

IMPACT OF COVID – 19 ON THE ECONOMY IN NORTH MACEDONIA

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Abstract

The paper presents the economic situation and challenges in North Macedonia during the pandemic, which resulted with economic contraction during 2020, although with different intensities viewed through quarters. The crisis is still going on due to the virus mutation, even why vaccination of the population in many countries of the globe has begun. Currently isolation measures operate in many development countries of the EU and wider. In the paper is presented the global and regional economic performance during 2020. Austerity measures to curb the spread of the corona virus shrink aggregate supply and demand. Almost all sectors of the economy were hit quickly and strongly, household consumption, business investments, etc.

To see the relationship between economic development and its determinants in the pandemic, is applied the function of correlation and regression for GDP as a dependent variable and household consumption and the public as independent variable. Their causal relationships are observed, through the quarters since the pandemic spread and until the end of 2020. Hypothesis H_1 is tested, $p \neq 0$ and $\alpha > 0.05$, shows that there is a strong correlation between the analyzed indicators.

The paper presents the measures taken by the government of Northern Macedonia to mitigate the negative effects of Covid-19, as well as identifies the factors that hinder the recovery of the Macedonian economy after the end of the pandemic.

Keywords: GDP, aggregate supply, aggregate demand, correlation, regression.

1. Introduction

The negative effects of the pandemic in North Macedonia were evident since the beginning of 2020. Both in other countries of the globe and in North Macedonia, austerity measures were taken which had a huge impact on economic activities. Prior to the summer season in North Macedonia and the countries of the region the isolation measures were eased, which after the end of the season resulted in an increased number of infections. Extensive austerity measures were restored to curb the spread of the virus (airports, borders, restaurants, educational institutions were closed, rallies were banned, domestic travel was restricted, etc.). Such austerity measures resulted in a deeper decline of the Macedonian economy, the heaviest during the entire transition period (contraction of 12.7% in the second quarter - compared to the same quarter of the previous year).

As the pandemic spread, the government was forced to invest in medical equipment and medicines, as well as increase the income of medical staff. From increased infections medical centers were transferred to specialized COVID-19 centers and private hospitals were made available to the government. Currently in many countries of the world and the region vaccination of the population has begun. North Macedonia is awaiting the arrival of the first vaccines, but the isolation measures still remain in force as the virus mutation from the UK spreads to other European countries.

The spread of the virus is still going on and we cannot predict the end, but one thing remained constant the economies of the globe were hit hard.

2. The nature of the economic crisis as a result of COVID - 19

Cyclical developments of the economy sometimes declining and sometimes increasing are common occurrences. In other words, it is normal for the economy sometimes to go into prosperity and sometimes to decline. Some of these cycles are so deep that they result in major economic shocks. One of them is the pandemic crisis which lasts almost all the year we left behind, and still continuous.

In the history of mankind there have been many economic crises but the most shocking in terms of duration and intensity was that of the deep depression of the years 1929/33, the most recent history is that of 2008/09 and that of the pandemic which still continuous.

The pandemic originated and appeared in China in late 2019, and in early 2020 spread to Europe and other countries around the globe. The global crisis caused by COVID - 19, differs from other world crises because of its specifics. First, it has its source from China and not like the first two that had the source from the US, second, it spreads very fast and has shown unprecedented aggression third, it strikes hard and without any warning the demand and aggregate supply, fourthly, it constitutes in itself a high dose of uncertainty regarding duration, fifth in contrast to other crises (1929/33 and 2007/09), in which the source of the crisis was the financial sector, in the crisis these sectors are liquid and can give the economy more support in money and sixthly, it is likely that this crisis will be shorter compared to other crises but with much stronger impact.

The crisis from the pandemic spreads evenly and much faster than the previous ones, because the globalization process strongly connects the national economies with the international ones. The economy of the globe functions almost like the economy of a state and if a powerful state falls into crisis it as a locomotive pulls other states into the abyss.

3. International economic developments during the pandemic

In 2020 the corona virus was associated with severe economic consequences. Its powerful blows were experienced in almost all the states of the globe. In the year of the pandemic the economy decline of the globe was due to the decline in private consumption and investment, amid deteriorating labor market. Unemployment reached 13%, the highest rate in American history with the exception of the 1929/33 Global Crisis. The world's second largest Chinese economy in 2020 recorded growth of 2.3%, which is the lowest in the last 4 decades. (<https://www.dw.com/chinas-economy-growth-slowest-in-4-decades>). The recovery was supported by high investment activity, high demand for Chinese goods and services, and relaxing monetary and fiscal policies.

The two major economies with rapid growth rates such as India and Brazil also recorded a decline of 4.2 and 4.7% respectively in 2020 compared to the previous year. (<https://www.statista.com>). Austerity measures to curb the pandemic starting in March 2020 resulted in deep economic downturns in the second quarter. In this quarter, the economy of Brazil shrank by 11.4% and that of India shrank by 23.5%, in addition to the growth of the previous quarter of 1.4% respectively 3.3%. In the two economies mentioned above, the contraction was accompanied by household consumption, investment followed by rising unemployment rates. Such economic developments will definitely be reflected in other economies of the globe. Severe economic shocks from the pandemic marked developed countries of the EU and the Euro zone, which are strategic partners of North Macedonia.

Table 1. GDP growth rates in EU countries through the quarters of 2020 year

	Change in % compared to previous quarters (2020)				Change in % compared with same quarters of the previous years			
	First quarter	Second quarter	Third quarter	Fourth quarter	First quarter	Second quarter	Third quarter	Fourth quarter
Euro zone	-3.7	-11.7	12.4	-0.7	-3.2	-14.7	-4.3	-5.1
EU	-3.3	-11.4	11.5	-0.5	-2.6	-13.9	-4.2	-4.8
Belgium	-3.4	-11.8	11.6	0.2	-2.0	-13.9	-4.3	-4.8
Germany	-2.0	-9.7	8.5	0.1	-2.2	-11.3	-4.0	-3.9
France	-5.9	-13.7	18.5	-1.3	-5.7	-18.8	-3.9	-5.0
Italy	-5.5	-13.0	16.0	-2.0	-5.6	-18.1	-5.1	-6.6
Austria	-2.8	-11.6	12.0	-4.3	-3.3	-14.2	-4.2	-7.8
Portugal	-4.0	-19.9	13.3	0.4	-2.4	-16.4	-5.7	-5.9
Sweden	0.3	-8.0	4.9	0.5	0.7	-7.4	-2.7	-2.6

Source: <https://ec.europa.eu/Eurostat/documents/>

As can be seen, as in other economies of the globe, the Euro zone and the EU had the deepest economic decline in the second quarter of 2020, of 14.7% respectively 13.9%, compared to the same quarter of the previous year. In the first quarter it has been almost five times smaller. Decline above average in the Euro zone and EU in the second quarter of 2020 is as follows: Portugal (16.4%), Italy (18.1 %) and France (18.8%), while the slightest decline in this quarter marked Sweden (7.4%), compared to the same quarter of the previous year.

Comparing economic growth rates from one quarter to the next in 2020, we can see that despite the deep declines of the second trimester, in the following quarter all countries achieved economic growth. The most significant growth is in France (18.5%) and Italy (16.0%). Such developments in this quarter are a result of the easing measures taken by the states during the tourist season.

Economic performance in the fourth quarter of 2020 compared to the previous quarter of the same year marked a slight decline of 0.7% (Euro zone) and 0.5% (EU).

4. Economy of the Western Balkan countries in pandemics

As in other countries of the globe, the pandemic in the Balkan region took the economy by surprise and hit it without warning. The rapid spread of the virus in this region, the number of which at the end of 2020 reached 800,000 ([https // news.google.com /](https://news.google.com/) COVID 19), imposed the application of isolation measures, which resulted in deep economic recessions.

Negative GDP growth is called a recession. (Oliver, 2009, pg. 46). From the Balkan countries, according to the EBRD, the deepest recession in 2020 was in Montenegro (12.0%), followed by Albania with a contraction of 9.0%, followed by North Macedonia with Bosnia and Herzegovina with a contraction of 5% compared to the positive growth of the previous year. of 3.6%, respectively 2.6%. The lowest contraction was recorded in Serbia (3.5%).

Such contraction of the economy increased the level of poverty in the Western Balkans region. As we noted above, the Balkan countries in the previous year and even many years ago had managed to increase their economies and reduce the level of poverty. In 2019 in the states of this region still about 20% of the population lived on less than \$ 5.50 a day and a significant number of people were on the brink of poverty. (<https://www.worldbank.org/en/region/>). The global pandemic crisis is likely to disrupt and partially overturn recent achievements. Poverty can be increased by reducing jobs, reducing employment income, reducing remittances, etc. More than 400,000 people in the region could be plunged into poverty while the middle class as a pillar of society could shrink significantly. (<http://pubdocs.worldbank.-poverty-impacts-Covid19>)

Most of the poor who may fall into poverty currently do not receive social protection. The crisis had an immediate impact on the employees in the sectors of hotel services, transport, trade, etc. Prior to the crisis, 48-65% of workers in the Western Balkans were employed in crisis-affected sectors. In the Balkan countries, at a high risk are the self-employed (almost 1/3 of the self-employed are in crisis-affected sectors), and those with informal employment (they are more likely to lose their jobs or work less than workers employed in the formal sector). Many of the informal or self-employed are not beneficiaries of social assistance, so they remain unprotected. Employees who are not able to work from home are also at risk. Revenues from other sources such as remittances will also decline. In the year before the pandemic crisis (2019) in the Western Balkan countries remittance revenues ranged from 2 - 10% of GDP. Kosovo receives more remittance income from Bosnia & Herzegovina. Migrant workers, especially temporary or informal workers, may lose their jobs in pandemic-stricken European countries and return to their country of origin, risking becoming unemployed and without social protection.

How much poverty will increase cannot be said for sure but one is certain that it depends on the duration of the pandemic. If it lasts throughout 2021 the number of poor in the Western Balkan states could double. Economic policies in the Balkan countries beyond measures to protect public health should prioritize minimizing the negative effects on the economy and reducing poverty.

