

Opening of the Chapter 23-24 in the Process of Negotiation with the European Union: Corruption in the Republic of North Macedonia

Review

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Abstract

The aim of this paper is to present the main characteristics and trends regarding the Chapter 24 of the *acquis communautaire* of the European Union in the context of the large, so long lasting and so much important problems of corruption in the Republic of North Macedonia. The starting premise is that the conditions for membership are becoming more and more difficult amid the broadened *acquis communautaire*, lower absorption capacity of the Union and deepening problems in terms of the rule of law in the candidate states. The main challenges are, among the others, consisted in the Chapter 24, with specific regards to the problem of corruption in the Republic of North Macedonia.

Keywords: EU *acquis communautaire*, process of europeization, rule of law, corruption.

1. Introduction

The democratic processes developed in 1989 brought changes in Europe's political map, demolishing communism and liberating people from one-party communism dictatorship. They established with enthusiasm the building of pluralistic democratic systems, depending on their circumstances and specifics. Even the western Balkan states were determined to build democracy. Therefore, they had aspirations to join the big European family (EU). However, their path was not short and without challenges for each western Balkan state. The road to the integration of the republic of Macedonia into the European Union is similar in many points to those of the countries of the region, especially with the former Yugoslav republics. Although, the independence of the former republics was bloody and had many serious consequences with the exception of Republic of North Macedonia which became independent without war. But there was an interethnic conflict ten years after international recognition (2001).

Initially, republic of North Macedonia faced many challenges, most of them inherited from the dictatorial one-party system, with centralized economy, self-governing mentality, large bureaucracy, unmanageable economic structures, and the destruction of the unique market space. All of these also reflected on the non-viability of the state institutions and the rising of unemployment. In the legal aspect there were lack of laws that responded to the new circumstances in the initial democracy, the lack of experience of pluralistic action in political, cultural, bureaucratic habits and the Balkan mentality of thinking about the lack of readiness to solve

problems with dialogue and tolerance and high degree of corruption and extensive coverage. Apart from the internal factors that hindered the advancement of the process of integration in the EU was the failure to resolve the problem of the name of the state contested by Greece. However, the role of subjective factors should not be overlooked. The EU no longer wants to accept countries with neighboring problems, thus repeating the mistake with Cyprus, which has not yet solved the problem of joining the island and some other countries too. However, Macedonia's aspiration to join the European Union has always been a priority. The idea of EU enlargement was given in 1993 for central and southeastern European countries. The countries that were acceding for EU membership had to meet the Copenhagen criteria, which had to do with the existence of a market economy, democracy and rule of law, as well as respect for human rights as a prerequisite for joining the European Union.¹

The EU criteria were added with more recent demands. At the Thessaloniki summit, the EU mentions reforms in key areas in order to meet the most important criteria: strengthening a lawful state, fighting organized crime, corruption and illegal migration, and strengthening the capacity of administration in border control.² The European Union is not a union of states like the United States but it is an organization. The European Union, as a supranational organization, rises beyond the interests of individual states and makes decisions based on the aggregative and common interests of all member states.³

North Macedonia's road to the European Union

The full membership of the Republic of North Macedonia in the European Union is one of the country's priority strategic interests. It is worth pointing out that North Macedonia has established diplomatic relations with the EU in December 1995. Then establishing "the agreement for stabilization and association" (SAA) with the EU which came into force in April 2004. The SAA aims to liberalize trade for 95% of exports to the EU. In December 2005, the former Yugoslav Republic of Macedonia was granted the status of candidate country for EU membership. In February 2008, the EU approved the membership partnership for the country, which updated the previous European partnership agreement of January 2006. The citizens of the former Yugoslav Republic of Macedonia were granted the right to visa-free travel to the Schengen area in December 2009.⁴ Obtaining candidate status for EU membership was a political recognition of the progress made by the country in implementing the reform process and building an open, democratic society and marking North Macedonia's entry into a more higher European integration process.⁵ The establishment of the Stability Pact created hope for overcoming the difficult situation and the

¹<http://www.enciklopedija.hr/natuknica.aspx?id=18657r>

²Samiti BE-Balkani Perëndimor – Deklaratë, Pika 7, në dispozicion në http://ec.europa.eu/enlargement/enlargement_process/accession_process/how_does_a_country_join_the_eu/sap/thessaloniki_summit_en.htm

³<https://www.scribd.com/document/229727177/Pravo-EU-Lidija-Mad%C5%BEEar,fage> 5

⁴http://www.mfa.gov.mk/index.php?option=com_content&view=article&id=112&Itemid=391&lang=mk

⁵http://www.mfa.gov.mk/index.php?option=com_content&view=article&id=112&Itemid=391&lang=mk

development of the region's economy. North Macedonia, as well as other Western Balkan countries, knock on the doors of international financial institutions for borrowing and financial donations.⁶

The journey has continued, in meeting the EU standards with the National Program for the Acquis, and complying with the recommendations of the European Commission expressed in the annual reports. The main goal of R.M was the opening of negotiations for membership of the European Union as soon as possible.

