In the area of migration management, Serbian authorities in charge of the border issues have a proactive work attitude, resulting in the termination of many channels for illegal crossing of the border by illegal immigrants. Migration legislation is adopted, a key role in the migration policy despite the law enforcement services has the Commissioner for Refugees and Migration, as a central focal point in migration management policies and for establishment of a uniform system for data collection and information of relevance to migratory movements. However according to the Commission services, Serbia needs to make further efforts to ensure respect for the rights of asylum seekers and progressive alignment with EU legislation that regulates the field of migration. The readmission agreement between the EU and Serbia is implemented without significant problems, although the capacities and resources for integrating returnees from the process of readmission are very limited.

Regarding Kosovo, intention of the Commission is to start with the Stabilisation and Association Agreement since the feasibility study prepared by the Union indicates that Kosovo is largely ready for the start of negotiations for such an agreement. To continue the process, according to the Commission, the implementation of the agreements signed with Serbia are

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<sup>113</sup> *More: Republic of Serbia 2013 Progress Report*

essential as well as Kosovo's readiness for enabling the rule of law, improvement of the functioning of public administration, protection of minorities, human rights and trade.

### **3. CONCLUSIONS**

Taking to account analyzes of countries in the region in the areas covered by the Union's policy in the field of justice and home affairs it can be concluded that national policies in the field of migration vary among countries of the region, because all have different priorities which have been implemented, although it is evident that the institutional capacities of all of them are more or less identical. In this context of substantial importance is to intensify regional cooperation with projects that will enable the countries of the region to transfer their experience with the sole aim faster approximation of the European aquis that will reflect with faster integration of the Balkan countries in the European Union.

**The European common defense Policy and security dimensions. Between the civilian defense goals and objectives as well as military capabilities**

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**Abstrakt**

SUBJECT : Dimensions of common security policy and European defense. Among the objectives of civil defense and military capabilities.

EU through its instruments of this policy is trying to actualize the dimensions of its occurrence with an increasingly competitive profile in terms of crisis management of regional and global conflicts. In these years of the development of this policy is found that EU in the fulfillment of 's role and mission for a safe and peaceful environment has made progress in terms of civil- military approach. Successfully tests done in many civilian and military missions has increased European ambition, role and responsibility that EU

should take and play in building peace, guarantee it, suppression of crisis and resolution of conflict.

Civilian and military capabilities and skills either in terms of their operational and their characteristics will be given in the evolutionary viewpoint, from their origin to the experiences generated across the globe and partnerships with international organizations. Civilian-military instruments in support of this policy will be treated associated with respective key goals such as Helsinki, the development of military capabilities, combat groups, their characteristics, and resource challenges, and not only.

Civilian targets undertaken in this regard will be presented related to increasing capacity effective EU in coping with civilian crisis management as a component of competitive and substantive foreign policy of the EU. These dimensions will be seen integrated within a conceptual framework of strategic management, where facing the international security environment challenges,

the EU has to offer in regards of its operational capabilities.

Key words : Helsinki goals, civilian and military capabilities, combat groups, the agreement Berlin Plus, European Joint Policy, Security and Defence etc.

Western European Union WEU since its creation through cooperation between member states and the experiences acquired in the framework of their missions has contributed to the creation and consolidation of a European identity, the common defense<sup>114</sup>, and the European pillar of the North Atlantic Alliance. WEU was seen and treated as a forum to discuss issues of defense and security impact on Europe. Political developments through geopolitical changes in Europe, the Middle East etc. makes WEU to update with these new reality, and to be seen as a mediator between the

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<sup>114</sup> Nato Handbook:the western European Uion WEU Nato publications.updated 4 nov 2002,PESD dhe misionet e vet ,Akademia e Mbrojtjes publikikim I Politikes se perbashket te mbrojtes evropiane..

EU and NATO in terms of strengthening European defense identity, where EU must now take its role in facing the operational challenges either civilian as well as military in the context of its foreign policy and security .

Petersburg Statement<sup>115</sup> by the so-called Petersburg missions such as humanitarian and rescue tasks, etc. expresses readiness WEU member countries for conflict prevention and peacekeeping efforts by the military through cooperation with other organizations such as the OSCE and UN Security Council in terms of peacemaking and crisis management. EU treaties since Maastricht makes the following important steps towards strengthening the operational capabilities of the EU ' through the experience of the WEU , and gradual transfer of competencies to the organization structures of European security policy and common defense. Since that time the policy of defense and security<sup>116</sup> has

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<sup>115</sup> Takimi i ministrave te jashtem dhe te mbrojtjes te vendeve antare te BEP ne Bon me 19 qershor te vitit 1992

<sup>116</sup> Neni 11 i traktatit te BE,percakton objektivat e nje politike te perbashket te mbrojtjes dhe sigurise ,Shih TEU

become an important part of foreign policy and European security, which in turn it had to do with partly external relations of the EU.

The Common Foreign and Security Policy sees NATO as responsible for the territorial protection of EU and peacemaking. Amsterdam Treaty considered WEU as an integral part of EU development and in particular of the European policy by equip and ensure of operational capability to fulfill the Petersburg missions , as well as in the strengthening of European security identity and defense within the Alliance. The EU is already responsible for peacekeeping and maintaining control of treaties, agreements . In its relations with NATO, respective missions are seen as separable and non splitted, which means a consensus among them where the same forces and commitments constitute the basis of the two operational organisms in the missions, where the first refusal right belong to NATO and then EU.

Transatlantic partnership between NATO and the EU in terms of its institutional declaration has reference of M.

Albright to " 3 D " ( no partition , no duplication , no discrimination )<sup>117</sup> , as well as Berlin Plus<sup>118</sup> Agreement , where the EU can use structures , equipment of NATO mechanisms to carry out military operations and missions if the NATO has the right of first refusal. So if NATO refuse to act then EU can decide to carry out the mission.

The creation of the European Defense Agency bypassed WEU making anachronistic and a relic, out of the time. Lisbon Treaty expanded Petersburg tasks, Humanitarian , peacekeeping , crisis management including peacekeeping missions, viewing it now as a post-conflict stabilization program and the war against terrorism. These tasks can be undertaken by the Rapid Reaction Force of the EU, which is headed by the Political and Security Community<sup>119</sup>. In essence the treaty improved cooperation between the EU member countries in

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<sup>117</sup> Ne kunderpergjigje te deklarates dhe marveshjes se St Malos mes BM dhe Frances (Bler –Shirak)

<sup>118</sup> Marveshje mes NATO-s dhe BE-s ne dhjetor 2002 qe hyri ne mars 2003

<sup>119</sup> Organ i krijuar nga Traktati i Nices

framework of known procedures as structured and permanent cooperation, where states are differentiated based on their abilities which are ready and prepared That separately or in groups to undertake difficult military missions.

So this means a kind of military and defense Shengen treaty, similar to the group of euro zone countries where some of them can not be involved because of introductory criteria , lack of capacity and resources. Different models of permanent structured cooperation materialized in pioneering groups of countries have overcome difficulties encountered in maintaining and finding a balance between legitimacy and effectiveness e in practice.

Lisbon Treaty reformed the system of EU columns by creating the post of High Representative of the EU for Foreign Affairs and Security , by merging into a post of High Representative for the Common and Security and the Commissioner for External relations and European Neighborhood Policy. Catrin Ashton as High

representative is responsible for the activity of the Foreign policy, a bureau of diplomatic corps " foreign minister" making it as a Foreign Policy spokesman for the EU. She is the chairwoman of the European Defense Agency EDA<sup>120</sup> , and exercises the rights and functions to Joint and Defense Policy .

A strong ESDP has repeatedly worried U.S. officials as this will lead to the creation of a European group front and within the alliance that could undermine relations between the U.S. and European countries, members of the alliance. Although the mission of collective defense is NATO , European defense integration contributes to European efficiency in this regard and rationalize its policies achieved through cooperation between the member states.

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<sup>120</sup> EDA ,acronim i Agjensise Evropiane te Mbrojtjes ,eshte nje agjensi e BE-se,organ i politikes se jashtme dhe te sigurise CFJS,e krijuar me 12 korrik 2004 ,per te mbeshtetur shtetet antare dhe Keshillin Evropian per permiresimin e kapaciteteve mbrojtese ne menaxhimin e krizave ..Ka disa funksione si zhvillim i kapaciteve te mbrojtjes,promovimin e bashkepunimit evropian ne fushen e armatimeve,rritjes se kerkimit e forcimiin e teknologjise se mbrojtjes si dhe krijimin e tregut evropian te pajisjeve mbrojtese ..

The objectives to be achieved within the foreign policy of the EU security are the preservation of shared values, fundamental interests , integrity , independence and security of the EU , strengthening of international peace and security , the promotion of this cooperation , respect of human rights and freedoms , democracy , the rule of law ec. To accomplish these objectives through EU policies and instruments foreseen by its governing structures , interferes with its diplomacy , its police missions , civil- military crisis management and conflict resolution .

### **The military goals of the ESDP.**

Development of the Rapid Reaction Force has been the main objective of increasing the military capabilities of the EU which dates back to the European Council meeting in Helsinki in 1999 , which was defined for the EU to become operational by 2007 with a force of 60,000 soldiers , reliable , deployable within 60 days , at a distance of 4000 km . These forces will be ready and in response to fulfill the Petersburg tasks and

simultaneously are the tasks for Rapid reaction Forces for humanitarian , rescue , peacekeeping , disarmament , military advice and assistance and post-conflict stabilization.

Rapid reaction Forces response was identified as an important aspect of crisis management by the EU. Helsinki main goal set in 2003 was that that member states be able to provide rapid response elements , to be ready. This concept deployed by EU military operation took place with the first autonomous EU military mission called Operation Artemis. The main forces catalog identify the required skills for each field, through their action plans aimed at enhancing , improving and developing these skills in the military posture of the EU, to have a coherent approach including a wide range of missions in response to crisis management under the EU Treaties, as well as the duties and responsibilities that are generated by the adoption and implementation of the European Security Strategy .

While the objective of Helsinki in 2003 had advanced and updated, the European Council appointed a new military goal in 2010, where it was envisaged that member states would be more rapid in their response as well as a comprehensive and coherent approach. Achieving this objective associated with the determination of strategic planning for the entire spectrum of operations to be undertaken.