Negative developments in the real sector will exacerbate the existing fiscal imbalance which will shrink due to the reduction of economic activities. Such a performance of public revenues will pose a problem for government interventions to mitigate the economic and social consequences. The most problematic will be in Kosovo, Montenegro and Albania, which have very limited fiscal space. In all Western Balkan countries, budget deficits will be above the level of Maastricht (3% of GDP), moving in the range of 5 to 7% of GDP. The contractions of economic activities will increase public loans, which in all countries except Kosovo exceed the level of Maastricht (60% of GDP).

5. Economy of North Macedonia during pandemic crisis

The economy of North Macedonia is characterized by modest development rates. During the 30-year transition period it grew at an average annual rate of close to 2%. Such a modest growth rate does not allow radical positive turns, and such economies find it difficult to cope with crises and take longer to recover.

During the pandemic year (2020) the economy of North Macedonia shrank by 4.9% compared to the previous year, and as an open economy it is sensitive to global trends. The strategic international exchange partner of North Macedonia is the EU, which as we saw above was hit by the pandemic. Germany as an EU member with which North Macedonia realizes the highest trade exchange, in the pandemic shrank almost the same as North Macedonia (5%). Demand reduction from this states as well as other states for Macedonian goods reduced the external demand, on the other hand the contraction of domestic economic activities shrunk and the domestic demand. Such shocks resulted in inevitable crisis. With the decline in demand, supply was reduced, which led the economy to lower equilibrium positions.

5.1 Aggregate supply

Aggregate supply is conditioned by aggregate demand. When aggregate demand increases, aggregate supply growth will be stimulated and vice versa (Musa, 2013, p. 106).

The aggregate supply in North Macedonia during the pandemic was a consequence of the loss of confidence of households and businesses, which resulted in the contraction of economic

activities. The effect of the crisis spread to all areas of the economy but was most pronounced in the field of industry, construction, trade, tourism, export, import, etc.

Table 2. Index of economic areas by quarters for 2020 (2019 = 100)

Economic sector	First quarter	Second quarter	Third quarter	Fourth quarter ®
Processing industry	91	73	96	101
Construction (completed facilities)	65	87	114	141
Export	87	62	105	116
Import	89	67	99	105
Domestic wholesale trade	92	86	94	94

Source: <https://stat.gov.mk>, for the month of October and November

According to the chart above, the North Macedonian economy the largest decline had in the second quarter. The reason should be sought in isolation measures such as: closure of borders, interruption of supply network, global contraction, etc. Deeper declines of almost the same size (38% and 33% respectively compared to the same quarter of the previous year) had imports and exports. In the same quarter, the industry, especially the processing industry, experienced a deep shock (-27.0%). In this sector, traditional activities such as clothing, textiles, furniture, etc. were hit hard. In addition to foreign trade, domestic trade, especially wholesale trade, also suffered strong shocks, although its decline in all quarters is slight. Construction had the highest impact in the first quarter and then is improving.

The tourism sector was the most affected area, but the money for summer vacations that the government allocated to low-income families mitigated the consequences of this area. Only the pharmaceutical sector experienced growth, which is normal because the demand for drugs, preparations, etc. increased.

As it can be seen from the data in the previous table in the IV quarter, with the exception of the wholesale trade sector, all the other areas increased compared to the same quarter of the previous year.

5.2 Aggregate demand

Renowned English economist John Maynard Keynes explained cyclical fluctuations in the economy by examining the reasons for aggregate demand fluctuations. (Johan, 2006, p. 478) The Keynesians demand that the government take the lead role in managing fiscal and monetary policy for economic stabilization. (Robert. &Rand, 2006, pg. 721)

The decline of GDP in the economy of North Macedonia of 4.9% in 2020 compared to the previous year is a consequence of the contraction of all areas of aggregate demand, which can be seen from the data in the table below.

Table 3. Quarterly growth rates in the areas of aggregate demand for 2020 in the economy of North Macedonia

	Quarter of the year 2020 1990 = 100			Differences in (in %) in the performance of macroeconomics indicators by quarters (2020)		
	First quarter	Second quarter	Third quarter	First quarter	Second quarter	Third quarter
Household consumption	1.2	-11.6	-3.0	-9.3	1.5	5.6
Public consumption	2.4	1.5	2.2	1.5	1.2	2.0
Gross Investment	0.5	-25.6	-8.0	-3.4	-41.3	95.7
GDP	3.6	-12.7	-3.0	-13.4	-10.4	19.2

Source: For the year 2019, first and second quarters for year 2020, National Bank of North Macedonia, Quarter report, November 2020, p 20 for third quarter, State Statistical Monthly report, 1.2.2021, p.25

As it can be seen from Gross Investments, there is a slight increase in the 1st quarter of 2020 of 0.5. % show a deep decrease in the second quarter of 25.6% compared to the same quarters of the previous year. In the language of macroeconomics, investment refers to the acquisition of new capital, either as equipment or as buildings. (Gregory & Mark. 2012, pg. 12). The reduction of Gross Investments was a consequence of the reduction of economic activities in many areas such as: construction, industry, import of capital goods, etc. The most significant contraction is recorded in the profit tax, partly related to the measures for cancellation of its payment. In an effort to boost investment, the state applied relaxing monetary measures based on cheap credit and ease of financing terms. In the third quarter of the pandemic year Gross Investments marked a slight decline (8.0%)

Household consumption is the second most affected sector of aggregate demand. The desired expenditures of households and firms determine the overall demand for products and services. (Gregory, 2009, pg. 778) After the slight increase of the first quarter of 2020 by 1.2%, household consumption fell by 11.6% in the second quarter compared to the same quarter of the previous year. The income of the population in North Macedonia after 7 years of growth seriously shrunk during the pandemic. The contraction of remittances due to restrictions on population movements has also contributed in this regard. Household consumption marked a slight decline (3%) in the third quarter.

Public consumption marks a symbolic increase of 2.4%, 1.5% and 2.2% in I, II and III quarters of 2020 compared to the respective quarters of the previous year, which in times of crisis is logical. Transfers in health, monthly income subsidies, etc. have contributed the most to public consumption.

The performance of changes in the aggregate demand sectors from one quarter to another in the year of the pandemic, shows that public consumption shows a slight increase but continuously (1.5%, 1.2% 2.0%). Other sectors are fluctuating, but in the third quarter of 2020, they are increasing, compared to the previous quarter. The most significant increase in this quarter is realized by Gross Investments (95.7%).

5.3 Correlation between GDP, household consumption and public consumption in the Macedonian economy in pandemic

In economic analysis it has been proven that the most appropriate form that expresses the interdependence of variables in this case GDP, private consumption and public consumption is that of the regressive equation. In the analysis, GDP is taken as independent variable, while private and public consumption as dependent variables. The analysis is based on concrete data in North Macedonia.

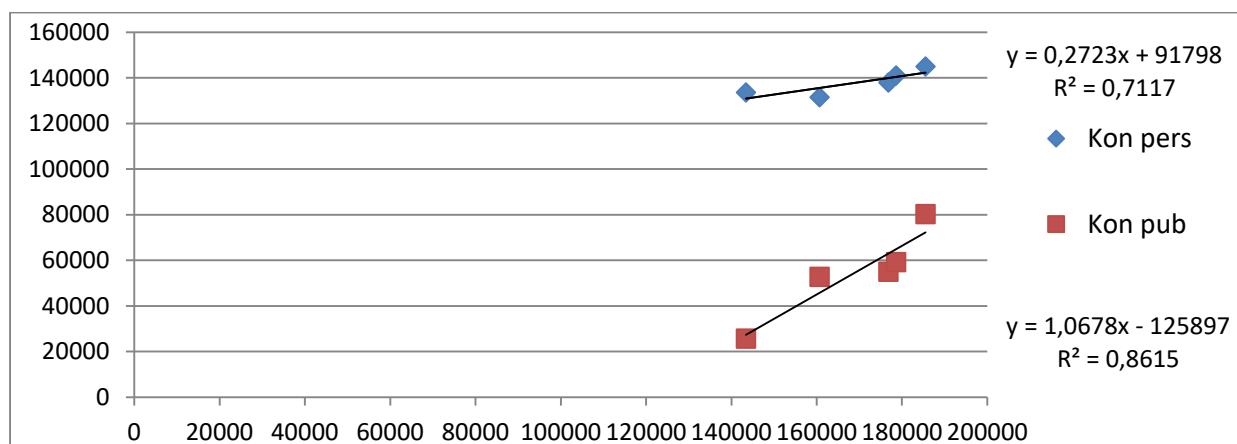
The analysis of the correlation between variable dependent GDP, household and public consumption has been researched starting from the III and IV quarter of 2019 when the corona virus first appeared in China and the I, II and III quarter of 2020 when the virus spread in North Macedonia and other countries. The data are taken from the monthly and quarterly reports of the State Statistical Office of North Macedonia.

The hypothesis is tested:

H_0 : which shows that there isn't any connection or links between the observed variables ($p = 0$) and

H_1 : indicates that between the observed variables there is a relationship ($p \neq 0$)

$$\alpha = 0.05$$



From the regression equation $Y = 8724,649 + 0.924227 X_1 + 0.60292X_2$

We can see that the variables have a fair ratio, which shows in the pandemic time with the increase of household consumption by 0.92 units and public consumption by 0.60 units, GDP has increased by 1 unit.

The coefficient of determination ($R^2 = 0.895494$), confirms the strong correlation between the variables and shows that during the pandemic the increase of GDP from private and public consumption can be confirmed by 89.5% and by other factors 10.5% ($1 - 0.895$)

In the suitability of the model, the values (p) whose value is smaller than the statistics test ($P_1(x_1) = 0.504555$, statistical test 0.806624 and $P_2(x_2) = 0.20157$ statistical test 1.875363) also prove their suitability.

5.4 Economic measures against the pandemic and its recovery

Like all other countries, North Macedonia took steps to mitigate the effects of the pandemic. Relaxing monetary and fiscal policies were implemented. The National Bank lowered interest rates and revised risk rules to encourage banks to lend more. In support of micro, small and medium businesses, interest-free loans were provided in the amount of about € 14 million. Business liquidity was helped by the fiscal package. The government subsidized contributions for workers up to 50% of the average wage paid in 2019 provided the business did not lay off workers. Payment was for April and May in the amount of € 235. It also assisted the tourism sector by providing a € 100 voucher for low-income households, etc.