Process of negotiation for membership although it keeps the EU negotiating label, it essentially sets out a list of EU legal conditions and norms that the Member State must align with domestic legislation. Therefore, the candidate country does not negotiate on EU regulation, but on the ways in which they will implement them.⁷

Why Chapter 23 and 24?

These two chapters include the essential basics for the radical changes of the candidate countries and serve as a key to good governance and the first steps towards the European Union. With these chapters starts the negotiations and with their addition the full integration is achieved. So, Chapter 23 and 24, are of particular importance to the candidate countries for the European Union as well as to the Republic of North Macedonia. Because they include basic principles such as : justice, fundamental rights, freedom, security.

These are directly linked to the European Union's political criteria, and their fulfillment paves the way for negotiations, which are difficult to fulfill and require a long time for their realization. Usually, these are achieved after the implementation of reforms that are directly related to citizens' lives.

At the final conference of the project "23+ Network" , which was held on June 5, under the title "Chapter 23: pandoras box or key of good rule" ? Justice minister Renata Deskoska said: Chapter 23 should not be seen as Pandoras box but as a means of opening a path for good governance that will not be easy and in which there will be many obstacles, but the opening of which is needed because of the establishment of good governance and legal certainty of citizens.

2. Corruption - A challenging Road to the EU

Corruption is a negative social phenomenon that has been conveying human societies since ancient times, Mesopotamia, Egypt, Greece, and Rome, and has lived up to the present day with planetary reach. For defining this phenomenon, there are numerous definitions that change in historical times and contexts. According to the definition of corruption provided by the United Nations, which implies any act or omission which the person responsible for performing the duties

⁶ Nazmi Maliqi, Proceset e Integritit Euroatlantik dhe Republika e Maqedonisë, Tetovë, 2008, fq. 57

⁷(<http://ukljuciseu.org/wp-content/uploads/2017/11/4-Dajana-%C4%90ura%C5%A1inovi%C4%87Pregovara%C4%8Dka-poglavlja-Evropske-unije-va%C5%BE-nost-kapitulli-23-dhe-24-.pdf>)

does, while for this, as a reward, either seeks or receives a gift, a promise or any other convenience. Civil Conventions on Corruption.⁸

Corruption (from lat. *Corruptio* - corruption, bribery, bribery or the root of the word: "rumpere" meaning: a violation, a fracture that alludes to something being broken, such as: administrative legal norms, social or moral norms by legal meaning includes banned behaviors related to the myths in performing public functions.⁹

Depending on the changes that have occurred in society, corruption has also adapted to new situations, acting in obstructing democratic processes. Sadly, this phenomenon has stretched in the very palms of our society, especially in areas where there is a greater chance of non-legal and non-moral benefits, and focus on combating this negative phenomenon. Though combat is not easy and eradication is impossible, thus the only option is keeping control.

Therefore, the research on "corruption and the fight against corruption is an interdisciplinary problem that must be solved with joint research from many scientific fields"¹⁰

Corruption in all its forms ranging from the wider it is an element of organized crime and misuse of authority, while daily corruption is the real cancer in contemporary societies.¹¹

The phenomenon of corruption is not only a characteristic in the state of North Macedonia, or only of transition or non-developed countries. This phenomenon is also present in developed countries. "With the request to join NATO and EU from republic of North Macedonia is also the fight against organized crime" [11]¹². State decency should be to fight corruption without any dilemma, with efficiency eg the Law on Corruption Prevention in the Republic of North Macedonia, it needed 5 years until it got approved in 2002. Concerning about the high degree of corruption is citizens' perception, and internal analysis and reports from the Ministry of Interior and External Organizations. The International Crisis Group (ICG) in its reports as the most corrupt institutions in the country emphasize customs, tax services, health and administration. According to this table, the country with the least corruption in the world is Finland. North Macedonia was listed for the first time in this list in 1999, when it was ranked 65th, where according to Transparency International, North Macedonia is among the 15 most corrupt countries in the world and before it there are some Knowing that one of the standards to integrate into the European Union is fighting corruption and putting it in control. " For the strategy to be successful, it is necessary not only to enforce law and prosecute, but also to prevent and educate society¹³