Coherent and comprehensive approach of that military goal led to the development and improvement of civic skills, as part of military infrastructure and not only, as well as the achievement of a civil- military synergy. Examples of this civil- military synergy cooperation is between the EDA, the European Commission, the European Council Secretariat in the Integrated Maritime Policy of the EU and marine, or the creation of the expert group on security sector reform.

The development of European defense and security is achieved through the dynamic capability development

and operational concepts<sup>121</sup>, dealing mainly with some reference points as the Rapid Reaction Forces, the Petersburg tasks, operational realities of ESDP missions, the main objective in 2010, combat groups, and UN - EU cooperation in crisis management.

Conflicts in various countries of the globe, such as in Darfur, Sudan, Afghanistan, Iraq, are operational requirements realities that have witnessed political and operational constraints of European collective actions, as well as limitations of defense policy and European security.

The main objective in 2010 was a planning framework in relation to the development of EU military capabilities for effective and comprehensive crisis management challenge. The concept of Combat group formations consists of 1,500 soldiers better trained, all in support of combat, combat service, and in deployment support. They need to be flexible to be available immediately

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<sup>121</sup> Politika e Sigurise dhe e Mbrojtjes se perbashket te BE.se ,Zhvillimi i aftesive ushtarake,botim i Amrojtjes “A.Moisiu”.

within 15 days of notification , and support for at least 30 days extended up to 120 days rotation. This concept is closely linked to the availability of strategic transport and any combat support , connecting the main objective of Helsinki and his ambition to meet the key skills gap identified. Combat group became operational by 2007, as a unique tool in a range of rapid response capacity , as a concept and a reality that has already made the EU a more coherent actor , effective , active and able to quickly resolve international crises. He has also contributed as a promoter of military capabilities of member countries to undertake rapid remote deployments.

### **The development of Civilian abilities and skills**

Initiation of European security and defense policy demanded to challenge the civilian branch where by then, such capabilities does not exists. Imperative was the identification of national resources with the aim of setting goals for generating civilian collective skills . At

the European Council in Feira<sup>122</sup> were identified four priorities in the civilian sphere by police mobilization , strengthening the rule of law and civil administration and civil protection .

The use of the police is seen as a priority in civilian crisis management , where states committed themselves to increasing their contribution and operational capacities. Many scenarios of coordination of these missions and to much discussed, contributed to the strengthening of concepts related to comprehensive civil administration , which already is opened, included not only a priority and focused only on the integrated policing dimensions, civil administration and the rule of law as well as civil protection simultaneously .

The development of these dimensions marked important steps along the years 2003 -2004 , which coincided with the context of the events of lessons learned from the

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<sup>122</sup> Ne qershor te vitit 2000 u mbajt Mbledhje e Keshillit Evropian u percaktuan dimensione civile

experience of these missions in the Western Balkans , as well as the adoption of the European Security Strategy. Also, geopolitical changes in Eastern Europe makes the EU to expand to other countries in this geography, which needs additional capacity after economic , political , institutional collapse.

In this European context, as well as those Asian political developments , African adoption of the action plan for civilian aspects of ESDP and Civilian<sup>123</sup> main objective in 2008 marked a significant shift towards the development of civic skills . Many priorities were identified in the development of these civil skills in the future , amongst whom were included civilian crisis management , monitoring missions , efficient deployment of multifunctional packages for integrated crisis management , staff training and growing expertise, institutional strengthening

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<sup>123</sup> Plani i Veprimit te ESDP per aspektet civile u miratua ne qershor 2004,nderkohe Objektivi Kryesor Civil 2008 u miratua ne dhjetor te vitit 2004

and support of financing structures, etc.

Determination of Principal Civil Goals of 2008 included analysis of possible scenarios of civil missions , listing their skills , contributions of member countries and identification of gaps that would lead to the adoption of the plan and improvement of these skills in the context of a review system for them.

Developing skills of ESDP has advanced through continuous coordination of civilian exchanges - by military structures responsible and civil- military cells . Packages of the integrated civilian crisis management has been a main target incentive in 2008 , where through their was designed the concept of civilian response teams , as multinational troops rapid reaction involving expert for many areas of expertise .

Civilian Response Teams can respond to the needs in three phases, that of early warning and assessment and collection of facts , at the planning stage and at the stage

of preparation for the materialization of the mission.

Other dimensions of this Principal Civil objective in 2008, are the adoption of relevant structures of organized training with different missions , ongoing dialogue with other organizations such as the UN , the OSCE for civilian crisis management through the exchange of experience and best experiences between member countries as well as regional and broader ones .

Completion of the Principal Civil objective in 2008 was the beginning transition to civilian targets in 2010 simultaneous with the military . The debate that accompanied this shift was based on the experience of new illustrative scenarios derived from the experience . In the framework of ESDP since 2004 where emanate Civil key objective in 2008 a variety of missions were tested in various countries , such as the EUPM , EUPOL Proxima , EUJUST Themis , EUPT , AMM , we Kinashasa , Kosovo EULEX etc. .

Adoption of these missions more functional and professional and for a long time is the focus of the Civil main objective of 2010 , where the key to its success

depends on the cooperation between all actors and concurrent factors , among its member states on the one hand , between and within EU institutions , between the EU and the theater where taking place these missions , as well as the EU 's and its member countries .

## **Conclusion**

Strengthening the ESDP is an important mechanism of increased EU role in tackling the civil- military challenges. The dimensions of this policy have been growing and expanding which has increased the profile of the EU to peace , security and international stability . They have also led to the establishment of new connections to its partnerships with other organizations involved in the architecture of Peace Regional Security , as the UN , OSCE, NATO , the African Union , etc. Experience of creating civilian missions and military cooperation with these organizations has made European defense and security , be seen as an instrument of foreign policy the EU has to promote its role as a global actor and influence , and has unified positions

within its member countries in matters of security .

Today , the EU within the protection of its interests , and preservation of international peace and security , these missions through the hard and soft Power opposes any real danger of hypothetical threat against Europe.

Facing new threats to security challenges, such as energy , cyber threats , piracy, by new partnerships will be the focus of the ongoing strategic review of the policy documents of the EU , where the management of civil- military crisis will be part of the ongoing debate about how and where, when , how, why and with the EU will have its own geopolitics role as regional and global actor.

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# PROTECTION OF MUSICAL WORK AS COPYRIGHT: KOSOVO CASE

**LLM Arbëreshë Zogjani**

## **Abstract**

“Protection of Musical Work as Copyright” paper is a document that contains information regarding the intellectual property in Kosovo with focus on the musical author’s work, the development of this field, national legal framework and the actual state of affairs!

Which are the works that owns legal protection, which are the criteria that they should fulfill to be considered as such, which are the author’s right exclusively gained, which are the legal remedies of the author’s work, how to get collective administration of the rights are topics covered in the paper. Drafting of paper was realized through consulting literature, articles, continuously follow up of the state of affairs and qualitative research.

The treatment of Intellectual Property in general, and that of musical works in specifically before 1999 in the country, under different jurisdiction, the fallout, restart, aim to harmonize our legislation with European standards are discussed in details so that the picture of its development its clear and easy to compare.

Being considered as a universal language of all humans, musical works with the vigorous development of the technology achieved to ease the access of citizens on them, by increasing the vulnerability of infringing author's rights or their misuse.

Lawmakers point of view, law enforcement agencies, collaboration between them, description of the situation from authors point of view, general awareness, and recommendations to improve the actual situation was given enough space in order to make this research more valuable!

## Introduction

The notion of Intellectual Property Rights implies the legal rights resulting from intellectual activity in the industrial, scientific, literary and artistic fields.

The intellectual property have the role of protecting the authors and other producers of intellectual materials and services, thereby providing them the rights to control the use of works, namely, their products within a specified time period. The field of intellectual property protects a wide range of inventions and creations that have an identifiable economic value. Thus, the IP is divided into two main categories: Copyright (which protects textbooks, lectures, plays, musical works, choreographic works, cinematographic works, drawings, paintings, architectural works, maps, plans, sketches, photographic works and other similar works), and Industrial Property (which includes patents, trademarks, trade secrets and industrial designs).

## **Intellectual Property in the Republic of Kosovo**

Intellectual property in Kosovo may be considered at the same time an old field and a new one taking into consideration the developments before and after the War of 1999.

Back on the time when our state was considered to be a party of the former Yugoslavia, this topic was in a satisfactory level of the development where the main contribution was offered by SOKOJ- the Serbian Organization of Music Authors by ensuring the collective administration of the authors rights. During the war, just the same as all other activities stopped implementing, by starting again in a blanked page, but at least by not inheriting the problems of the past, as happened in other states. The national legal framework today has on this profile composition, laws which are closely harmonized with European legislation such as Law on Authors Rights and other related rights, Law on Patents, Law on Trade Marks, Law on Industrial Design, Law on Customs Measures for the protection of Intellectual Property Rights and Law on Protection of Plant Varieties. To ensure the full implementation of

these laws today we have in force the secondary legislation, administrative instructions, regulations and also the governmental strategies, each offers contribution on the specific field.

## **Musical Work**

Musical works is an intellectual concept of the sound, which in different ways can be converted into the documentary form. The primary goal of conversion of a musical work into the physical form is for the intellectual concept to be conveyed from one person to another. However, the fact that musical works are essentially meant to be listened, conversion into the physical form is not always the first priority of creators and consumers. A musical work includes a series of activities, which are primarily divided into composition, listening and analysis, performance and improvisation. Copyright as a legal protection form offers protection for the musical work in general and its elements.

But, not only have this, in the musical terms, copyright protected not only the song (which usually consists of melody and text) but also the recordings (CDs, mp3, tapes and other forms of recordings). To acquire such protection, a work must fulfill some criteria, such as: be original (not to be a copy from other source), to be expressed, specifically to exist in a form that can be distributed to the public and to have a creativity level. In a moment when a special work fulfills these criteria, the author exclusively acquires some rights, which the same as in other countries, lasts during his life and 70 after his death. These rights can be categorized as follows:

- oral rights (through which the non-vulnerability of the authors work is being protected together with his personality);
- economic rights (through which the economic interests are being protected) and
- other rights.