The above measures mitigated the shocks of the pandemic but were insufficient to save the economy from recession. Economists and the general public are interested in how long the recovery will last and what are the expectations after the end of the crisis. Expectations for the Macedonian economy are based on the experiences of previous crises as well as the existing economic potential.

According to past experiences, the fragile economy of North Macedonia is recovering from the crisis with great difficulty, as evidenced by the average annual growth rates after the crisis. We start the presentation from the first years of the transition; from 1991 to 1996 the Macedonian economy shrank with an average annual rate of 3.4%. After 1996 and until 2000 which can be called recovery years, the economy grew at modest average annual rates of only 2.9%. After the armed conflict of 2001 and until the outbreak of the global crisis in 2008, the economy grew at an average annual rate of 2.6%, the same development rates the Macedonian economy achieved in 2008/19 after the end of the global crisis until the onset of the pandemic. (Pollozhani, 2015, pg. 105). Such economic growth for middle-income countries such as northern Macedonia is insufficient to achieve rapid and strong positive turns. Achieving such an objective for these economies requires growth at an average annual rate of 5% or more, for many years in a row.

Unemployment though falls, its rate of 16.6% in 2019 likely increased in 2020 remains at high levels compared to EU countries. The decline in unemployment rates is more a result of mass emigration than of sustainable economic growth.

Structural transformations according to international estimates are slow and inefficient.

The level of capital investment is a crucial important development factor, but still remains to be desired, because the monetary easing measures, although improving still there is plenty of work to be done to reach the right levels. Monetary policy manages to maintain price stability but fails to achieve sustainable economic development.

Free market mechanisms are not sufficiently developed and the legal framework governing economic activities fails to give impetus to development.

Narrow fiscal space (deficit of 5% of GDP in 2020) will also be an obstacle to the rapid recovery of the economy

Public debt which in the pandemic reached 60% of GDP is also a serious problem for recovery. For the Macedonian economy, such a level, even though it is at the level of the Maastricht agreement, is a heavy burden for the future.

Corruption in North Macedonia is highest in the Western Balkans region. According to the 2020 Corruption Perceptions Index, North Macedonia, along with Bosnia & Herzegovina, are the most corrupt countries in the Western Balkans, ranking 111th out of 180 globe countries surveyed. (<https://transparency.org>).

Nepotism, inefficient and selective judiciary, extreme partisanship, an issue of Bulgaria denying Macedonian identity is also serious problems that dampen expectations for a speedy recovery.

6. Final reviews

The global crisis has hit all the economies of the globe (USA, China, India, EU, Eurozone, Western Balkans, etc.) albeit with varying intensities. It was fast powerful and without any warning.

The fragile economy of North Macedonia in the year of the pandemic (2020) compared to the previous year shrank with an average annual growth rate of 4.9%. It affected all areas of the economy but the industry, especially processing, tourism, export, import, trade, services etc. Aggregate demand also shrank as a result of the loss of confidence in the household and

business consumer sector. Public consumption as a result of state intervention in the economy increased, albeit at a slower pace.

Empirical measurement shows that in the year of the pandemic there was a strong correlation between GDP, household consumption and the public. The equation, $R^2 = 0.895494$, shows that GDP at the time of the pandemic over 89% can be explained on household and public consumption and only 11% on other factors.

The regression equation, $Y = 8724,649 + 0,924227 X_1 + 0,60292X_2$, shows that with the increase of household consumption by 1%, in the pandemic household consumption increases by 0.92% and public consumption increases by 0.60%.

The experiences of the business cycles show that the North Macedonian economy after the crises is hardly recovering. Problems are of different nature such as: high public debt, limited fiscal space, double-digit unemployment, corruption, nepotism, inefficient and selective judiciary, inefficient business legal framework, slow and inefficient restructuring, extreme partisanship, low capital investment, etc.

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THE REFORMS AS A NEED OF PUBLIC ADMINISTRATION, ONE OF THE CONDITIONS FOR EU INTEGRATION

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Abstract

Reforms in the public administration occupy an important role among other priorities of a country aspiring for membership and EU integration. Not that integration depends on public administration reforms, but it's the quality of reforms that accelerate the pace and strengthen a country's road towards EU integration. The basic idea is to prove that there is a connection between these two elements or procedures on one hand, and on the other the process of integration of Republic of North Macedonia into EU depending on the public administration reform. This means that the more effective reformation of public administration the RNM has made, the shorter term of meeting the conditions for EU integration it will take.

From the very beginnings of the independence of the Republic of North Macedonia a lot of importance and value has been given to adjusting reforms in accordance to the new pluralist democratic conditions and those of the economy. Up to 1999, when the process of reforms was incited, a very small part of the specific engagements was accomplished in terms of improving the functionality of the public administration. The main goal to be reached through the implementation of the reforms in the RNM is the development of a democratic society and the development of the economy. The reforms in the public administration take a very important role among other priorities of a country that aspires to become a member and integrate in the EU. The integration does not depend on public administration reforms, but the quality of reforms does accelerate the tempo and strengthens the road of a country towards EU integration. The basic idea is to prove that there is a correlation between these two elements or procedures. The process of integration of RNM into the EU is very much dependable, among other things, also from the public administration reforms and if the Republic of North Macedonia manages to conduct an efficient reformation of the public administration, it will comply with EU integration criteria faster.

Keywords: administration, reform, European Union, integration.

1. Introduction

It is believed that the paradigm of values in the public sector developed by the authors from the leaderships in the public sector¹ is the matrix for development of the public sector because of its capacity to comprise both the criteria for governance and principles of management.

Management refers to the interaction between the public sector and civil society towards collective decision-making.² In the concept of values in the public sector, public intervention should be aimed at meeting the needs of citizens in a fair, effective and responsible manner.

The concept of values in the public sector emphasizes the need to achieve a balance between the demands of the democratic political processes and those of the effective management of public resources. Concentrating on the importance of focusing on citizens to deliver public values, this paradigm is useful for guiding civil servants towards achieving economic and social

¹ Moore, M. (1995), *Creating public value*, Cambridge, MA: Harvard University Press., Stoker, G. (2006), *Public Value Management: A New Narrative for Networked Governance?* In *The American Review of Public Administration*, Sage, Volume 36 Number 1, pp. 41-57

² Castro, S. X., and Mlikota, K. (2002), *Overview on E-governance*. Working Paper prepared in the framework of the ICT cross-cutting project ICTs as Tools for Improving Local Governance, UNESCO

results. In the perspective of public values, public interest comes in the center of civil servants' activities; the role of managers in the public sector is highlighted and it contributes to the democratic processes.

This requires open access to procurement in the civil service (assessment of the benefits of public and private sector) as well as dedication to the credo of the civil service, as defined by Aldridge and Stoker, with five criteria:

- Culture of work: dedication to services for individuals and the community;
- Capacity for support of a universal approach: special responsibility of the public sector;
- Responsible practices for employment: well trained and motivated personnel which acts professionally and is fairly rewarded;
- Contribution to the wellbeing of the community: recognizing the need to work in partnership with others.

2. The values in the public sector as a leading principle for administrative reforms

The approach of managing values in the public sector opens an alternative way for running the public sector outside the traditional Weberian Bureaucracy and the new theories for management of the public sector.

In circumstances where complexity and uncertainty are permanent characteristics, the concept of values in the public sector requires adaptability and flexibility as key factors which are best concretized through constant evaluation and learning, as creation of policies based on proofs. In this sense, efficiency should be assessed against higher goals, as are social wellness, sustainability and responsibility.

The theory of management in the public sector is inspired from the experience of practitioners and managers in the public sector who had felt the need of adjusting the concepts to theories and practices and harmonizing conflict values. Democracy and management should be considered as partners in the process of creation of policies to close the gap between policies and management and convert ideology into reality.³

Managers in the public sector should manage the processes, people and resources, so that they shall think wider and improve leadership, communication and evaluation.

Human resources have a key role in the implementation of administrative reforms. Civil servants are responsible for designing laws, organizational development, administrative restructuring, and creation of policies and implementation of laws. To accomplish these crucial tasks, they should be well prepared.

In order to ensure sustainability of reforms, a quality policy for human resources is necessary and this requires investing in human capital, knowledge, competences and trust.

Major priorities mentioned in the research of administrative reforms in the Balkan countries are de-politicization and professionalization of the civil service. The modernization of administrative personnel should concentrate on improving ethic standards in the public sector. This presupposes a major change in individual and social relations from the former political regimes which leads to a "cultural gap" between old and new generations. Governance should implement the changes in relations and mentality by addressing resistance and fears while new values are consolidated and by persuading people to accept the new standards.

Balkan countries have numerous consequences in harmonizing procedures in civil service. In this process Balkan countries need to overcome major barriers, such as poor management of changes, poor skills, lack of experience in project management, standing behind the laws and lack of focus on customers.

³ Joly, J. (2011), *The execution of public budget: A politics and management deals*, Presentation made in Dijon, <http://www.epractice.eu/en/events/2011-meeting-interest-group-shared-services>

National laws should be accorded with the principles of the European administrative space. Professionalization of administrative personnel presupposes strengthening the local capacities and structures for training when a meritorious system for human resources is established.

Lessons learned from the countries of Central and Eastern Europe in the preparation of the accession process are important for the situation of the Balkan transition:

- Reasons for changes have to be explicit and felt;
- Goals have to be clearly defined and accepted;
- Partnerships for reforms have to be built;
- Local ownership has to be matured;
- Specific models cannot be transplanted.
- Legal approach has to be an entry point of the reforms in the civil service;
- Proper alignment of reform steps in order to ensure sustainability.

An example of relevant reform steps is that of Croatia in March 2008 when the country developed a whole strategy for reforms in the public administration for 2008-2011 which was called “Strategy for Reforms in Public Administration” and served as strategic frame towards modernization of the country. The plan of the reforms included the following goals:⁴

- Strengthening the competences and effectiveness of public administration;
- Enhancing expertise, professionalism, knowledge and transparency;
- Developing electronic administration;
- Reducing the operational costs and simplification of regulations.