⁸ Civil Law Convention on Corruption, concluded at Strasbourg on 4 November 1999., CETS No.: 174, (<http://conventions.coe.int/Treaty/Commun/QueVoulezVous.asp?NT=174&CM=8&DF=11/13/2007&CL=ENG>)

⁹ Jeton Shasivari, Proceset e Integritetit Euroatlantik dhe Republika e Maqedonisë, Tetovë, 2008, faqe 199// D-r Slaveski T., "Organiziraniot kriminal i korupcijata"; Makedonska revija za kazneno pravo i kriminologija, br. 1-2, Skopje, 1996, str. 306-317. 98 Prof. D-r Kambovski V., Dr. Naumoski P., Korupcijata - najgolemo ostestveno zlo i zakana za pravnata drzava, Skopje, 2002, str. 23.

¹⁰ Zbornik Radova Naučnostručni skup s međunarodnim učešćem, metodologija izgradnja, metodologija izgradnje sistema integriteta u institucijama na suzbijanju korupcije Banja Luka, 19. novembra 2010 Godine, str. 3

¹¹ Kambovski Vlado, Kazneno Pravo, Prosvetno Delo, 2003, Skopje, page 508.

¹² Nazmi Maliqi, Proceset e Integritetit Euroatlantik dhe Republika e Maqedonisë, Tetovë, 2008, page 198.

¹³ Antikorpcijski priručnik, <https://dokumen.tips/documents/antikorpcijski-prirucnik-2011.html>, faqe 20.

Summary of progress reports by the European Commission on the Republic of North Macedonia regarding Chapter 23 and 24 - Justice, Freedom and Security.

Regarding progress reports from the European Commission on Chapter 24, respectively corruption, starting from 2005 -2018, we can say that:

The 2005 report - was a generally positive report, but it has contained many remarks and recommendations in the following areas: the fight against corruption, public administration reform, freedom of information, acceleration of judicial reforms and progress in the political dialogue.

In 2006, North Macedonia is ranked among the most corrupt countries in the region according to international transparency, and marks a negative turnaround for our country.

In 2007 - Progress has been made in these areas: the field of justice, the fight against corruption and fundamental rights as governments have demonstrated greater determination in the fight against corruption but still poses gaps in the code of criminal procedure especially in combating corruption and still represents a serious source of concern since corruption is a deep root problem. Year 2008 has marked a limited progress in politics and the fight against corruption, as well as in the area of justice. There has also been some improvement in terms of police co-operation, migration, visa policy and border management, and has also facilitated the visa regime, with their approval in January 2008, however, serious problem has remained the struggle against organized crime .

In 2009 - marks an achievement against corruption, judicial reforms and the protection of fundamental rights. As far as the area of freedom, justice and security is concerned, it is working to fulfill the established determinants in the visa liberalization dialogue.

Improvements have also been noted in the field of organized crime, asylum, visa policy, foreign borders and Schengen.

Also, in the 2010 report on chapter 23 – are mentioned the achievements on the progress against corruption, as well as on judicial reforms and on the protection of fundamental rights but on human rights should still be worked out. While the remarks of chapter 24 have had progress in the same areas but with increasing asylum applications, after the implementation of the visa-free regime, is being requested that more attention to be put to this problematic. In 2011 it is characterized by easy improvements in the fight against organized crime and police co-operation.

In this year, the Ministry of Interior has carried out audits according to the legal provisions in the ministry for limiting the political activities of official persons.

According to the state statistical office of North Macedonia's survey in 2011, North Macedonia is ranked as the first country in the region according to the bureaucratic average that the population has provided over the years.

As far as the 2012 report is concerned, there is a significant progress in chapter 23 and 24 which states that there have been improvements in the fight against corruption and justice by reducing the number of suspensions of cases. There has also been progress in external borders and customs cooperation.

The 2013 Report assessing the work of the courts that has been strictly required for the courts to eliminate the remaining cases that have been suspended while the legal corruption law is relevant. It also needs to establish an efficient asylum system for money laundering and financial crime.

Although in 2014, our country has generally fulfilled its obligations on some of the reforms, there is still a risk of deterioration in certain areas, including the judiciary and the fight against corruption. There is a need for greater attention to fundamental rights, especially on prisons, and the children's rights.

Year 2015

Regarding the fight against corruption in all countries where enlargement is concerned, there is a need for installing stronger frames in prevention and combating corruption. The fight against organized crime remains one of the fundamental values in the fight against the criminal infiltration in the political, economic and justice spheres.