Recognizing the authorship of a work, including the musical work does not require a registration, having a person mentioned, name, firm, nickname or mark on the work is enough. The main purpose of the abovementioned rights is to ensure that the work, the authors rights are not being misused. Since our focus is on the musical works, composing a song with similar substance to the composition of any other song, and presenting it to others as your own original work is considered plagiarism or violation of copyright. The motive of plagiarism can vary from complete innocence to provocative intentions, and up to complete culpability. Innocence can be achieved in the case when using another song's through fair use, including the usage of the composition for personal needs or study excluding the usage for economic benefits or damaging another author's image, and when using a parody, which is considered to be a new work that is a subject to copyright and is based on another protected work, and despite being used in the new work it can be easily

picked out, but it is not used more than is necessary, and it does not damage the value of the existing original work. Another variant to use the composition of another author is the "summary" which is considered the work formed by the collection and collation of existing materials but which are selected, coordinated or arranged in such a way resulting in the original work of an author. When the author contributes somehow, at least minimally in the authorship, in the creation of the originality during the selection and arrangement of existing musical compositions, the author creates a composition that is legally protected. Protection of a composite work extends only to the selection and ranking of musical compositions.

### **The title of a musical work**

Whether the title of a musical work is protected or not is an issue that always causes confusion, and not only among the general public but also among the authors themselves. In our country the title of a work has legal protection. The author of a work cannot use a title, which

has already been used by another author for the work of the same kind, especially if such action would cause confusion as to the authorship of the work.

The title protection issue is regulated differently in legislations of different countries. Considering the fact that the title usually represents a single word or a short and general sentence, many countries find it difficult to provide legal protection. Many authors often tend to be protective of the title that they used in their work, and many others try to take advantage of the popularity of another author's title of work. As much as it is a minor issue, very often it managed to create public controversy.

The title is rather regarded as a denomination or label of the work in question, be it film or theatrical work, or musical in our case, and not its integral part. There are many cases when the author after writing the text of a song, changes its title at the end, and titles are translated very rarely. This practice confirms the truth of the real world of legal theory. What individuals often confuse are

the trademarks, because they are subject to copyright. The name of a product can be included in the trademark and can enjoy protection, but not a song title, and this is because one of the main goals of the trademark is to identify the origin of the product.

### **The text of a musical work**

Unlike the title, the part of a musical work that has legal protection in all legislations is without doubt its text. The text is considered a literary work, which is part of the group that is subject to copyright. Certainly, to have a legal protection, the text of a musical work must meet certain criteria. First of all, the text must be original, creative, and should definitely be in written. The text of a musical work may also be a derivative work, collection of works or even intertwined works, and in all three cases it enjoys legal protection.

### **Composition and the audiovisual part**

Other elements of a musical work that has legal protection are also the composition and its audio-visual

part. Subchapter G of Law No. 04/L-065 on Copyright and Related Rights, regulates the use of the work in material form, which regulates in detail the issue of public performance, the right of public communication, inter alia, the broadcasting and rerun of audiovisual content. Certainly these two elements are indisputable creations of the author protected by law and administration even as collective rights from certain associations.

### **Collective administration of the authors rights**

We have mentioned that the copyright holder can administrate his rights in an individual method (administering copyright on his/her works is done for each work separately, and it is exercised by the author himself or his/her representative through authorization) or collective method (administration covers a number of author's works, and may be exercised either by a natural or a legal person). In Kosovo two collective associations for the administration of copyright has been established, one in the music field and the other of visual artist,

producers and interpreters. APIK collective association for copyright administration dedicates its work for musical works. Based on the work plan, it is the association that starts negotiations with the users of a musical work, doing everything possible to convince them to pay for the use of musical works. If the same do not comply with the negotiations, than the Government of Kosovo takes the necessary measures, if they still resists, than the Government is authorized to issue fines to these users. Otherwise when the negotiations works, the money received from the users, are being forwarded from the association to the bank account of the author, by getting 30% for its own expenses. The same nature of the work is being made by the other association, VAPIK, being more focused in the audio-visual field. VAPIK is the abbreviation for Visual Artists, Producers and Interpreters of Kosovo defining at the same time the group of interest of this association.

## **Governmental Strategies of the Republic of Kosovo**

A great help in the implementation of the national legal framework, author protection and raising public awareness except from establishing the Copyright and other related rights Office and Industrial Property Office has been given also by the national strategies, the one on Intellectual Property and the Strategy against Piracy and Counterfeiting.

Intellectual Property Strategy as a policy documents adopted by the Government of Kosovo for the period of 2010-2014, has its objectives oriented in the improvement of the investment climate and economic promotion, scientific and cultural development in the country. In addition, the Strategy against Piracy and Counterfeiting is also in place, one of which action is also establishing a Task Force which will be functioning until 2016, and which until now has confiscated 35 thousand copies of the CD, mostly music materials, videogames, computer programs and thousands of books, using and selling of which consists of copyright infringement.

## **Penalty provisions in case of infringement of copyright and related rights**

Considering the fact that sanctions are one of the most effective ways to achieve the meaningful observance of regulation or law, the Law on Copyright has provided what actions might be taken by the author whose work has been violated, and the New Criminal Code of the Republic of Kosovo provides sanctions for violators of copyright.

According to Article 177 of the Law on Copyright and Related Rights, the person whose copyrights have been violated, not only can he/she seek legal protection, but may also ask for compensation.

And, Article 296 of the New Criminal Code has foreseen the following penalties for the violators of copyright:

<b>No.</b>	<b>Penalty</b>	<b>Cause</b>
<b>1</b>	Imprisonment of three	When under his/her or someone el

	months - three years	publishes the work already protect
<b>2</b>	Fine and imprisonment up to one year	Intentionally does not state the name of the author/ performer of the work
<b>3</b>	Fine or imprisonment up to one year	Changes, misrepresents or impairs the work protected by copyright or presentation
<b>4</b>	Fine or imprisonment up to one year	Inappropriately presents/communicates the work protected by copyright, violating the honor and reputation of the performer
<b>5</b>	Imprisonment up to three years	Unauthorized use of the work protected by copyright
<b>6</b>	Fine and imprisonment of three months - five years	Unauthorized use of the work protected by copyright, thus gaining for himself or another the amount of at least 10,000 Euro or more than 50,000 Euro
<b>7</b>	Fine and imprisonment of six months - eight years	Unauthorized use of work protected by copyright, thus gaining for himself or another the amount of at least 10,000 Euro or more than 50,000 Euro

		amount of more than 50,000 Euro
<b>8</b>	Items and equipment used in the commission of the offenses, d article of the Criminal Code, are a subject of confiscation.	

## **Conclusions and Recommendations**

Based on the conducted research we can definitely conclude that:

- 1) Copyright, as a right guaranteed by law, belongs to the author of the work in the field of literature, science and art;
- 2) The musical work represents an intellectual concept of sound, which being complemented with other works of art, can easily be converted into documentary form, becoming one of the author's works that enjoys legal protection. Naturally, in order to be transformed in this format, and like this reach the public much easier, a series of professional activities need to be joined, starting from text, composition,

orchestration, arrangement, interpretation, as well as the video clip;

- 3) In Kosovo, in this regard, not only the laws and regulations were adopted, but also institutions were established with the aim of empowering the protection of copyrights, and even there was a Strategy approved for the protection of copyrights, combating counterfeiting and piracy, whose goals are achieved through the Task Force;
- 4) We now have a legal and institutional infrastructure ready to protect the authors, as a guarantee that in the future copyrights will be best protected in Kosovo.

Being aware of the current situation on copyrights in Kosovo, namely, the protection of musical works, we recommend that:

- 1) State authorities, prosecutors and courts to be more efficient in the future in finding and putting before justice of all violators of copyright in

order for them to receive appropriate sentences for the committed criminal offenses and in the civil procedure make them compensate the damage caused;

- 2) Work more in raising awareness for copyrights, not only with citizens but the authors themselves as well, especially in the protection of musical works, especially now that we have a new Law and Strategy;
- 3) Taking into account that a song can easily reach different countries, it can be accepted by the foreign public, and therefore especially regional cooperation is necessary in order to have effective protection of bearers of copyright, therefore more should be done in this regard.

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**River Drini i Zi, Necessary Sources and Measures  
Mass for Protection of this River**

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**Mr.sc.Rukije Ibraimi, State University of Tetovo –  
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**ABSTRACT**

Industrial Revolution was accompanied by scientific and technology developments , which led on establishment of unbalanced relations between man and nature. Supporting momentary needs and use of natural resources without any criteria, caused pollution of the living environment .

When we talk about nutrients in the water, we are referring mainly to nitrogen and phosphorus. Nitrogen and phosphorus are found naturally in small amounts in healthy streams.

The aim of this paper was to analyze parameters, like  $\text{NO}_2^-$ ,  $\text{NO}_3^-$ ,  $\text{NH}_4^+$ , and  $\text{PO}_4^{3-}$  in the River Black Drini. For this purpose we have made determinations in three samples at the location of Struga Town.

Determination of analysed parameters for pollution control: nitrites, nitrates and ammonia was done using UV-VIS Cam Spec M 330.

Phosphates were analyzed by the SF Method UV - VIS-type DR / 2000 Hatch - Lange.

**Key Words: Black Drini, nutrient pollution, protection, nitrites, nitrates, ammonia, phosphates.**

## **PURPOSE OF THIS STUDY**

The Black Drim or Black Drin (Albanian: Drini i Zi: meaning "the black deer"; Macedonian: Црн Дрим; Transliterated: Crn Drim) is a river in Republic of Macedonia and Albania. It flows out of Lake Ohrid in Struga, Macedonia. After approximately 50 km it crosses the border to Albania, west of Debar, Macedonia. It

merges with the White Drin in Kukës to form the Drin, which flows into the Adriatic Sea..

Where the Blak Drim flows in Albania there is an agricultural-based site. The main agricultural products are corn and barley, but the tree-culture is evolving as well. The Ohrid trout, which is a form of salmon, can also be found in parts of the river from time to time. River Black Drini is the out-flow of Lake Ohrid (aver. discharge: 22 m<sup>3</sup>/s, total annual outflow: 693.8 million m<sup>3</sup>).