The management paradigm of the public sector emphasizes the need to find out new ways of cooperation towards collective decision-making.⁵

In this context, interdependence of many actors which involve individuals and organizations is constantly increasing. It is believed that policy is crucial for coordination of social demands. Many reports in the Balkan countries underline the importance of political will in achieving real reforms. Real progress in anti-corruptive policies cannot be achieved unless there is political will and apathy among the citizens.⁶

Due to the above, coordination of social actors has the greatest importance in the implementation of changes. In order to overpass the lack of citizens’ trust in political institutions, it is necessary to show greater transparency of political decisions and administrative procedures, as well as stronger and independent media and judicial authorities.

To deal with corruption and ensure democratic political processes, civil society has a key role in achieving political changes, since it is the key factor in the implementation of reforms. Civil society has two major functions in implementing democratization of the society:⁷

- To follow the steps of the governments in their reforms towards new standards;
- To motivate support and participation in the European accession processes.

⁴ Kandžija, V. Mance, D. and Godec, Z. (2010) *A Review of the Croatian Public Administration Reform in Public Administration in the Balkans from Weberian Bureaucracy to New Public Management*, L. Matei, S. Flogaitis (Eds.), pp. 105-118

⁵ Stoker, G. (2006), *Public Value Management: A New Narrative for Networked Governance?* In *The American Review of Public Administration*, Sage, Volume 36 Number 1, pp. 41-57

⁶ Igric, G. (2010), *Lack of Political Will Thwarts Anti-corruption Efforts*, in *Accession of the Western Balkans to the EU: Evaluating a process*, pp. 18- 28

⁷ Miljenko, D. (2010), *The European Union and Civil Society: what interactions?* in *Accession of the Western Balkans to the EU: Evaluating a process*, pp. 29-31

Wide participation of interested parties from the civil society may be accomplished only if people engage themselves in a practical manner and at the same time keep ownership over the process of changes.

In this context, the role of the guards, that is non-government organizations and media, should be strengthened and supplied with capacity for revision of the reforms by enhancing their expertise and further encourage debates for strategic decisions.⁸

The reports of the European Commission on the Balkan accession countries emphasize the importance of civil society in the reform process. The Croatian Progress Report 2010 confirmed the role of civil organizations in promoting and protecting human rights and democracy, but regretted its exclusion from the political process, and their weak capacity to monitor the political development. As far as Serbia is concerned, the Commission informs about the active role of the civil society in social, political and economic life, but for insufficient operational capacity and uneven cooperation with the state, too.

3. Management of changes and the public administration

The changes in the public administration must be permanent. They provide quality of services, efficiency and effectiveness in working and achieving goals. Public administration does not have to stick to the past, not even to the current situation nor routine works which are being implemented now, procedures that functioned sufficiently in the last year do not imply that they will be good enough for this or next year. Today changes happen everywhere. Public administration cannot afford itself to be static. If we want to be successful we should embrace the changes as an opportunity to advance and reach results. We should all the time consider ideas and findings in order to identify the areas that need changes and prepare for the future. Changes in the public administration are inevitable. The only safe thing in every organization is changes.

Institutions that are part of the public administration have to be sure that they have established processes to prevent failure of the factor of changes. These processes include assessment of the needs of the organization and awareness of all members of the organization about the foreseen changes. The employees have to recognize the reason for changes and be involved in their implementation. The assessment and interaction of employees are of vital importance since they will reduce the level of resistance and contribute to successful transformation.

When implementing changes in the public administration we should have in mind the effects of changes over the behavior of employees in the organization and the delivery of services provided for the citizens. The governance of the organization should create a vision of the future of the organization in a way that will make the plight in the process of changes be worth the efforts. The vision is of essential importance for long-lasting success.

Each programme for changes requires a strategic plan. The process of four steps developed by Kurt Levin and Edgar Shane has proved to be an efficient method for changes:

- The employees in the public administration have to accept the changes. This can be achieved upon the creation of discontent with the old way of working.
- This undesired behavior must be abandoned (defrosting), the members of organizations must quit the old way of behaving and replace it with the desired one and motivate themselves for changes.
- The members of organizations must be presented a feasible model of the new behavior (changing). Employees in organizations should be aware of what benefits change

⁸ <http://www.cmi.no/publications/file/2693-corruption-in-serbia-2007.pdf>

will bring along; in addition, changing requires communication and time for people in organizations to understand the change.

- The new behavior should be strengthened (freezing back), and the employees will accept the new way of working and behaving.

One of the objectives of changes in public administration is creation of a system of public administration which shall work under the principles of equal treatment in exercising and protecting citizens' rights, or public administration - service to citizens. Thus, in the Republic of Macedonia, the relation between the public administration and the work of administrators who believe that they are above the system, and not service to the citizens, should be changed.

Through proper use of the resources and offering quality services to citizens, public administration increases the efficiency and quality of services, but, also the trust of citizens.

Goal of any organizational change is allow the organization to work more efficiently, which means:

- Efficient - the degree of utilization of resources against results,
- Effective - whether products and services meet the needs of the client,
- Legitimate – accepted and recognized in areas where it acts,
- Flexible- ability to adapt to changes, and
- Sustainable - ability to conduct activities for a longer term.

Efficiency of public administration is objective of every democratic country. Efficiency of public administration is an indicator of successfulness of the country, and society, too. The work of the public administration and the services it provides to citizens results in the need to increase efficiency. Employees in the public administration are the main resource and the efficiency of public administration might be determined through employees' performances, i.e. through their way of working, the knowledge they have, their motivation, interpersonal communication, cooperation, governance, coordination.

In the last years, the Republic of North Macedonia and the rest of the countries of Western Balkan and Eastern Europe, which aspire to become EU and NATO members, have been making huge efforts to increase efficiency and effectiveness of public administration. The need of more responsible and quality public administration is high, because of the harmonization of legal frameworks and reforms related to public administration taken over by the candidate countries. The Republic of North Macedonia should show greater flexibility and political understanding towards the issue of public administration reforms, the efficiency of the public service allows the foreign and domestic investors, to easily achieve their goals. Investments in economy positively affect the changes in public administration which should be professional and able to deliver quality services, at the same time requiring better observance of laws and regulations, and institutional stability. It is these standards required by the public administration that represent an opportunity for creation of favorable business climate and possibility to draw foreign investments. To date, expectations of citizens, especially of the business community in the Republic of North Macedonia, as well as the private sector, are huge due to the increasing competition both from outside and inside. There must be a consensus that the previous orientation towards administration based on rules has to be replaced by general orientation towards results in which the needs of the users or more precisely citizens, play a significant role.⁹

⁹ Responsive Government Service Quality, Initiative, Skopje, 2003, стр.16

4. System of prey and principle of merit

In the Republic of North Macedonia, contrary to declarations for the establishment of a merit system of employment, the reality is slightly different where still operates the spoils system - a system of prey, which means that the public administration turns into a politicized factory that produces inadequate and incompatible or less compatible products which affect the society very unprofessionally and risky for the public service.¹⁰

If the merit system involves reward and advancement of professionalism that they receive with their expertise and education, the spoils system is the opposite of the merit system, inaccuracy and inefficiency in operation. System of prey and principle of merit

Unfortunately, in such situations very capable and competent persons do not come to the fore, their knowledge, expertise, experience, simply does not allow them established system.

In order to fulfill that consistent implementation of the above principles of meritocracy, it requires major reforms in the public service in the country. There are significant changes in recruitment of staff in public administration. You have to apply value criteria such as personal values and qualifications, professional competence, should eradicate nepotism and political structure that creates inadequate, inefficient, unproductive and corrupt administration.

The public administration should be the only key player in the creation of conditions for the development of a professional, politically neutral, competent, responsible and stable civil service, as an efficient service to the citizens. It takes true professionals, people who know well the issues to think independently and decide, love the administration, live professionally by it, pleased and happy to be part of the public sector and such a responsible state legal activity.

These professionally trained staff will be ready to realize the social obligations to the benefit of socially useful work, and be a service to the citizens and to the society itself. These officers who have the knowledge, and are willing to respect the criteria of morality and values advocated by our society, can lead to improvement of the public service.

5. Conclusion

The administrative capacity of the Republic of North Macedonia plays a vital role in integrating itself into the European Union. Scholars and analysts dealing with the study of integration processes, give great commitment and role to the reforms in the public administration of a country and the EU integration. The Balkan countries, including the Republic of North Macedonia also give great importance to this issue, although from a broader perspective, the countries of this region are still preoccupied with the economic and political stability. The development of an effective public administration in other countries, such as those in South-East Europe, was completed prior to their integration into the EU, and the public administration of the Republic of North Macedonia as a basis for democracy, rule of law and free economy is a real challenge in the future. Nowadays it is very clear that an effective public administration sector is a prerequisite for the further development of the Republic of North Macedonia towards EU integration. Including this issue as one of the major priorities, all previous governments of the Republic of North Macedonia put an emphasis on the definition of their involvement in the implementation of reforms in the field of public administration and transform it into a service for citizens and economic entities in the country, since a professional, efficient and modern administration is a necessary predisposition to support the objectives of the government of the Republic of North Macedonia for full membership in the EU structures. Theoretically, since gaining independence of the Republic of Macedonia, all government bodies have recognized the importance of reforming the public administration. The reforms were seen as one aspect of the transition to a democratic society, predisposition to economic

¹⁰ www.sep.gov.mk/data/file/.../mk_rapport_2013_MK4_21_10_2013.doc

development and a prerequisite for entry into EU. idat service of citizens and society. These officers have the knowledge, possessing will and who are willing to respect the criteria of morality and values should have in our society, can lead to improved public service..

In addition to the adopted legislation, institutions also have an impact on the process of public administration reform. With the establishment of the Ministry of Information Society and Administration, which is responsible for coordination and adoption of reforms in the public administration, although functioning since 2011, it has taken over some of the responsibilities of the Agency of Administration (former Agency of Civil Servants). With the establishment of the Agency of Civil Servants and the Ministry of Local Government as part of the process of reforms, great institutional importance has been given to reforms in both fields - public administration and decentralization. If some institutions implement the reforms better than others, then emphasis and efforts should be put to remove the bad experiences of non-implementation and focus on a public administration that is efficient and modern.