Year 2016

Recommendations from the European Commission have supported those of the previous year. As are the remarks in the judicial system, which is said to have gone back.

Implementation of the rule of law, mixing of politics in the work of the judiciary, media freedom, etc.

It is also required to undoubtedly support the efforts of the Special Prosecutor to establish legal frameworks.

Corruption remains a major problem in state institutions as well as media freedom.

The European commission has also demanded the implementation of the Perzino agreement, prompt reforms, as the state is stagnating and has implications for the functioning of democratic institutions.

Maintain free and democratic elections, which would be internationally accepted.

Corruption still prevails and remains one of the serious problems, " says the report .By adding that laws exist, but mixing policy in the work of the Anti-Corruption Commission reduces the outcome of their work .

Year 2017

In the 2017 report, the Euro Deputies estimated that the situation in Macedonia is very serious as the increasingly deep political crisis endangers the European perspective of the country. Systematic deficiencies have been recorded in the judicial system, the fight against corruption and human rights.

Year 2018

The 2018 report has been divided into three parts: the European legislature, the economic criteria and the political criteria that contain a number of issues.

In the Macedonian judiciary system, it is estimated that progress has been made, but not so obvious as the fight against organized crime needs to be effectively refined. Such as money laundering and financial crime. As far as fundamental rights are concerned, there is a recommendation for work in the prisons and psychiatric institutions, as well as in the importance of hate speech and organized crime.

The fight against corruption must continue because it is present and poses a serious problem in the country. Major problem in this case is the structural and operational absence but also the policy intervention in fighting corruption. Spheres in which corruption is most pronounced.

As corrupt state institutions are considered medicine, administration, judiciary and education, but not forgetting other areas such as police, customs and business.

What's next.

Since the phenomenon of corruption can not disappear by itself, nor does the institutional basic reforms are not implemented spontaneously, then the state with its readiness and willingness, political parties, civil society and citizens must give their contribution to fulfill the recommendations that have been left unmet. Because Macedonia's perspective is in the European Union and NATO: Fulfilling EU standards is not for her sake, but for the future of our democratic state. If far-reaching measures have not yet provided any expected effects, then it is necessary to analyze where their defects are coming from. So what needs to be changed in methodology, tools, activity or something else. For the consequences we are only experiencing, and action must be taken to eliminate the causes.

First of all

- Preventive measures should be taken, informing citizens about the very dim harm that causes corruption to democratic institutions.
- Transparency of state institutions in their activity for what is in the benefit of citizens
- Control - on the financing of political parties.
- Declaring the wealth of public officials
- Control of anti-corruption measures
- Training of officials with code of ethics
- Integrity of state officials and return of trust to state institutions
- Establish co-operation and interaction with civil society organizations
- International co-operation.

The purpose of these preventive measures is the eradication of corruption by public administration institutions and state segments, and in particular by institutions providing citizens with public services. However, the solitary preventive can not accomplish prevention without the interaction with repressive means, as they are. Police, judiciary, legal corruption.

3. Conclusions

Corruption is only fought in an organized way with the prosecution bodies, as with the professionally prepared police to fight corruption, and by controlling it through inspections. And the formation of special police forces to fight criminality in society. But while respecting the fundamental rights and ethical standards of western police, that the trust of citizens towards the police be greater. While within the courts special units are set up to combat corruption. With the court, it is necessary to lead (represented) people with professionalism, transparency, that respect the implementation of laws, as well as adhere to the ethical code that preserves the authority of judges and courts, being impartial and independent. Only with a coordination with all segments dealing with the fight against corruption. Citizens can also give a big shock by not voting those who suspect they are corrupt. The legal framework for the participants needs to create space and opportunities for combating corruption, as well as sanctioning criminal acts should be stricter.

During the analysis of the forms of criminality nowadays I have come to the conclusion that with the actions of the perpetrators of crime, in most cases, namely the regular activity of the state organs is damaged, the authority is damaged, the legitimate rights and interests of different physical and legal persons are destroyed and damaged. To reach the successful fight of criminality, it is necessary that for many criminal acts, the lawmaker to add the measure of punishment, but in addition to it to become a more concise definition of some actions that leave doubts whether or not they enter in frame of the criminal area classified as organized crime.

Therefore, without regional cooperation based on EU standards, it is difficult not to say impossible to succeed in combating criminality successfully. We rely on the fact that in the present case, we are dealing with crime that marks extensions in many countries and is organized and managed by criminal groups and organizations, many times with extremely long criminal experience.