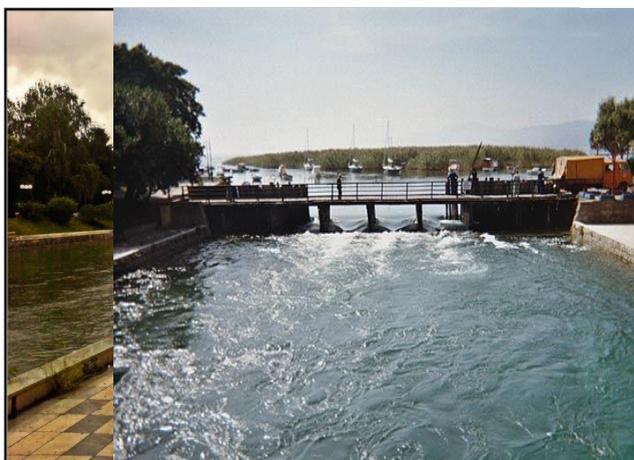


Fig. 1 - Image from River Drini I Zi - Black Drin

## PARAMETERS FOR POLLUTION CONTROL

Waste of animal origin is a very common water pollutant with pathogenic microorganisms. During the process of soil (earth) purification, under the influence of bacteria, different kind of degradation products are formed. Beside the carbon, sulfur and other biogenic derivatives, the nitrogen compounds have a very important role in the quality of water. Nitrogen, from organic compounds, as a result of their decay, turns into  $\text{NH}_3$ ;  $\text{NO}_2^-$  or  $\text{NO}_3^-$  and staying in this form from earth comes to the surface of the water or these compounds can be created in the water if the degradation of organic matter happens in there.

### NITRITES

The presence of nitrite gives a sign of pollution. Nitrites are biochemical products, mediators of oxidation of ammonia or mediators of reduction of corresponding nitrates which are produced by the

activity of microorganisms. The nitrites are present in a very small quantity from tenth of the miligram to a few grams per liter. On the surface of the water the nitrites turn into nitrates. Because the nitrites are unstable, their determination is done immediately after the sampling. If we want to keep the sample longer we should add 1 ml of  $\text{H}_2\text{SO}_4$  concentrated in 1 litre water. This can be achieved also by cooling the sample in  $3-4\text{ C}^\circ$ .

## **NITRATES**

Nitrates as nutrients are indicators for high level of oxidation of nitrogen in nature. In water their concentration is lower, whereas in underground water their concentration is higher. Optimal quantity of  $\text{NO}_3^-$  gives the water the taste of freshness, for this quantity shouldn't be high because  $\text{NO}_3^-$  can be reduced to  $\text{NO}_2^-$ , which then becomes toxic

## **AMMONIA**

The presence of  $\text{NH}_4^+$  ion or of  $\text{NH}_3$  ion in water is a chemical parameter which shows the dangerous contamination of the water. Ammonia is present in most of surface and underground water as a product of water's microbiological activity during the biological decay of organic compounds of nitrogen, thus its presence in water shows organic pollution of water. Because of its ability to dissolve in water ammonia can be found in some forms:  $\text{NH}_3$  (gas);  $\text{NH}_3 \cdot \text{H}_2\text{O}$  (unionised ammonia);  $\text{NH}_4^+$  (ionized ammonia) and  $\text{NH}_3 + \text{NH}_4$  (regular/ general ammonia).

The toxicity of water solutions of ammonia come from its unionized form -  $\text{NH}_3$ . What form of nitrogen ammonia forms depends greatly from the pH value of the water. In most cases  $\text{NH}_4^+$  predominant.

## PHOSPHATES

In water oligotroph ecosystems phosphate is a nutrient which limits, favours or controls the algae

growth. If the quantity of phosphate in water ecosystems grows and if that level of quantity remains for a long time, the ecosystem will produce more algae and other water plants. This is the reason why the water looks green, transparency is low, the level of oxygen decreases and it releases unpleasant odour.

As a nutrient, phosphate is an biogenic element, which is studied the most. Phosphates have great importance for ecology. Following Wetzel, this comes as a result of the role of phosphates in biological metabolism and also its limited quantity in nature.

We still have to look after the relation of its concentration toward other biogenic elements like C, N and S.

## **EXPERIMENTAL WORK**

### **Material gathering and working methods**

Gathering of the material was done during the spring time 2012 Sample waters of the River Black Drini for analysis were taken in the three localities.

The determination of parameters  $\text{NH}_3$ ;  $\text{NO}_2^-$  or  $\text{NO}_3^-$  was done by method UV-VIS spectroscopy, CAM SPEC M 330 and Phosphates were analyzed by the SF Method UV - VIS-type DR / 2000 Hatch - Lange.

## **EXPERIMENTAL RESULTS**

Achieved results are given in tabelar and graphic form. Tables represent the achieved experimental results of concentration of  $\text{NH}_3$ ;  $\text{NO}_2^-$  or  $\text{NO}_3^-$  in the studied samples.

Tab.1 - Determination of pollution control parameters Spring

Sample	$\text{NO}_2^-$	$\text{NO}_3^-$	$\text{NH}_4^+$	P
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	□g/l	□g/l	□g/l	□
D1	3.94	6.64	0.79	1
D2	9.96	12.66	1.72	1
D3	4.14	14.3	1.84	1

Tab. 2 - Determination of pollution control parameters Summer

Sample	NO <sub>2</sub> <sup>-</sup> □g/l	NO <sub>3</sub> <sup>-</sup> □/l	NH <sub>4</sub> <sup>+</sup> □g/l	P □
D1	3.75	7.64	1.79	1
D2	7.96	14.66	1.72	1
D3	5.14	13.3	1.94	1

Tab.3 - Classification of quality aquatic ecosystems by UNECE (content, mg / l)

Category	$P_{\text{total}}$	$\text{NO}_3^-$	$\text{NH}_4^+$
Quality I	<10	<5	<0.1
Quality II	10-25	5-25	0.1-0.5
Quality III	25-50	25-50	0.5-2
Quality IV	50-125	50-80	2-8
Quality V	>125	>80	>8

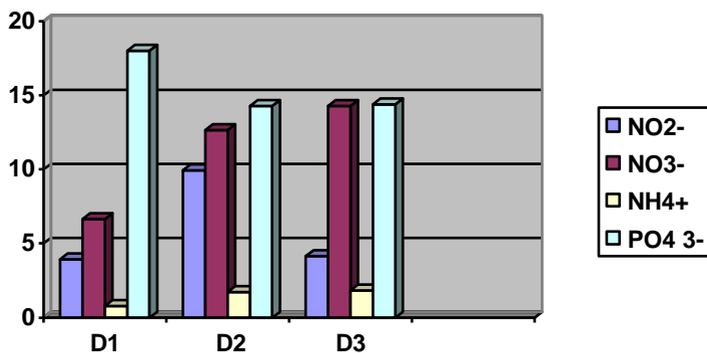


Chart 1 - Determination of pollution control parameters  
Spring

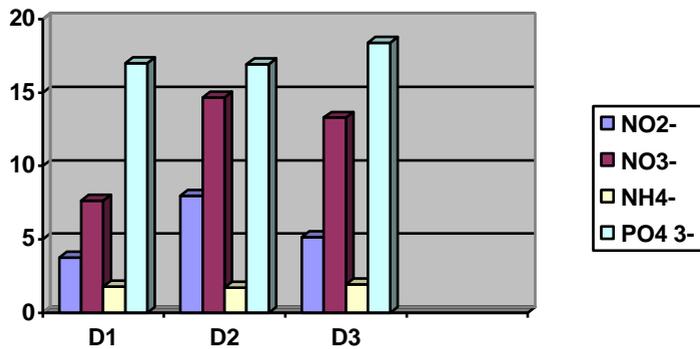


Chart 2 - Determination of pollution control parameters

Summer

## **DISCUSSION OF RESULTS**

If we throw an eye to the graphic representation of the results, we can see that waters of the river Black Drini are:

Nitrates as nutrients are a high profile indicator of the oxidation of nitrogen in its circulation in the open. Components of nitrogen can have a straightforward toxic impact, such as ammonia in fish. These components, as a result of different reactions, can inflict reduction of the percentage of oxygen in waters. Except this, presence of the nitrates in running drinkable waters is limited and they do give water a fresh and mild taste when given in optimal quantity. But this quantity shouldn't be higher than prescribed, because they'd afterward be reduced in nitrites, which on the other side are toxic.

Pollutants of water can be as well manure that

pollutes water with different pathogen microorganisms. Under the impact of bacteria, in the process of purification different products of diagram can be produced. Ammonia comes as a result of dissolution of the organic stuff and its existence in water is an indicator that speaks for itself for the dangerous pollution of water.

The concentration of nitrites, nitrates and ammonia during our study was as follows:

Minimal amount of nitrites 3.71 mg/l (D1) – summer and 9.96 mg/l (D2) in spring. Nitrates were from 6.64 mg/l (D1) in spring, up to 14.66 mg/l (D2) in summer. For ammonia we have minimum value 0.70 mg/l (D1) in spring and maximal one of 1.94 mg/l (D3) in summer.

Phosphorus as a nutrient is an important biogenic element, because it plays an important role in the biological metabolism and its amount is reduced in the hydrosphere.

The natural content of phosphorus in the systems

of pure waters varies usually in amounts smaller than 25  $\mu\text{g/l}$ . In cases when these concentrations are bigger than 50  $\mu\text{g/l}$ , then this value comes from the human activity. Minimal amount of phosphates is 14.41  $\mu\text{g/l}$  (D3) in spring , while the maximal one during the summer time is 18.41  $\mu\text{g/l}$  (D3).

## **CONCLUSION**

Currently extraction of sand and gravel from the riverbed is uncontrolled. This extraction influences water flow (speed and direction) and the sediment load, and the resulting erosion of riverbed is substantial. The riverbed has deepened and the riverbanks have eroded. We can see this from our results. Our results show the water of River Black Drini is loaded with phosphates.

From that we saw River Black Drini brings itself communal waters, and canalizations. As a result is important to protect riverbed of river Black Drini from

Suspending materials which are coming from River Sateska which is pour in the Ohrid Lake.

All anti – erosion activities in the Catchment are should be followed by adequate administrative and other measures or activities, such as a grazing prohibition and other controls on forest and grassland exploitation.