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CORRUPTION, ITS CAUSES AND CONSEQUENCES IN THE REPUBLIC OF KOSOVO

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Abstract

Corruption is a major problem everywhere, not only in developing countries. It impedes economic growth, weakens the rule of law and undermines the legitimacy of institutions. Corruption in Kosovo has been researched from a variety of perspectives with different methodologies and policy goals in mind. The paper stresses the need to keep the issue of corruption squarely in view in the development agenda. Lack of transparency, lack of accountability and consistency, as well as institutional weaknesses such as in the legislative and judicial systems, provides fertile ground for corruption to take place. The major concern for the country with the weakest economy in Europe and the youngest population is the fact of not punishing corrupted people who belong to state and political high profile. Evident concerns are noticed also regarding the punishment of medium profile officials, which when accused minimum punishments are imposed to them. Corruption in Kosovo is manifested in many different forms, but it dominates bribe accepting and abusing official position or authority. While acknowledging that corruption is a complicated issue that likely has many root causes, is hypothesized that relatively low salaries and poor working conditions are among the chief reasons why corruption has persisted in Kosovo. The aim of the paper is to create greater awareness of the subject and to highlight the desirability to keep it in view in thinking about development issues, especially in the context of a least developed country. Some of the results that are expected to come to light through this paper are: a) raising awareness of readers about the phenomenon of corruption, b) the tendency to toughen criminal sanctions related to criminal offenses of a corrupt nature and

c) Highlighting the role of civil society in combating this phenomenon.

Keywords: Influence, consequences, rule of law, prevention

1. Introduction

Corruption exists, since there is humanity. Today, corruption thrives in the darkness of totalitarian, dictatorial and authoritarian regimes, but it is present although to a lesser extent in environments of democracy, pluralism, freedom expression of individual security. Today, in the world, all states are, or strive to be, democratic states. This particularity or form of self-government has its negative side, so except new benefits and new possibilities for society, brings different problems in society. This paper will outline some of the main sources of institutional weakness that are the roots of Kosovo's current problems, such as its history of conflicts, its underdeveloped and largely informal economy (including criminal economy) that was adopted by United Nations Interim Administration Mission to Kosovo (UNMIK). The word corruption is derived from the Latin word "*corruptus*", which means "*corrupted*" and in legal terms, the abuse of a trusted position in one of the branches of power (executive, legislative and judicial), or in political or other organizations with the intention of obtaining material benefit which is not legally justified for itself or for others. Corruption is defined as the use of public office for private gain, or in other words, use of official position, rank or status by an office bearer for his own personal benefit. Following from this definition, examples of corrupt behavior would include: (a) bribery, (b) extortion, (c) fraud, (d) embezzlement, (e) nepotism, (f) cronyism, (g) appropriation of public

assets and property for private use, and(h) influence peddling. Corruption means the realization of a right or interest for which a certain person or group has no legal basis or the realization of rights and interests for which there is a legal basis, but in a way which creates a privileged position in relation to the rights and the interests of others who have the same legal basis for their Corruption scandals do not just happen in one place development where corruption is often seen as a norm or a tax, but it is acceptable and in developed countries. Sale of parliamentary seats in Great Britain before the Reform Act of 1832¹¹ and - Political machines in the US in 19th and 20th¹² centuries, are two of the most well-known stories of corruption. Corruption means the realization of a right or interest for which a certain person or group has no legal basis or the realization of rights and interests for which there is a legal basis, but in a way which creates a privileged position in relation to the rights and the interests of others who have the same legal basis for their realization.¹³ Cicero, the great Roman philosopher and orator, noted the escalation of the spread of corruption and looked at the nature of corruption in the human being and consciousness as well as in the presence of human vices, that is, it gives a psychological explanation.¹⁴ Besides that, this paper also claims the types of corruption that caused state fragility, and addresses the large gap of weak economic and judicial development which made it possible for numerous criminal offenses of a corrupt nature to take place, which led to their impunity by the judicial system itself. The corruption patterns found today in Kosovo are a strongly related to its recent history. Following the conflict in 1999, Kosovo was administered by the United Nations until it declared independence in 2008. Kosovo provides a third variant on the theme of corruption in post-conflict situations. Large-scale fighting ended in 1999, and since then Kosovo has been largely self-governing under a United Nations Protectorate backed by NATO security forces.¹⁵ The United Nations Mission in Kosovo was responsible for Rule of Law until 2004, when the Ministry of Justice in the Provisional Institutions of Self-Government was formed. Firstly, the war created new interest groups which entered the political and business scene; and secondly, the immediate period after the conflict was a legal and rule of law vacuum while the UN administration sought to establish itself on the ground. The current existing context of corruption in general may be characterized as a result of the political and social system before the collapse of former Yugoslavia, especially under the circumstances of pre - 1999 war period and general trends that occurred after the establishment of the international administration in Kosovo. Corruption undermines the reform agenda, and it may be the crutch on which existing leaders rely to maintain power in a chaotic environment. In the longer term, if corruption is not limited, it may delegitimize the state, leading to further outbreaks of violence and extra-legal protest.¹⁶ Being subject to unequal treatment unlike other nations in the former Yugoslavia, the Kosovo population to a great extent was forced to realize the rights through corrupting public officials at all levels. Such an

¹¹Pearce.R and Stearn. R., (2000), Access to History, Government and Reform Britain Second Edition Hodder& Stoughton, pp.1815-1918.

¹² Clifford P. Th., (1975), The political Machine an American institution vantage press.

¹³Gojani. S., (2013), Fjalori i Terminologjisë Juridike, Prishtinë, pp.137

¹⁴Aliu, E. Ligji penal romak në fjalimet gjyqësore të Ciceronit, Tribuna Juridike, n.55/ 2005, pp.121-126.

¹⁵S.C. Res. 1244, 1 5, U.N. Doc. S/RES/1244 (June 10, 1999). The Special Representative of the UN Secretary General heads the international civil administration, called the United Nations Mission in Kosovo (UNMIK). The cooperating institutions are the UN, the Organization for Security and Cooperation in Europe and the European Union. Two UNMIK resolutions, No. 2001/9 and No. 2002/9 provide the constitutional framework and incorporate several international human rights treaties. See ABA RULE OF LAW INITIATIVE, THE LEGAL PROFESSION REFORM INDEX FOR Kosovo, VOLUME II (2007).

¹⁶ See Richard. Sannerholm., 2007, Legal, Judicial and Administrative Reforms in Post-Conflict Situations: Beyond the Rule of Law Template, 12 J. CoNfluc&SFc. L. 65, 83. Sannerholm argues for a focus on legal, judicial and administrative reform in post-conflict states, including the control of corruption. Id. at 66. He claims that past law reform efforts have too often focused on high profile human rights areas while ignoring basic issue of state organization. Id. at 87.

“understanding” for the purpose of realizing the civic rights results in the continuation of “employment” of such practices after the 1999 war as well. In February 2000, for the first time, the United Nations inserted international judges and prosecutors (“IJP”) into the Kosovo criminal justice system to work alongside existing jurists. Development of a fair and impartial local selection of judges and prosecutors is essential to the long-term credibility of judicial institutions. When UNMIK took control of the province there were an insufficient number of local jurists qualified to serve as judges and prosecutors. The paper will also address how to prevent this negative phenomenon, referring to various international laws and conventions which states sign with the sole purpose of combating such a phenomenon in order to maintain a better and safer society.

2. Methodology

The methods I have used in this paper are: Descriptive method with which I described the negative phenomenon of corruption, its forms in the Republic of Kosovo and the way to fight this negative phenomenon, the historical method - through which I have presented the origins of the beginning of corruption and its evolution over the years, normative method through which I have expressed the internal legal regulation and sanctioning of corruptive criminal offenses and the statistical method through which I have presented the punitive policy of corruption cases and the reasons for postponing corruption cases.

3. Types of Corruption

Corruption can be manifested in many ways, but all ways of its presentation are expressed through two types, which are:

- **Active corruption**
- **Passive corruption**

2.1. Active corruption means the criminal offense committed by promising, proposing or giving directly or indirectly any kind of benefit, public or private official to perform or not an act contrary to his duty or function.¹⁷ Active corruption is otherwise known as crime committed by influential people. This type of crime is also called white collar crime and is a special form of professional crime. It is about individuals and groups that have strong positions and influence in the economic, political and state flows of the country. These connections they exploit for criminal purposes. According to Sutherland, these criminals go through double life:

- in one side they present themselves as authoritative people, representatives of highly respected circles and people with important posts
- on the other hand, they are connected to the criminal underworld, collaborating and helping various criminals and delinquents to achieve the goal. They protect criminal groups and individuals; they provide them with various information and data that are relevant to their criminal activity.

The most common criminal acts of these people are: active and passive corruption, counterfeiting in financial exchanges, manipulations in the market, taking and giving bribes, giving facilitations and enabling the purchase of various shares. In the contemporary world there are many cases and phenomena that concretely and practically show interference in the criminal activities of prominent personalities in power. They are popular scandals, resignations, arrests which are present in some countries such as in America the "Watergate" affair, which influenced the dismissal of President Nixon, the "Leinski" case in the investigation of President

¹⁷Gojani.S., pp.137.

Clinton, in Italy the case of Julio Andreotti, etc. Such was the case of Augusta, which the Belgians called the "trial of the century", or the illegal collection of donations and funds by former Chancellor Kohl for his party, which shocked the whole Germany. At the anti-corruption conference held in Lima, Peru, in 1997, its participants tackled corruption as well as terrorism and organized crime, as the extent of its spread and its consequences are manifold in all contemporary countries.¹⁸

White collar crime is an antisocial punishment in the thesis of enrichment, practiced by persons in high positions of social prestige, and within their professions, taking advantage of the public trust which is necessarily conditioned by their category, and at the same time presupposing a respectful conduct of law on the part of everyone else. As the typological designation of white-collar criminality itself suggests, it stands in contrast to "blue-collar criminality" which are crimes committed by what are considered "prominent persons" belonging to the "upper socio-economic classes". Active corruption of persons exercising functions includes the promise, proposal or provision, directly or indirectly, of any improper benefit to a person holding public office.¹⁹ Subjectively, this form of corruption is committed with direct intent and for the benefit of the person who exercises public functions. Objectively it is performed even when the bribe-giver gives the money or irregular benefit directly but also indirectly, e.g. of gives the judge or prosecutor's driver money or other material benefits to give the judge or prosecutor to perform or not to perform an action related to his or her duty or function (eg to dismiss the case or change the setting criminal offense in favor of the defendant).