At the end of the discussion, I will conclude with a quotation from former US Secretary of State John Kerry's speech, which says: We have declared the fight against corruption a priority for national security, and has invited all governments to do the same. In appearance it is less wicked, which does not destroy the state, will distort it. It is a tax that all citizens pay - though it is more damaging to the weak, the poor and the most vulnerable. Makes communities less competitive, less secure, and less free.

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Free professions in European Union Attorneys (The lawyers)

Research Article

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Abstract

In this paper I have been dealing with free professions in the European Union which are closely related to the provisions adopted by the commission and are mandatory for implementation in all EU Member States. By doing a thorough study on free movement exercising lawyers in the European Union, enabling them to treat all subjects practicing the profession of lawyer in the European Union equally.

Understanding of free professions in the EU. I talked about the different directives regarding the practice of the advocacy profession in the EU as well as about CJEU jurisprudence regarding the profession of lawyer. Aspects of the implementation of this freedom that still face national barriers and other obstacles, not for legitimate reasons. The exercise of the official public authority is accompanied by examples from CJEU jurisprudence, while the innovations and changes introduced by Directive 2006/123 on the liberalization of services are materialized in a case study. Provision of services permanently by being placed in an EU Member State is governed by the provisions of freedom of establishment.

Directive 98/5 on the placement of lawyers and the effects on the Community's application of this provision. Under the approach taken by the Community legislature, member states are considered appropriate for the exercise of profession in its territory which had qualifications in the country of origin, professional qualifications and diplomas, on the premise of trust in "the appropriateness of national training systems.

Directive 77/249. The lawyer's profession is a unique position amongst the professions in Europe, since: firstly, lawyers have an important function in administering justice and maintaining the rule of law; Secondly, lawyers play a vital role in the economies of the Member States and the functioning of the European Union's internal market; Thirdly, the profession of lawyer is targeted specifically since it is based on national legal systems in which future lawyers qualify and practice professional practices.

Keywords: professions, European union, attorneys, lawyers.

1. Introduction

The right to practice a professional activity in the EU is based largely on the in-depth analysis of the Community provisions on the free movement of services, first of the TFEU provisions, and secondly the provisions of Community acts, the directives that are very much in this area, and Council regulations, and CJEU decisions.

Directive 89/48 / EEC, which is not subsequently amended by Directive 2005/36 / EC. In this regard, the directive distinguishes between a regulated occupation and an unregulated occupation. A profession regulated under Article 1 (c) and (d) of Directive 89/48 / EC is that profession which is governed by national rules. These directives are applicable and apply throughout the EU without exception. the internal affairs of the states that include the domestic legislation of each member state in the EU.

Professions consist of two categories: regulated and non-regulated professions. It is worth noting that regulated professions can also be exercised against the salary, and in this case, the professional employee does not exercise a free profession in the sense of the provisions on free professions, e.g. a physician, engineer, or employee lawyer of a large firm, assistant pharmacist, nurse, etc. - An unregulated profession includes professions whose activity is not related to trade, industry, crafts or agriculture. Usually are the intellectual or the noble professions, whose usufruct is the reward. Unregulated professions can be exercised freely or in some cases may be required a permit to practice. They are not covered by Directive 2005/36.

2. Understanding free professions in the EU

The creation of a European market for regulated professions is based on the recognition of the two main freedoms: stabilization and service Para stabilization, being represented in "Two ways in which a service sector operator can benefit from his / her right to movement within the Community".

The first judgment concerning the non-application of the directives related to free professions was in 1974. This trial was inspired by a Dutchman's story.

Van Binsbergen relates to a Dutch citizen who acted as a legal advisor to Van Binsbergen over proceedings before a Dutch social security court and moved his residence from the Netherlands to Belgium during the proceedings. He was told he could no longer represent his client, as under Dutch law, only Dutch-based persons could act as legal advisers. In this case a pre-trial request was made to the CJEU to determine whether Article 56 had direct effect and the Dutch rule was consistent with it. The CJEU hereby expresses itself in several points in relation to the above questions, namely in points 20, 21, 22, 24, 25, 26⁵. The Court of Justice, in order to clarify, made the decision to clarify the purpose of the clause national treatment, and emphasize that the implementation of the article. 59 (now Article 49 Trattato UE, now Article 56 TFEU), was an alternative, during the transitional period, to the adoption of secondary legislation, which was no longer subject to this condition.

As for the legal profession, the inability to coordinate curricula - as with the study of individual national rights - made Union legislators limit its intervention to the free provision of legal services where Directive 77/249 / EEC (1977/03/22). The foundation of the general system was the principle of mutual recognition, developed by the Court of Justice in the case of the well-known