Using of chemicals (pesticides) must be controlled in agriculture especially along watershed of the river.

It is necessary bringing and application of rigorous juridical dispositives with international and national character.

Prevention measure's to delay river's pollution, which pour in River Sateska.

International co-operation and in local degree between Macedonia and Albania.

Growth of the degree of cooperation between governmental organizations and nongovernmental organizates.

Cooperation of organs of central government (ministry) with organs of local government (sector for living environment protection) and co-operation of units of local self-government (Commune) between them.

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**The important values of the anthropogenic  
complementary tourism**

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Human systems transformation in the Republic of Macedonia have a long history . Through certain periods of the overall development of the country, its space is transformed depending on the socio-economic situation. In the post war period the biggest settlements, especially in the cities environments, were built a number of objects which strongly contributed to industrialization and at the same time at strength urbanization, whereas the environment of villages especially those who were not involved with development projects (hilly – mountainous) settlements were transformed into migration environments the consequences of which today are highly expressed both in terms of depopulation and in degradation. All this has led to the abandonment in primary activities of the rural population and their migration to more developed industrial center with larger functions.

In this part we will work out with demographic processes during the most important traffic corridors, the population that is located close to 10 km from both

sides of highways, till we appreciate that gravitating area affects into these routes in order to see the potential and possibility for the development of transit tourism in our country. The Traffic in the corridors 8 and 10 represent a complex social-economic phenomenon of the modern life and have a big impact in the development of tourism in Macedonia. In terms of total tourist spending and the development of tourism and traffic, except the tourists transport, great importance has also the transfer of goods who meet the needs of different activities, within the economy and especially tourism. The goods are transferred for direct consumption in the form of food products in the hotel services as well as articles intended for consumption out of the country. Till today there is no single theoretical approach for this problem, because as imperative for the present is that the subject for scientific traffic processing has to do with the discovery, analysis and explanation of the connections that exist between traffic and tourism, the intensity of the movement of residents and goods for wide consumption.

This is an important factor for the development of economic branches, especially for the types of tourism in our case the development of transit tourism. There is a link up between the development of road infrastructure and the valorization process of tourism potential, which means that an inadequate policy for construction and maintenance of road infrastructure is

presented as a limiting factor for the consumption of tourist services and thereby precluded its assessment and the inability to expand the tourism offer. It should be noted that the geographical traffic position of the Republic of Macedonia, quite slowly and in differential manner has valorized some tourist potential of some localities.

This has to do with existing roads and their power for users, respectively the tourists and the companies for tourists travel. In general it should be noted that they do not meet the needs of both the quantity of services, as well as the quality of movement, whether internal or external or transit tourist travelers.<sup>124</sup>In connection with land road infrastructure facilities exist many problems, especially those important international routes (Corridor 10 and 8). This has to do with many countries where are expressed obstacles called(narrow throat)have negativ effect for the road network and led to a slowdown traffic,reduce the security during the

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<sup>124</sup> Velkoski Stojan: Soobracajot kako faktor za razvoj na turizmot vo Republika Makedonija. str 139-140.

<sup>124</sup>Petkovki, B.,& Kalicanin, B.,(1998): Makedonski soobračajni koridori i nivno koristenje: Zbornik od trudovite na Megjunarodniot naucen sobir "Perspektivi i unapreduvanje na planiranjeto i ureduvanjeto na prostorot". Ohrid: Ministerstvo za Urbanizam, Gradeznicтво i zastita na zivotnata sredina, 1998. str.Z01-308

turnover and a great number of traffic accidents. Therefore the conclusion is that it degrades the value of traffic and the overall of the road network, bad condition of road traffic especially those roads that are near major cities.

Macedonia's central geographic position in comparison with its all surroundings defines important convenience for integration with European traffic system. as possible factor for the development of traffic in Balkan and European level. As we mentioned earlier for the Republic of Macedonia, highways have great strategic importance because they represent our country, not just traffic corridors, but also developmental axes ( corridor 10, north south and east west corridor 8),

Wich are defined as a solid and modern opportunity new opportunities presented policy in Europe and beyond as conditions for faster economic development of the countries through which pass these highways. In the past 15 years the European Union has made great steps for projecting a new economic policy, creating a unique market, by dragging the borders between member states. The movement of resident and free movement of goods are two basic components for the future growth of this unique market. In order to maximize the benefits of a traffick-integration network the EU commission and its members agreed for greater integration and involvement of countries from Eastern and Central Europe. The

approach and their adapting in a European-trafficked system. In this way can be formed the model of traffic trans-European system .

Therefore, in Crete, in March 1994 was held the pan-European conference. Where were identified 9 transport pan-European corridors, for the formation of quality transport infrastructure across Europe and the creation of a pan-European network which will be used for economic and social welfare of the citizens of Europe. To see the dynamics of population movement close to highways, it is necessary to analyze the demographic movements of population, the demographic structure of settlements which represent an important component of the tourist close to highways.

### **1.1. Demographic characteristics near the international highway**

Demographic elements enable better understanding of the changes that are made in a certain period of time, such as changes in demographic structures, social changes, economic, ethnic and other demographic features, which together form the demographic mobility of the studied space.

It is not possible to analyze demographic processes for a longer period of time for this geographical space, because there are no relevant data. The first official data

are from 1921 and from 1931. From these data can not be shared global flow of demographic structure, except that data can be used to dealing with the total number of population in the Republic of Macedonia. Also it should be noted that there are some data from turkish civil registers covering, that have been dedicated for collecting taxes. However, these data for demographic research processes are inadequate, because they provide data on the number of population according to religious affiliation.

The adequate results for the number of population movement, and other demographic structures come after World War II and from registry of population in 1948, 1953, 1961, 1971, 1981, 1991, 1994, 2002. The data from these records we recognize their methodology, so it is also hard for following the demographic movements through regions, municipalities and settlements for certain periods especially before 1971. The data from the first recordings especially those from 1948 and 1953, they don't correspond with late registration because they are different in methodology, so these data for the population are extracted through prognosis procedures and the recorded results in 1994 and in 2002 completely correspond with the criteria and principles for the census with European community criteria and the advanced democratic world.

The internal and external migration have left deep consequences for demographic mobility of many settlements throughout the country, with these are created depopulation areas on one side and at the other side the migration area. The dynamic movement of population from one settlement to another were caused because of the fast development of industry and urbanization of some civic centers especially in the 70, when in the cities were built industrial facilities which absorb the rural and civil population in their gravitating area.<sup>125</sup>

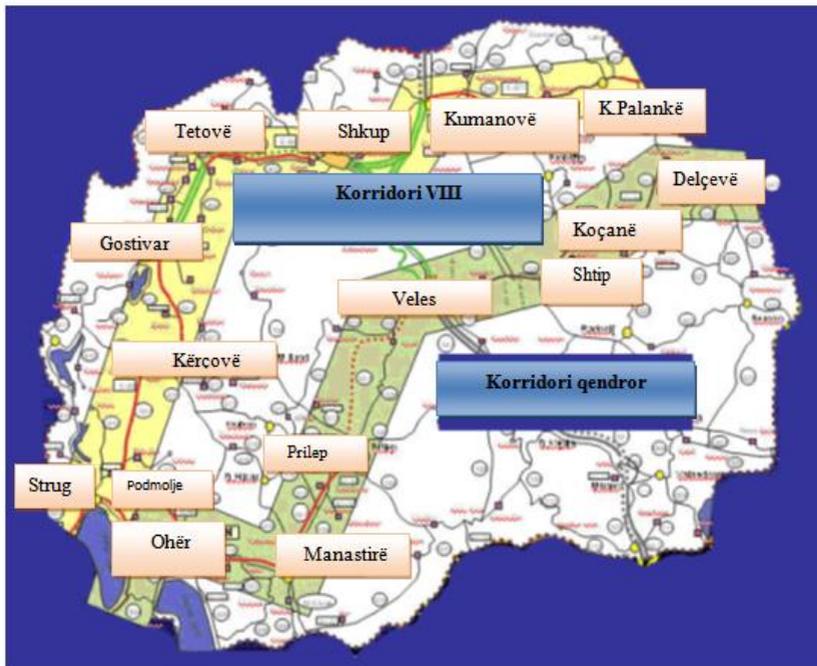
## **1.2. Population movement in the area of 10 km from the highway M1 (Corridor 10) and M2 (Corridor 8)**

For the movements and changes in the demographic structure in the space of corridor 10 and branch of Corridor 10 was defined to use two census years because those results are not significantly different from the methodology for their empirical recording and processing. In the space of 10 km on both sides of the corridor 10 and the branch of Corridor 10, respectively 20 km along these routes caught a total area of 5450 km<sup>2</sup>, with a total population of 404,279 resident (1994),

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<sup>125</sup> Republika Makedonija: rabotna verzija. Skopje: JP za Prostorni i urbanisticki planovi. 1998. str. 2813. faza do 2020 godina

respectively 400 728 resident in 2002, which means that in this area the population is gradually decreasing. We can explain this with a fact that in the last two decades, that the greatest scale of natural population increase has been reduced as well as the fact that many resident from urban and rural settlements have migrate from Skopje and outside our country. It should be noted that positive movement of population have Kumanova city and the rural settlements stretching up to 10 km on both sides of the corridor 10, then come Petrovec and Gevgelija city, and other cities resulting with a population decline from the period of 1994 to 2002 (urban and rural population), while population growth was occur also in Negotin.