2.2. Passive corruption means the deliberate action of an official, who, directly or through an intermediary, requests or receives advantages of any kind whatsoever, for himself or for a third party, or accepts a promise of such an advantage, to act or refrain from acting in accordance with his duty or in the exercise of his functions in breach of his official duties. Passive corruption also means the criminal offense committed by seeking, receiving any kind of irregular benefit or accepting an offer or promise from a public or private official to perform or not, an act contrary to his duty or function.²⁰ The crime of passive corruption of judges, prosecutors or other justice officials has as its object the morality, conscience and security of the regular and honest activity of judges, prosecutors and other justice officials as well as the rights and legitimate economic interests of citizens, specially protected by criminal legislation from criminal acts or omissions. Actions, which formalize the objective side of the criminal offense of passive corruption, can be carried out directly by the person himself, exercising a public function or through a third person. Using this way to secure illicit benefits in the exercise of a certain public function camouflages corrupt practices by superficially maintaining the "purity" of the official and making it difficult to obtain evidence to prosecute them.

4. Forms of Corruption

4.1. *Bribery*

Based on the Anti-Corruption Law of Kosovo, corruption means any breach of the duty of official or responsible persons in legal entities and any activity of the initiators or beneficiaries

¹⁸Duk V. Tang., (1994), *Korrupsioni dhe demokracia*, Tiranë, pp. 23-30.

¹⁹"Public servant" is: any person holding a legislative, executive, administrative or judicial position, appointed / elected, permanent/ temporary, paid / unpaid, regardless of the length of service of the person; any other person exercising a public function, including a public agency / public enterprise, or performing a public service, as defined by domestic law.

²⁰Gojani.S., pp.137.

of this behavior, directed in response to a reward that has been directly or indirectly promised, offered, given, requested, accepted or expected to be taken for oneself or for another person.²¹ Bribery means giving or receiving an unearned reward to influence someone's behavior. One common form of bribery is a "kickback" - an unearned reward following favorable treatment. Both are corrupt. There are many equivalent terms to bribery, like kickbacks, gratuities, "commercial arrangements", baksheesh, sweeteners, pay-offs, speed- or grease money, which are all notions of corruption in terms of the money or favors paid to employees in private enterprises, public officials, and politicians. A bribe is a fixed sum, a certain percentage of a contract, or any other favor in money of kind, usually paid to a state official who can make contracts on behalf of the state or otherwise distribute benefits to companies or individuals, businessmen and clients. Public and private bribery are twin forms of corruption, with public officials and private persons, respectively, abusing entrusted power for personal gain by accepting bribes.²² While public and private bribery "are two variants of the same censurable conduct,"²³ stakeholders respond to the two bribery forms in radically dissimilar ways. Conversely, governments largely ignore the same corrupt activity when it transpires within the business community but without the presence of a government official. Citizens often remain unaware of the private bribery phenomenon and its criminalization or lack thereof.²⁴ Some governments leave their anti private bribery legislation outside of their penal codes, instead placing the legislation in labor or commercial codes, where such legislation lies ignored.²⁵ Referring to the Criminal Code of Kosovo, bribery is considered when the official person or official foreign person or foreign public official, directly or indirectly, requests or accepts any gift or other benefit for himself or another person, or that accepts the offer or promise for such gift or benefit, so that the official person or official foreign person or foreign public official acts or does not act in accordance with his official duty.²⁶ Corruption in Kosovo, also favored by a lack of trust in public institutions, a culture of mistrust and a private spirit, fosters higher rates of corruption than those that occur in communities where overall trust and civic engagement are strong. Legislatures, courts, and international organizations acknowledge the significant role that corruption plays in bribery agreements, but despite this plethora of voices, some continue to justify bribery as an economically efficient way "to get things done."²⁷

²¹Ligjinr.2004/34 kundërkorrupsionit, GAZETA ZYRTARE E INSTITUCIONEVE TË PËRKOSSHME TË VETËQEVERISJES NË KOSOVË / PRISHTINË: VITI II / NR.10 / 01 MARS 2007, neni 2.

²² See ORG. FOR ECON. CO-OPERATION & DEV. [OECD], CORRUPTION: A GLOSSARY OF INTERNATIONAL STANDARDS IN CRIMINAL LAW 22 (2008), available at <http://www.oecd.org/daf/anti-bribery/41194428.pdf> [hereinafter OECD CORRUPTION] (defining corruption as the "abuse of public or private office for personal gain").

²³ Antonio Argandoña, The 1996 ICC Report on Extortion and Bribery in International Business Transactions, 6 BUS. ETHICS: A EUR. REV. 134, 142 (1997).

²⁴ See Edmund S., Domestic Commercial Bribery: An Often Overlooked Issue, BUS. CRIMES BULL., Aug. 1, 2012, at 3 (discussing public unawareness of private bribery).

²⁵ See, e.g., Bonifassi, supra note 17, at 91 (describing the decision of the French government to move its private bribery legislation from its Criminal Code to its Labor Code, where it effectively has been "thrust aside" and ignored); Saito, supra note 17, at 195-96 (explaining that Japan's private bribery prohibitions are located in its Code of Commerce, not its Penal Code).

²⁶Kodi nr.06/L-074 i Republikës së Kosovës, GAZETA ZYRTARE E REPUBLIKËS SË KOSOVËS / Nr. 2 / 14 JANAR 2019, PRISHTINË, neni 421

²⁷Jac Jac C. H., & Benjamin P., Corruption and the Institutional Environment for Growth 1 (Suffolk Univ. Research Working Paper No. 2008-6, 2008). Researchers Kaufmann and Wei coined the term "efficient grease hypothesis" to describe the notion that bribery yields lower amounts of red tape, and this hypothesis posits that bribery can boost economic efficiency and thus regulating bribery would be counter-productive. Daniel Kaufmann & Shang-Jin Wei, does "Grease Money" Speed Up the Wheels of Commerce? 2 (Nat'l Bureau of Econ. Research, Working Paper No. w7093, 1999).

4.2. *Embezzlement*

Embezzlement is one of the many forms of corruption besides bribing and extortion. It corresponds to an intentional dishonest act, committed by individuals who misappropriate assets that were entrusted to them in order to monopolize or to steal them.²⁸ Embezzlement is theft of resources by people who are put to administer it. Embezzlement is regarded as theft because it does not involve the “civilian” side directly. This is a serious offence when public officials are misappropriating public resources, when state official steals from the public institution in which he or she is employed and from resources he is supposed to administer on behalf of the public. From the official’s point of view, these two methods of self-enrichment-bribery and embezzlement-are substitutes. Embezzlement usually is a premeditated crime, performed methodically, with precautions that conceal the criminal conversion of the property, which occurs without the knowledge or consent of the affected person. Often it involves the trusted individual embezzling only a small proportion of the total of the funds or resources they receive or control, in an attempt to minimize the risk of the detection of the misallocation of the funds or resources.

The Criminal Code of Kosovo sanctions the embezzlement in article 418 which states, the official person, who in order to illegally obtain property benefit for himself or for another person, misappropriates the property entrusted to him due to the duty or position of shall be punished by a fine and imprisonment of six (6) months to five (5) years.²⁹ According to the Criminal Code, if the criminal offense results in material gain or loss in value exceeding fifty thousand (50,000) Euros, the perpetrator shall be punished by a fine and by imprisonment of three (3) to twelve (12) years.³⁰

4.3. *Fraud*

Bishop, T. and Hydoski, F. empirically examined fraud considering it as the tip of the iceberg.

Fraud is the crime of intentionally and unlawfully making misrepresentation to the actual or potential prejudice of another person. Also, fraud is the crime of deliberately misleading or deceiving someone to cause that person financial loss or other harm. Bishop, T. and Hydoski, F. empirically examined fraud considering it as the tip of the iceberg. ‘Fraud’ is an economic crime that involves some kind of trickery, swindle or deceit. Fraud involves a manipulation or distortion of information, facts and expertise, by public officials positioned between politicians and citizens, who seek to draw a private profit. Fraud is when a public official (agent), who irresponsible for carrying out the orders or tasks assigned by his superiors(principal), manipulates the flow of information to his private profit; hence the widely used principal-agent or incentive theory employed by economists to study this phenomenon. The doctrine of criminal law³¹ has given this definition: “*Fraud is the taking or misappropriation by lying or misuse of the trust, property or property rights of a natural person, legal person or state, committed intentionally and for the purpose of material gain, for oneself or for others.*” Fraud is also a broader legal and popular term that covers more than bribery and embezzlement. This criminal offense is committed when the official or responsible person during the exercise of

²⁸ Embezzlement can use several techniques such as falsification of records, emission of false bills, and declaration of ghost employees or stealing money in cash. In political science, Green (1993) defines embezzlement as a “theft after-trust offense”.

²⁹ Kodi nr.06/L-074 i Republikës së Kosovës, GAZETA ZYRTARE E REPUBLIKËS SË KOSOVËS / Nr. 2 / 14 JANAR 2019, PRISHTINË, neni 418.

³⁰ Ibid.

³¹ Elezi.I., (2013), E drejta penale, pjesa e posacme, Prishtinë, pp. 178.

duty in connection with the exercise of official duty, in order to bring them to themselves or to another unlawful property gain, by presenting false accounts or bringing in any another way of misleading the person authorized to make an illegal payment. It is fraud, for instance, when state agencies and state representatives are engaged in illegal trade networks, counterfeit and racketing, and when forgery, smuggling and other organized economic crime are propped up by “official” sanction and/or involvement. It is fraud when politicians’ and state agents take a share for closing their eyes on economic crimes, and it is serious fraud when they have an active role in it.