**Fig 1.The corridor 10 and the central corridor**

In the settlements of corridor 10 and there are five cities settlements and 90 village settlements which show dynamic in different population movement,so this is seen depending on the degree that grows the number of population and the equity migration, according to the collected results urban population marks a positive move to the number of population 6564 inhabitants, or only

1.3%, while the village population with 2,434 inhabitants, or about 4.4% of the total rural population. In Kumanova city during the period from 1994 to 2002 the city population marks increase for 3041 inhabitants or 4.2%, while the population of the villages was increase only in 2015 or 6.6%. This trend comes as a result of large decrease of the components of natural population increase (birth rate), with what consequences are visible and gradually Kumanovo with the village settlements which directly gravitate from the corridor 10 entered in the on the threshold of the aging population.<sup>126</sup>

Table 1.1. Significant movement of population in the corridor 10 in the period from 1994 to 2002

Significant movement of population in the corridor area from 10 km on both sides of the main road M			
Population	The type of Population	1994	2002
Corridor 10			
Kumanovo	Town	73233	76274

<sup>126</sup> A.Selmani (2004): *Popullsia e Maqedoniss*, Logos-5, Sak-stil, Skopje, 73-82

	Village	32120	34235
Petrovec	Town	-	-
	Village	6233	6613
Veles	Town	44149	43716
	Village	8714	8201
Gradsko	Town	2221	2219
	Village	1401	1331
Negotino	Town	12516	13299
	Village	3825	3714
Gevgelija	Town	14974	15685
	Village	5510	6303
Total towns		205026	211590
Total villages		55481	57915
Total (A)		205026	211590

Through the Petrovec space the mentioned corridor passes, so the population of villages in a given period is increased to 380 residents or 6.1%. In this municipality the rural population mainly deals with primary activities. Even the Veles city is in this main road, instead to show a strong dynamics of population development, due to decreased natural scale of growth and the active scale of population migration in the period from 1994 to 2002, marked a population increase for 433 residents or 1.0% (the urban population) while the village population has increased for 513 residents or 4.5%. Gradsko also marks that the population has increased for only 8 residents and presents general characteristics of this area, because for a long period of time, its population migrates to other larger cities, especially from Skopje city abroad to western European countries. In the recent decades Negotina city is an important central location while in the given period its population has increased to 783 residents or 6.2%, while the village population decreases to 2.9%.



**Fig2. Gevgelija city**

Gevgelija with a border point Bogordica becomes more frequent environment due to the high degree of travelers and tourists in the border point Macedonian – Greek. In gevgelija were built modern casino and hotels with modern restaurants, so every day the same are visited by Greek travelers and tourists. The urban population in Gevgelija is increased for 711 resident or 4.7%, while the rural population has increased for 793 resident or 14.4%. It is of interest to note that in areas where the gravitational influence manifested branch of

Corridor 10, includes the following cities: as Kavadarci, Prilep and Bitola, who during the last two decades, mark the different movements of population. Bitola in last years has marked a population decrease in comparison with other Macedonian cities, the space through which the corridor 10 pass is not as frequent as compared to other road directions or corridors, because the Bitola for a long time was a city which show a high degree of migration not only of the active population, but also the families that migrated out from our country mainly in the U.S., Australia, New Zealand, and less in Western Europe. This corridor from Veles through Bitola to Greek border has a total length of 127 km.

**Table 1.2 The Population movements in the branches of Corridor 10 in the period from 1994 -2002**

Population	The movement of population in the corridor 10 in 10 km from both sides of the highway M-1 (E-75)		
	The type of Population	1994	2002
The branch of corridor 10			
Kavadarci	Town	28288	29188

	Village	5623	6234
Prilep	Town	64897	69704
	Village	4319	4121
Bitola	Town	77464	74550
	Village	6652	5371
Total towns		294418	304927
Total villages		16594	15726
Total (B)		187243	304927
Totally A+B		404279	400728

Only Kavadar has marked population increase (of urban and rural) while in Prilep we can see a population increase only in the city while in bitola we can see a population decrease also in city and village, the urban population in Kavadraci marked population increase for

900 resident or 3.2%, while the rural population for 611 resident or 10.8%. Positive movement of the population is for 4,807 resident or 7.4% while rural population mark a population decrease for 198 resident or 4.6%. The urban population of Bitola, in the period between 1994 - 2002 decreased to 2,914 residents, or 3.8% and in rural decreased for 1,281 residents, or 19.3%.

Table 1.3. Numerous movements in the gravity area of corridor 8 in the period from 1994-2002

Numerous Movements of corridor 8 in the gravity area on both sides of the highway M-2			
Population	The type of Population	1994	2002
	The branch of corridor 8		
Kumanovo	Town	73233	76274
	Village	32120	34235
Skopje	Town	543670	578901
	Village	11234	12345

Tetovo	Town	50376	52915
	Village	23251	24123
Gostivar	Town	30494	35847
	Village	21376	22345
Kicevo	Town	24987	27067
	Village	2446	3071
Ohrid	Town	41213	42033
	Village	6731	6654
Struga	Town	15641	16559
	Village	24285	25132
Total towns		779614	829596
Total villages		121443	127905
Total		901057	957501

From the collected results we notice that the population in gravitational space of corridor 10 and the branch of Corridor 10 has increased only 0.9%, which presents a

minimal increase of population. This fact shows that the components of natural increase of the population are low, which is expressed with the degree of natural population increase in the mentioned area. According to the results from Table 1.3 corridor 8(M-2) indicates that it is in the best functional basis compared with corridor 10, that have to do with the socio-economic transformation also the positive aspect of urban and rural settlements. This has to do with the fact that a large number of immigrants in Western Europe, invest in construction of individual residential houses and other facilities for manufacturing, such as small and medium enterprises that are located in the production process. On the M-2 highway in its gravitating area lives 957,501 inhabitants, that are located 47.3% of the total population of Macedonia. In comparison with 1994 the number of population has reached 6.4% (the urban population) respectively 5.2% the rural population. In this corridor are located Kumanova city (in two corridors), then Skopje, Tetovo, Gostivar, Ohrid, Kicevo, Struga with their settlements around 75 settlements, except the rural population of Ohrid, which shows a decrease in the number of population, all other rural or civic settlements who gravitate into this gravitating area and marks positive movement of population.<sup>127</sup>

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<sup>127</sup> Prirodno dvizenje na naselenieto vo Republika Makedonija: 1997, 1998, 1999, 2000, 2001 I 2002.

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## **Role of ethics in the development of tourism**

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Everyone wants to be successful, this widespread success in various fields. Everyone dreams to have a long crystallized career in certain profiles, being able in this way everyone to give their own contribution to their country. Desires, dreams, goals, targets are different for different individuals, but all have the same “interest.” Precisely, are the issues that are directly or indirectly related with the operation of a state, with its institutional organization, the structure of the state apparatus, the fairly recruitment of candidates and based on merit, etc., as well as the provision of the government services at a closer level to its citizens or otherwise known as the principle of subsidiarity that make up this common interest.

Is it possible to achieve and realize these different goals?  
How can we achieve a better and functional tourism

development that relies on principles, or laws by which it is derived and shaped?

To these and to other many questions I have tried to give an answer in this paper. A quotation of Cicero says: For anyone who wants and proposes himself a career, ethical and moral philosophy is more than necessary.”

It is the moment to say that the key to success in achieving these desires and having a career, which may involve different aspect, is Ethics. I chose to talk about ethics, as it is a very important component for the functioning of a proper tourism.

The aim of this paper is to address issues that are associated with this term, analyze tourism in Kosovo, region and beyond, starting from a realistic point of view and with a direct access to tourism. This topic will attempt to present a concise analysis of ethics as a necessary element for a better organization of the tourism whose fruits are transmitted in society from the perspective resort hoping to somehow bring a contribution to the understanding of the Kosovo justice, for which our country needs.

## **INTRODUCTION**

Recently, interest on the ethical issues has been increased significantly, not only in one but also wider as in many organizations, formations of various kinds whether in public or private sectors etc. Nevertheless, what is specifically happening with ethics in Kosovo? Does this notion really exist or does it pale the meaning of it?

The term “ethics” is a very wide notion that includes in itself not only institutions, managers and senior state officials and tourism in general but also it affects even the simplest individual.

Given that, the work is based on a developmental approach that shows us how to build the directions of the tourism so that the public should be more satisfied in obtaining the services they are entitled to etc.

I have divided the paper work into several parts where the first part explains the term ethics since from its etymology up to the creation of ethical climate.

The second part has to do with the study of tourism. The third and the last part talks about the future of tourism in Kosovo, but always when we talk about the future we

must look to the present, because events have a chronological flow between them.

In the end, I made the conclusions' of the thesis.

Explaining what are ethics, tourism, as well as the explanation of many other terms, this thesis does not only manages to give us a different approach, but serves us on improving the climate that is created for a meaningful development.

## **DEFINITION AND DETERMINATION OF THE PROBLEM OF THE RESEARCH FOR ETHICS IN TOURISM**

What do we mean by the word “Ethics?”

To give an answer on the term “ethics” we will go back in the retrospective to “dig” from the etymology of the word to the earlier writings of philosophers and political scientists that have used this term.

The word ethics derives from the Greek word “ethos,” “ethikos” which means morality.

It means tradition, and habits.

A chronological order about the term “ethics.”

Ethics is a set of norms that make the ideals, values in daily practices, while values are acceptable principles in a collectively way that govern our judgment, to what is right and wrong.

Another definition for ethics phrases that ethics is the process by which we distinguish the right from the wrong and act in accordance with what we call fair.

Ethics can be defined as a systematic effort using the reason, which gives meaning to our moral experience, individual or social, in a way, to determine the rules, which govern the human behavior.

Various aspects as part of the philosophy. However, briefly and simply summarized it can be said that ethics is a system of moral principles or a social, religious, civil code of conduct, which clarifies the good from the bad and the individual's choice to do what is good.

Ethics is not a new topic for discussion; it has been discussed, debated for thousands of years in all cultures, religions, countries, states, communities and regions of the world.

Whether the context is public or private, local or international, on private or organization level, the issue

of ethics has been and is the essence of these raised problems.

Ethics and morality are two concepts handled by different philosophers such as D.Hume, E.Kant, R.

As a science ethics is a branch of philosophy that means addressing questions on morality. Ethics and morality are two concepts closely related to each other.

Although we have always defined ethics as a study of moral, these two notions are often used as synonyms of each other, but we can never put an equality sign between them.

Despite the overlap in the use of terms, the distinction between morality and ethics is important, not only for philosophical reasons, but because the focus on ethics emphasizes the active involvement of the individual in a search of the correct moral position.

The main difference between ethics and morality has to do with being ethical discipline that generally deals with the issue of morals where as ethics provides norms, to moral norms are given. Ethics includes standards of the right and the wrong, the study of these standards. The question arises why we need ethics?

We need ethics, including the study of these standards to discuss what is right and wrong in the context of some rules.

However, what is the ethical behavior itself?