4.4. Extortion

Extortion is sometimes called the "protection racket" since the racketeers often phrase their demands as payment for "protection" from (real or hypothetical) threats from unspecified other parties; though often, and almost always, such "protection" is simply abstinence of harm from the same party, and such is implied in the "protection" offer. Extortion is commonly practiced by organized crime. In some jurisdictions, actually obtaining the benefit is not required to commit the offense, and making a threat of violence which refers to a requirement of a payment of money or property to halt future violence is sufficient to commit the offense. “Protection” or “security” money can be extorted in the classical, well-known mafia style, where organised criminals use insecurity, harassment and intimidation to extort money from individual citizens, private businesses and public officials. Extortion was originally the complement of bribery, both crimes involving interference with or by public officials. But extortion and, to a limited extent, bribery have been expanded to include actions by private citizens as well. Corruption in the form of extortion is usually understood as a form of extraction from below, by mafias and criminals. A *modus operandi*³² that has been revealed during several criminal investigations, and which was illustrated in the former paragraph, can be described as follows: a problem is created with a victim by one or multiple perpetrators, or an existing situation (with a third party) is turned into a problem as a result of misleading information or deceit. Then a solution is offered to the victim in terms of a negotiation or an offer that will solve the problem. Whenever that deal is accepted, mainly under misleading or intimidating circumstances, the victim is psychologically bound to the perpetrators. The situation is then used to keep a tight grip on the victim, and the extortion is an established fact. The “*ideal extortion*” turns out to be difficult to prove in court. Extortion consists of obtaining property from another through the wrongful use of actual or threatened force, violence or fear. The fear the victim experiences therefore seems to lack any objective grounds, it is not the result of threats and use of violence. Second, since the preparation and the execution of the crime has been divided between multiple actors with varying behaviors, the underlying organization with its sole intention to extort the victim is far from evident. What I have seen during several criminal investigations, is a lack of understanding from the side of law enforcement on how the extortion is prepared and executed and then as a result the fail to qualify the fear of the victim in a proper way.

What we have seen during several criminal investigations is a lack of understanding from the side of law enforcement on how the extortion is prepared and executed and then as a result they fail to qualify the fear of the victim in a proper way

4.5. Favoritism and Nepotism

³² “*Modus Operandi*” is a Latin term used in English-speaking circles to describe an individual's or group's habitual way of operating, which forms a discernible pattern. The term is primarily used when discussing criminal behavior, but it is not exclusively uttered in this context. *Modus operandi* can also be defined as a specific method of operation.

Favoritism from the Latin word “favor” means mercy or unfair and prejudicial patronage of minions in office to the prejudice of common cause. Favoritism is the second form of preferential treatment. The word ‘favoritism’ has two somewhat different meanings: (I) the general inclination to favor one person or group over others, and (ii) concrete preferential treatment of those to whom one has personal connections, such as relatives, friends, neighbors³³ or other acquaintances. Nepotism and favoritism pose a particular challenge to the development of democracy in the Republic of Kosovo as well as the main constraint on the path to EU membership. While nepotism is practice of showing preferential treatment toward one's relatives (by blood or marriage), favoritism is shown towards friends and acquaintances. In nepotism, which is briefly known as relative favoritism, the subject of preferential treatment is blood relation and emotionality is the major element as required by primary relations. Although the phenomenon of preferential treatment is considered a “form of corruption” that appears in the political decision-making process³⁴ it is at the same time one of the major problems of the public bureaucracy. Bestowing privilege to some individuals in the organization may not always be for direct pecuniary interests. It may arise from certain commitments and obligation. That is to say, rather than an economic power, such as money or property, the likelihood of the use of a non-pecuniary power, i.e. kinship ties, as the means of influencing is highly probable.³⁵ The word nepotism is from the Latin word ‘nepos’, meaning “nephew”.³⁶ The concept of nepotism refers to the misuse of office in favor of family members.³⁷ Nepotism has negative effects on human resource management recruitment and selection practices because candidates are chosen for their friendships and blood relationships. In small states such as Kosovo, improving performance and credibility requires comprehensive but well-orchestrated institutional reform that combats corruption and frees up the latent potential of these organizations, redirecting their practices to serve developmental ends. Nepotism is one of the types of favoritism which will effect on employee's performance. In Kosovo, due to nepotism in many organizations people are hired or fired from organizations. It is believed that relatives who are good at positions in organizations or family business, their dedication towards organization are very beneficial and it also avoids conflict between owners and managers. When it comes to fighting corruption, which includes all of the forms, the Republic of Kosovo still faces problems and lacks of a coherent policy to confront these negative issues.

6. Causes and consequences of corruption

Some of the causes that affect Kosovo are a) **personal greed** that leads to an unfettered desire for money or power; with no regard whatsoever to moral boundaries. **The underlying anthropological cause is the innate human impulse to own external goods, when it is not subject to personal integrity,** b) **decline of personal ethical sensitivity**, either due to lack of education or negative learning experiences, developed by downplaying perverse conduct in the past, c) **low awareness or lack of courage to denounce corrupt behavior** and situations conducive to corruption. That is the case of someone who is aware of corruption and stays quiet. They simply cover for the corrupt individuals, perhaps thinking that it is not their

³³Loewe. M., Blume.Jonas- S., Verena.Se., Stella. S., Johanna. Ch., Voss 2007, the Impact of Favoritism on the Business Climate: A Study on Wasta in Jordan, s. 216, Bonn 2007, pp 19-20.

³⁴Kayabaşı.Y., (2005), PolitikYozlaşmayaÇözümOlarakAnayasalİdare-sat, ÇukurovaÜniversitesiSosyalBilimlerEnstitüsü, YayınlanmamışYüksekLisansTezi, Adana, pp 56.

³⁵Berkman. Ü., A. (1983), AzgelişmişÜlkelerdeKamuYönetimindeYolsuzlukveRüşvet, TODAİE Yayın No: 203, Ankara, pp 25-26.

³⁶Kiechel, W., (1984), How to Relate to Nepotism, Fortune, pp. 143-144.

³⁷ Ford, R., and McLaughlin, F., (1985), Nepotism, Personnel Journal, Vol. 64, No: 9, pp. 57–60.

problem, or perhaps out of cowardice, so as not to make their lives more complicated, d) **lack of transparency, especially at the institutional level**, but also in less formal organizations, e) **slow judicial processes**. In some other countries, we would have to add “and unreliable” to that statement. Swift processes can have a greater exemplifying effect than those that, by the time the sentence comes, the crime already is nearly forgotten. Justice requires appealing processes and warranties, but not if it means slowing down the administration of justice. Consequences of corruption in society are major; they can be even coated on top of each other, aggravating more and more their effect on the society and system in function. Therefore, we had so many warnings and evaluations by international institutions about danger and consequences this negative phenomenon could bring along, phenomenon that is too harmful. Starting from this, legislations have been drafted, mechanisms established, either international or local, with aim of preventing and combating this phenomenon, harmful and socially destructive. Consequences of corruption affect political, social, economic and psychological power. Political consequences of corruption are really major. It can directly damage the purpose (goal) of democratization of the society; it is also a serious threat to entire political class. The corruption especially affects countries which are on their way of transition and those who face nonexistent political stability.³⁸ Economic consequences of corruption in such cases could be major. High level of corruption can affect a withdrawal of foreign investments, which every country has a great need for. Experience shows that people from the political milieu avoid investing in countries where the level of corruption and economical crime is high, because right at the beginning they would have to confront corrupted officers (officials), who for their personal gain are able to make it difficult for accommodating the foreign businesses, causing intentional delay of administrative procedures which very often look so complicated, and all for the sake of fulfilling their corrupted goals.³⁹

7. Legal and strategic infrastructure for the treatment of corruption in Kosovo

It is without a doubt that the state, through its own mechanisms, has the possibility to prevent spreading of corruption. In Kosovo, the role of media in reporting or showing cases and corruptive practice is increasing more by each day. The role of public institutions, especially in the transition countries, is very mild, not to say that the beginning and the cultivation of corruption begins in these very institutions. Policies and initiatives against corruption were in the focus of legal and institutional efforts, which have been carried out in recent years in Kosovo. In this string, one improvement was noticed by the stakeholders while treating challenges of the corruption, especially at the beginning of addressing the corruption cases, as well as improvement of the framework of current legislative structures for treating the corruption such as Law on Declaration, Origin and Control of the High Official's Property in Public Institutions, Law on Anti-corruption Agency, Criminal Code of Kosovo and Anti-Corruption Strategy and Action Plan. The role of civil society in prevention of corruption is without a doubt very influential. A way to gauge political commitment against corruption could be to measure “anti-corruption investments” made by governments. This might involve not only developing an anti-corruption strategy but also setting up related policies, task forces and sufficient funding for anti-corruption agencies as implementing bodies. The lack of political commitment over time also can be a challenge for the sustainability of anti-corruption strategies. Political events after the adoption of the anti-corruption strategy might affect its implementation. The civil society includes those societies, structures that are separated from legislative, administrative and legal self-government authority, but have mutual interaction in many ways and many areas. In most cases, when strivings to combat corruption have failed,

³⁸Krasniqi, A., (2013), Corruption, Forms of Appearance and Suppression, Pristina, pp.60.

³⁹Halili, R., (2011), Criminology, Pristina, pp 201.

that is happening because this, so important element – civil society, was left out. The role of independent media, viewed from the point as an element to prevent crime in general, and especially corruption, is commendable, as irreplaceable. Media kicks on cases of corruption phenomena that are seen will create a climate of belief and positive optimism in public, it would compel state entities to respond positively to embedding or improving the state of legality in the mentioned administration, it would give real effect of relevance of so-called civil society. Subsequently, an attempt to change some things from down to upwards becomes more difficult and complex, because the beam of authorities, breaking furiously and mercilessly the media membrane and the membrane of society, damages to a large extent and prevents those who want to do something good and reviving for their own place.⁴⁰

8. Results

Corruption cases in the courts of the Republic of Kosovo is accompanied by major procedural delays, which comes as a result of the absence of judges in court hearings, the absence of defendants, the absence of prosecutors, witnesses or other reasons.