Ethical behavior consists of rules, standards, norms and practices that are socially acceptable.

Moral in tourism is a code, set of rules or norms that can solve various problems, in public language called “ethical dilemma.” Employees who deal with tourism activities are often found under the pressure of “ethical dilemma,” to perform or not to perform an action that contradicts the ethical and moral norms.

Therefore, we say that ethics is an important element in tourism because by being guided by these principles; we cannot “violate” the laws of tourism.

From what we have treated above, we conclude that ethics has a key role in tourism as one of the most important elements in tourism.

If ethics does not remain only a written principle on a paper but achieves to be applied by employees who deal with this area then in the country we will have a tourism

that offers clientele, tourists or its visitors the best service always being near them<sup>128</sup>.

Every individual regardless his own hierarchic position in the society should be ethical in behavior and actions. We encounter the term ethics everywhere as e.g. professional ethics, media ethics, business ethics that has to do with the rules, principles and standards that guide the behavior and actions of the business organizations.

However, the essence in all these areas is the ethical responsibility and the way to adhere to it, combined with the social responsibility.

The role and the importance of ethics appear not only in the tourist activities but also on the impact that ethics has in the society, e.g.:

- Unethical behavior brings serious consequences to the individual who performs the behavior but also to others who are affected by it
- Ethical behavior leads to positive results
- Serves as a model for the individual and to others
- Ethical or unethical behavior influences the carrier.

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<sup>128</sup> Cooper, Terry. Handbook of Administrative Ethics. New York: Marcel Dekker, 1994

- Ethical behavior in itself carries significant values to society

## **METHODOLOGY**

The used methodology is a function of the set goals at the beginning of the study.

The study is based on an empirical research. The research consists on a combination of qualitative and quantitative methods. Thus, quantitative methods aim to achieve quantitative assessment of FDI trends and identify them in the future.

While qualitative methods are used in, order to interpret the quantitative results and to provide an overview of the economic development of Kosovo from the regional and national policies affecting tourism. The research is designed so that the collected and interpreted data have in the middle the objective in the study.

In addition, I used a number of articles and official pages of the various world organizations, such as UNEP. Paperwork is specifically built on a development approach and being as such tells us how tourism in

general needs to be developed , how the reports need to be created, and is not built only on empirical data as the paperwork does not aim to bring only a descriptive analysis but aims to offer us a new landscape for doing things<sup>129</sup>.

The thesis will be based on the “content analysis” and the “comparative analysis” in order to identify tourism products and be placed in a broader theoretical framework in order to not only understand the importance of tourism but also to be the key to achieving this goal.

The aim of this paper is to provide a brief summary of what ethics in tourism is as well as the national and international documents to which are included or defined the rights and obligations of tourism.

The main purpose of this paper is to show how society contributes to the sustainability development of the tourism. We have done this by using comparison example with the countries of the region and beyond,

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<sup>129</sup> Etika-Ethos-Moral

also to examine potential threats to long-term economic sustainability.

The paper aims to give a theoretical treatment of FDO in tourism, to determine the factors that attract FDI and further to identify the main characteristics of the host country's economy. In an empirical perspective, different studies give different results. More specifically, through models of evaluation, comparison and statistical analysis, based on collected data through questionnaires, this paper focuses on the factors determining the pros and cons of the impact on tourism.

## **RESEARCH METHODOLOGY**

During this research there was shown a need of selecting the appropriate methods of the analysis and the theoretical treatment that would contribute to the empiric treatment and interpretation of the problem of the economic impacts of tourism. In the study has been selected the General Systems Theory by applying it for tourism.

This methodology was necessary:

Because of the multidimensional nature of tourism and the difficulties that exist in the evaluation, the economic impact of tourism in the development of a country.

To determine the structure and rules of the operation of the tourism system, also the theoretical interpretation of inputs and outputs of the Tourism Impact Model (TIM), which as a system examines and evaluates quantitatively the economic impacts of tourism.

The system “tourism” consists of subsystems the “object of tourism” and the “tourism entity.”

Both subsystems are constantly in an alternated relationship between them. The “tourism” system has an interface with other systems where the most important are:

Economic Environment

Social Environment

Ecological Environment

Technological Environment

Political Environment

The “tourism” system is influenced by the elements of these subsystems, while at the same time there is a “collaboration” and “reaction in series.”

This means that the study of the “tourism” phenomenon presupposes the specific use of the economic scientific methods that allow a meaningful evaluation of its impact on the development of the country.

There are many researches conducted in the contemporary literature to study the economic impacts of tourism in different destinations of the world, but mainly on the developing countries, that are host countries to tourists.

## **THEORIES AS TO ETHICS**

So far, we have talked about ethics and its importance in tourism where we have considered it as an essential tool without which no tourist activity would make sense and be. If we talk about ethical theory they are divided into two directions, first direction takes heteronymous treatise. This approach stems from an ethical morality.

From this ethic stand morality stems from a higher instance, from the absolute truth and in this context represents the absolute value.

According to the grouping, morality is another aggregate state of the religion. The second direction takes the autonomous treatise. Autonomous ethics searches for the genesis morality to the man himself, approach this supported by materialists, nihilists, etc. According to this perspective only human is a criterion of all existing and nonexistent things.

From what we have said up until now according to the autonomous ethics appears that judgments, principles, values etc, are obtained from experience, consciousness, ethical memory and not unexpected things that can happen along the way without knowing the individuals themselves. As a result they have a relative nature are transient and do not have any great importance to the individual<sup>130</sup>.

Based on that, if within the human moral life greater importance is given to reason, emotions, will, or experience, autonomous theory has generated theories that in science, life, and in the recognition of the moral life priority give to the reason (rationalist theory,) will

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<sup>130</sup> Rohr, John. *Ethics for Bureaucrats*. New York: Marcel Dekker, 1978

(discretionary theory,) feelings (emotional theory) and experience (theory empiricists.)

So according to this theory importance take some other principles and were not only transitory and irrelevant as it happened with the previous theory.

Individuals are different and therefore, differ not only ideas, desires, behaviors but also the purpose of the actions that they have given the latter shared ethical doctrines: utilitarian, eudaemonist, hedonistic, perfectionist. According to utilitarian ethics, benefit holds the finest (which be of various forms,) interest and not other principles. Eudaemonist ethics is a notion used by Aristotle.

According to him, the highest degree is the ultimate goal or achievement of Telos, which means higher intentionality and this telos, is 'happiness.' Happiness according to him is closely related to ethics and between them; we can put an equitation or validity sign. Happiness, inner peace is achieved when you are ethical. Hedonistic ethics teaches that body pleasures, biological, physical, etc. is finest good. Perfectionist ethics presents a different approach that believes in the perfection of

things. They aim to a perfect world, perfect life and the perfect society etc.

As stated above, we conclude that the achievement and the implementation of the ethics are possible everywhere and for anyone. Ethics has been and remains a major issue and of particular importance for humanity.

## **CREATION OF THE ETHICAL CLIMATE**

The term ethics was an important notion not only for the individual and for a small group of individuals, not only for the society but also for the entire country. The concept has its roots in the ancient times and since that time until now, it has the same importance. To the same importance is the creation of an ethical environment or an ethical culture.

In addition to formal controls can be worked to promote the ethical behavior, by creating a climate where ethical behavior is assessed and by encouraging free and open communication in the organization.

All must work in the creation of an environment that promotes high values of ethical integrity, compiling

programs and procedures aiming public administrators to act everywhere with ethic integrity. This is a difficult initiative but not impossible.

Taking of these programs for the promotion of the ethics would consist to a choice for every type of tourist activity. Lack of ethical programs and procedures will lead to the creation of another climate, where due to increased bureaucratic requirements will also be grown behaviors that are even more unethical. In fact, not all tourist activities realize something like this.

To achieve the creation of ethical climate in tourism activities, tourism associations, organizations, and beyond some steps or measures should be that could be a simple and successful practice for anyone who puts into practice. These steps are chain action to be implemented systematically in a steady way.

The first step, and as explained above was the ethical audit. Then, we have the development of a clearer statement on the values that govern the values of the tourist activities that should contain general moral guidelines, mission, goal, establishment of the

organization, institution etc, and then you should have a code of ethics.

Then, training programs on the ethical principles can be offered and to communicate them within the organization.

The leader example, so the person who is in the highest hierarchic position is the best training model for the administration staff who deals with the hotel and tourist activities.

## **ETHICS, SOCIAL RESPONSIBILITY AND ENTREPRENEURS IN TOURISM DEVELOPMENT**

Therefore, ethics is concerned with all the standards and moral judgment on tourism issues whether specific tourism practices are acceptable. The ethics of tourism is a major and the most misunderstood issue in the world of tourism.

8.0.1. The development of ethics of tourism in years

Before '60, ethical principles were discussed from a religious perspective, to its principles on family, politics, society, etc<sup>131</sup>.

In the 60s, tourism development was associated with problems. The main problems were:

- Air pollution and the elimination of toxic and nuclear waste,
- Consumer rights under John Kennedy,
- The right to be protected, the right to be informed,
- The right to be heard,
- The right to choose.

In the 70s, ethics began to be studied. Researches began to write and talk about social and touristic responsibility.

In the late 70s' appeared:

- Bribery,
- Deceptive advertising,
- Manipulation of prices,
- Product warranty and
- Environmental impact.

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<sup>131</sup> Mingst, Karen, Bazat e Marrëdhëies Ndërkombëtare, IISAT, Tiranë

First years of 80s were consolidated more as a field of study. The ethics of tourism today is an evolving field and deals with ethical and moral issues of tourism.

Ethics systematically links concepts of morality, responsibility and decision-making within the organization.

Issues of environmentalism:

- Pollution is one of the most troubling problems today.
- Concern is the problem of waste disposal in rivers,
- Air pollution and acoustic noise.

Some companies have invested in new machinery to eliminate the above problems.

The gap in the legislation does increase the level of environmental damage.

Corrupt practices do not help in reducing the level of environmental pollution.

Consumerism Issues

Consumerism has to do with the protection of a consumer from abusive practices of companies.

Small companies may have difficulties in creating safe products and avoiding inappropriate services.

Types of ethical issues in small firms

Ethical issues are those practices and policies that involve right and wrong issues or problems.

An unethical action is:

- Concealment of the incomes,
- Deceptive advertising,
- Concealing of the reports.
- Weaknesses of small entities of hotels and touristic in the ethics.
- Small hotel and tourist entities unethically act because of the small size, feel in advantages to competitors bounds.
- Factors that influence ethical behavior.
- External factors: competitive environment, extreme dependence.
- Internal factors: high performance pressure, dissatisfaction of the employees, delegation of the authority.

## THE GLOBAL ETHICS FOR TOURISM

Global Code of Ethics for Tourism, is required as a necessity in the Resolution of the General Meeting of the World Tourism Organization in Istanbul in 1977 and is

now distributed in more than 70 countries members of the WTO, as well as the adoption of a resolution A/RES/406 (XIII) at the thirteenth General Assembly of WTO (Santiago, Chile, from 27 September-1 October 1999):

Reaffirming the objectives defined in Article 3 of the Statute of the World Tourism Organization, “Crucial and central role” of the organization, which is recognized by the General Assembly of the United Nations, promoting the development of the tourism in order to contribute to the economic, international development, contributing to understanding, peace, prosperity and universal respect for human rights and fundamental freedoms for all regardless of race, sex, language or religion, that tourism is a vital factor in the power of peace and friendship and understanding among the nations of the world, spontaneous contacts and direct contacts between men and women of different cultures and ways of life, signs of reconciliation environmental development, economic growth and the fight against poverty in a sustainable manner, which were formulated by the United Nations in 1992. It was the environmental summit “The world is

at the top,” in Rio de Janeiro and is phrased in the Agenda 21 hereby approved, considering the rapid and sustainable growth of the tourism industry, or tourism, cultural, religious or health, and its powerful effect, positive and negative, but convinced that the global tourism industry as a whole can benefit greatly from doing business in the environment

That favors the market economy, private enterprise and free trade, and encourages useful tourism effects in creating wealth and employment, also firmly convinced that, in accordance with the principles and rules of responsible tourism and sustainable certain, and in any case does not fall in contradiction with the increased liberalization of the terms that regulate trade in services among whom businesses operate in the sector and that is possible to reconcile economy and ecology sector, openness to international trade and protection of cultural and social identity, because with such an approach, all participants in the development of national tourism, regional and local government, companies, business

associations, tourism, workers in the NGO sector, and all bodies belonging to the tourism industry, and local community, media and tourists themselves - are different<sup>132</sup>.

Although interdependent responsibilities in the individual and social development and tourism that will formulate the rights and the responsibilities of individuals to contribute to this cause, determined , in accordance with the objectives which are managed by the World Tourism Organization.

The interpretation and implementation of which participants in tourism development should form their actions at the dawn of the twenty-first century, applied, for purposes of this instrument, definitions and classifications applicable to trips that were given particular terms “visitor,” “touristic” and “tourism” approved at the International Conference held in Ottawa

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<sup>132</sup> Perry, Jmes. Handbook of Public Administration, San Fracisco: Josey-Bass

on 24 to 28 June 1991., approved by the Statistical Commission of the United Nations in its twenty first session, referring in particular to the following declarations and conventions:

- Universal Declaration of the Human Rights of 10 December 1948;
- International Covenant on Economic, Social and Cultural Rights of 16 December 1966;
- International Covenant on Civil and Political Rights of 16 December 1966;
- Warsaw Convention on air transport on October 12, 1929;.
- The Chicago Convention on International Civil Aviation of 7 December 1944 and conventions of Tokyo, Hague and Montreal, which are related to;
- The Convention on Customs Facilitation in tourism since July 4, 1954 and the linked Protocol;
- Convention for the Protection of the World Cultural and Natural Heritage of 23 November 1972 .;
- Abaca Declaration on World Tourism of 10 October 1980;.

- Resolution of the General Assembly's Sixth WTO (Sofia), which was approved in the Charter of Rights and the Tourist Code resort on 26 September 1985 .;
- Convention on the Rights of the Child of 20 November 1989;
- Resolution of the General Assembly of the nine WTO (Buenos Aires) on October 4, 1991, which is particularly in relation to facilitating travel and tourist safety;
- Rio Declaration on Environment and Development dated June 13, 1992.;
- General Agreement on Trade in Services on 15 April 1994.;
- Convention on Biological Diversity January 6, 1995;
- Resolution of the Eleventh General Assembly of WTO (Cairo) in the prevention of organized sex Tourism October 22, 1995;
- Stockholm Declaration against Commercial Sexual Exploitation of Children on August 28, 1996;

- Abaca statement on the impact of tourism on society since May 22, 1997;.

Conventions and Recommendations approved by the International Labor Organization in the collective agreements, prohibition of forced labor and child labor, protection of the rights of indigenous nations and the equal treatment and non-discrimination in the workplace;

- Affirm the right of the tourism free movement of tourists, expressing their desire to promote a fair tourism and, and liberalized international economy and ceremony for this purpose to adopt the Global Code of Ethics for Tourism.

## THE GLOBAL CODE OF THE ETHICS FOR TOURISM

Promotion of the common ethical values of the humanity, with the tolerance and respect for diversity of religious beliefs, philosophic and moral, are not only the foundation, but also the consequences of the responsible tourism. Participants in tourism development and tourists themselves should respect cultural traditions and customs of all nations, including the traditions and

customs of minorities and indigenous nations, and recognizing their social value. Tourism activities should be consistent with the attributes and traditions of the host region countries and must respect the laws and customs of their community. The task of public authorities should pay special attention to the safety of foreign tourists because of possible specific events; they should facilitate the introduction of specific means of information, prevention, security, insurance and assistance consistent with the needs of tourists.

Tourists and visitors are obliged to take, even before leaving, knowledge about the characteristics of countries that are preparing to visit.

Local residents should be associated with tourism activities. They should participate equally in the economic, social and cultural rights that it produces, especially in the workplace that opens directly or indirectly.

Second tourism policy should be applied to the population in the visited regions to help raise their standard of living and to fill their needs.

Particular attention should be paid to the specific problems areas and territories and regions vulnerable rural or mountain, to which tourism often represents a rare opportunity for development, given the decline of traditional economic activities.

Tourism professionals, investors particularly, led by the set public authorities' rules, should do an impact research of their development projects on the environment and the nature, should also be possible transparency and objectivity, information on their future programs and their predictable consequences and nurture a dialogue on their content with a concerned population.

## **THE RIGHT TO TOURISM**

The first option of direct and personal access to the discovery and enjoyment of the resources of our planet is the right that is equally open to all people of the world. All of a broader participation in national and international tourism should be seen as a best possible expression of a sustainable growth of the tourism in general.

The universal right to tourism must be considered as a natural consequence of the right for rest and leisure, including reasonable limitation of working hours and paid periodic holidays, guaranteed by third support public bodies, should develop social tourism, in particular associative tourism, which promotes wide access to leisure, travel and holidays, should encourage and facilitate tourism for families, youth, students, seniors and the disabled.

### **THE FREEDOM OF MOVEMENT OF TOURISTS**

Tourists and visitors must comply with international law and national legislation, to enjoy the freedom of movement within their country and from a state to state, in accordance with the Declaration of Human Rights. Tourists and visitors should have access to all available forms of internal and external communication.

Tourists and visitors should have the same rights as citizens of the country they are visiting as much on confidentiality of personal data and information about them, especially those that are electronically stored.

Administrative procedures related to border crossing, regardless of whether they belong to the jurisdiction of the state or as a result of international agreements, such as visas or customs formalities, should be designed to facilitate maximum freedom of travel and widespread approach to the international tourism. Must respect agreements between countries to harmonize and simplify these procedures. Gradually must remove or correct specific taxes and fees to the detriment of the tourism industry and threaten its competitiveness<sup>133</sup>.

If permitted by the economic situation of the country of origin, travelers should have access to a certain amount of convertible currency that they need to travel.

## **APPLICATION OF THE PRINCIPLES OF THE GLOBAL CODE OF ETHICS FOR TOURISM**

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<sup>133</sup> Paviqeviq Vuko, Bazat e Etikës, Rilindja, Prishtinë, 1981, fq 53

The first public and private actors in the tourism development should cooperate in the implementation of these principles and monitor their effective implementation.

Participants in the second tourism development should recognize the role of international institutions, including: World Tourism Organization, and non-governmental organizations with authority in the area and promote tourism and tourism development, protection of human rights, the environment and health, with due respect the general principles of international law.

The same third parties to demonstrate their intention to refer any relating dispute to the implementation or interpretation of the Global Code of Ethics for Tourism in compliance by an impartial body known as the World Committee on Tourism Ethics.

## **CONCLUSIONS**

In this paper, we talked long about the term ethics and tourism and the relevant explanation by digging from

etymology of these concepts to give a more accurate answer.

Furthermore, we clarified different important concepts and other important principles that had a close connection with tourism in general. We studied these other tourism principles in order to achieve a more extensive analysis of this paper.

The analysis is not comprehensive because the issue itself is very spacious and neither intended nor is able to provide such an analysis. This topic will attempt to present a concise analysis of ethics as a necessary element for the organization of a genuine development, the fruits of which are transmitted in the society from a normative perspective, hoping to somehow bring a contribution to the understanding of social justice, for which our country needs.

In the paper, I have tried to offer an important perspective that aims to encourage and serve to different governmental and nongovernmental organizations to propose and establish better work practices in tourist activities.

Also, the paper intends to serve as a guide for ordinary citizens about the duties and obligations that tourist activities have in providing services to them, respectively, for the quality of these services as part of the ethic of impartial and professional tourism. Furthermore, the paper provides a brief overview about the rights of all who deal with tourist activities.

In the paper were specifically raised some questions that had to do with ethics. The main question and what has inspired me to prepare this paper is: The role of ethics as one of the most important components of good organization of all tourist activities.

From what we found in this paper, we conclude that ethics really occupies a primary role in tourism. It plays an important role also for the whole society.

Between ethics and tourism activities, there is a very close connection. We cannot understand tourism without analyzing ethics. Any action in tourism activities should be driven by ethics. Tourism is “mirror” where all tourist activities appear. Creation of the ethical climate is again a very important element for the whole society and not only for tourism. Through the paper, we treated

issues dealing with the future of tourism development in the effects of globalization and integration.

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