Table 1

Reasons for postponing the court hearings of corruption cases in 2019⁴¹

Absence of defendants	Lack of prosecutor	Lack of judges	Lack of witnesses	Other reasons
81 sessions	61 sessions	34 sessions	17 sessions	131 sessions

Judges should take all legal action in order to avoid unreasonable adjournment of court hearings. Given the fact that corruption cases fall into the group of cases with priority of treatment by the justice system, prosecutors and judges in these cases to respect at least the legal deadlines set by the Code of Criminal Procedure.

Table 2

Profile of persons accused in corruption cases⁴²

Low profile individuals	Middle profile individuals	High profile individuals
471 cases	387 cases	61 cases

In the face of the large number of high-profile indictments that have failed in the Courts, the State Prosecutor should make an analysis of these cases and identify what were the causes of the failure of these cases, and in relation to this analysis, reflect in subsequent investigative actions.

⁴⁰Latifi, V., (2012), Politics of the Fight against Crime, Pristina, pp. 196.

⁴¹ Kosovo Law Institute, (2020), Pristina, pp. 26 See file:///C:/Users/DATACenter/Downloads/1.-RAPORTI-VJETOR-I-KORRUPSIONIT-2019-IKD-1%20(2).pdf.

⁴² Kosovo Law Institute, (2020), Pristina, pp. 26. See file:///C:/Users/DATACenter/Downloads/1.-RAPORTI-VJETOR-I-KORRUPSIONIT-2019-IKD-1%20(2).pdf.

Table 3. Judgments announced by the Basic Courts for corruption cases during 2019⁴³

Imprisonment	Probation	Penalty with fine	Acquittal	Rejection judgment	Dismissal of the indictment
41 individuals	56 individuals	36 individuals	91 individuals	14 individuals	2

The courts of the Republic of Kosovo must strictly implement the Guideline of the Supreme Court on Punitive Policy. After a proper assessment of the principles of punishment, mitigating and aggravating circumstances and the purposes of punishment, the sentences should be imposed in accordance with the limits set out in the appendix to this guide. The courts of the Republic of Kosovo, in addition to the main sentences, should also apply additional sentences, in order for this negative phenomenon to be reduced and the crime rate not to be as high as predicted in the table.

9. Conclusion

Corruption issue is that corruption is a symptom of deep-seated and fundamental economic, political and institutional weaknesses and shortcomings in a country. To be effective, measures against corruption must therefore address these underlying causes and not the symptoms. Emphasis must thus be placed on preventing corruption by tackling the root causes that give rise to it through undertaking economic, political and institutional reforms. Another observation that may be useful to bear in mind is that corruption is most prevalent where there are other forms of institutional weaknesses, such as political instability, bureaucratic red tape, and weak legislative and judicial systems. Moreover, if the state institutions, non-governmental organizations and ordinary civil society mean to persistently and with great determination carry out the prevention of corruption, then the treatment of corruption in Kosovo will be easier, having in mind that despite of great efforts, the first phase of prevention was unsuccessful. This happened because a lot of stakeholders and participants were identified in the first phase of presenting and development of corruption. So, getting rid of corruption helps a country to overcome other institutional weaknesses, just as reducing other institutional weaknesses helps to curb corruption. Practical elements contributing to the reduction of corruption, in some hand a hope is created that the concerned phenomenon will not happen again, because it is historically known that those who have committed criminal acts, sooner or later were discovered, and then prosecuted. I've come to the conclusion that some of these elements that have preventive characteristics are: transparency - which is actually preventive element in order for phenomena to reduce rhythm or disappear in one institution. A part of these are; Publication of precise data for budget of the state, as well as publications related to the budget, drafting practical conditions and full respect of the rights to public information, public debate in cases where it is discussed about wealth or declaring it based on previous aspirations combat corruption in Kosovo, the enactment of specific measures to combat, detect and investigate corruption. Ratification of international conventions in the area of criminal law, to this regard also the enactment of the human and professional capacities of the Prosecutor's Office including the necessary level of security and adequate material compensation and enhancing the role of the Anti-corruption Agency and preserving its impartiality. We will have success in

⁴³ Kosovo Law Institute, pp. 27.

fighting corruption only if we are ready to make the proper decisions on concrete cases and bring to light all weaknesses of the state institutions.

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REOPENING OF CIVIL PROCEEDINGS FOLLOWING A JUDGMENT OF THE EUROPEAN COURT OF HUMAN RIGHTS IN REPUBLIC OF NORTH MACEDONIA

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Abstract

The reopening of civil proceedings is an extraordinary legal remedy, which is made after the national court decision has become final on grounds specifically provided in the Law on civil proceedings. The Republic of North Macedonia successful implementation of the Recommendation No. R (2000) 2 of the Committee of Ministers to member states on the reexamination or reopening of certain cases at domestic level following judgments of the European Court of Human Right in the new Law on civil proceedings adopted in 2005, in article 400, provided the opportunity to reopen civil proceedings following a final judgment of the European Court of Human Right when the European Court of Human Rights confirmed a violation of certain human right or of fundamental freedoms guaranteed in the Convention for the Protection of Human Rights and Fundamental Freedoms and its additional protocols, ratified by the Republic of North Macedonia.

The objective of this paper is to analyze the reopening of civil proceedings following a judgment of the European Court of Human Rights in Republic of North Macedonia, according to the Law on civil proceedings, as a means of ensuring restitution in integrum, to clarify the scope of the obligation to adopt such a measure, its implementation in the practice of the courts and its limitations.

Keywords: retrial, law on civil proceedings, case law, recommendation

1. Introduction

The European Convention on Human Rights¹ (ECHR) is an international human right treaty composed of 47 states² that are members of the Council of Europe³. The creation of the ECHR led to the establishment of the European Court of Human Rights (ECtHR)⁴. It was set up in 1959 and is based in Strasbourg, France. It rules on individual or State applications alleging

¹Formally the Convention for the Protection of Human Rights and Fundamental Freedom. The Convention entered into force on 3 September 1953. https://www.echr.coe.int/Documents/Convention_ENG.pdf

² The human rights convention protects the rights of more than 830 million people in Europe. All 47 Council of Europe member countries have signed up to the European Convention on Human Rights (ECHR), a treaty designed to protect people's human rights and basic freedoms.

More: <https://www.coe.int/en/web/impact-convention-human-rights/how-it-works>

³<https://www.coe.int/en/web/portal>

⁴ According to the article 19 of the ECHR (Establishment of the Court) To ensure the observance of the engagements undertaken by, the High Contracting Parties in the Convention and the Protocols there to, there shall be set up a European Court of Human Rights, hereinafter referred to as "the Court". It shall function on a permanent basis.

violations of the civil and political rights set out in the ECHR⁵. Since 1998 it has sat as a full-time court and individuals can apply to it directly.

The Republic of Macedonia ratified the ECHR on 10 April 1997. At the same time, the Republic of Macedonia has ratified Protocols No.1,2,3,4,5,6,7,8,11,12,13,14 to the Convention. On 16 June 2016, the Republic of Macedonia ratified Protocol No. 15, which has not yet entered into force.⁶

The member states have undertaken obligation to comply with final judgments of the ECtHR finding violations of the ECHR, as well as with Court decisions taking note of friendly settlements⁷. The adoption of the necessary execution measures is supervised by the Committee of Ministers of the Council of Europe.⁸ The measures might relate to the individual applicant or they can also have general nature.

The first type of measures, such as individual measures, concerns the applicants. They relate to the obligation to erase the consequences suffered by them because of the violations established so as to achieve, as far as possible, *restitutio in integrum*. The second type of measures, such as general measures, relate to the obligation to prevent violations similar to that or those found or to put an end to continuing violations. In some circumstances they may also concern the setting up of remedies to deal with violations already committed. The obligation to take individual measures may be taken in two different ways: the first is to pay any just satisfaction (normally a sum of money) that the Court may have awarded. The consequences of the violation for the applicant are, however, not always adequately remedied by the Court's award of money or the finding of a violation. It is here that a further aspect of individual measures intervenes. Depending on the circumstances, the basic obligation of achieving, as far as possible, *restitutio in integrum* may thus require further actions involving, for example, the reopening of unfair criminal proceedings, the destruction of information gathered in breach of the right to privacy, the enforcement of an unenforced domestic judgment or the revocation of a deportation order issued despite a real risk of torture or other forms of ill-treatment in the country of destination.⁹

The Convention does not contain any provision which would require that the State Parties provide the possibility for retrial or reopening of the case. Even the Court itself noted in one of the cases that "the Convention does not give it jurisdiction to direct [French] State to open a new trial"¹⁰. On the other hand, there is also no provision that explicitly forbids a retrial.

⁵The Convention secures in particular: the right to life, the right to a fair hearing, the right to respect for private and family life, freedom of expression, freedom of thought, conscience and religion and, the protection of property. The Convention prohibits in particular: torture and inhuman or degrading treatment or punishment, slavery and forced labor, death penalty, arbitrary and unlawful detention, and discrimination in the enjoyment of the rights and freedoms set out in the Convention.

⁶On 21 April 2021, Italy deposited its instrument of ratification of Protocol No. 15 amending the European Convention on Human Rights (ECHR), thereby bringing the Protocol into force for all CoE member states with effect from 1 August 2021.

⁷ See Articles 46 and 39.4 of the ECHR.

⁸ The Committee of Ministers of the Council of Europe is made up of representatives of the governments of the 47 Member States, assisted by the Department for the Execution of Judgments of the Court (Directorate General I of Human Rights and Rule of Law).

⁹https://www.echr.coe.int/Documents/Anni_Book_Chapter05_ENG.pdf

¹⁰*Saïdi v. France*, 20 September 1993, § 47 Series A no. 261-C

The Committee of Ministers issued a specific recommendation¹¹ to member States in 2000 inviting them to ensure that there exist at national level adequate possibilities to achieve, as far as possible, *restitutio in integrum* and, in particular, ‘adequate possibilities of reexamination of the case, including reopening of proceedings, in instances where the Court has found a violation of the Convention especially where: the injured party continues to suffer very serious negative consequences because of the outcome of the domestic decision at issue, which are not adequately remedied by the just satisfaction and cannot be rectified except by re-examination or reopening, and the judgment of the Court leads to the conclusion that the impugned domestic decision is on the merits contrary to the Convention, or the violation found is based on procedural errors or shortcomings of such gravity that a serious doubt is cast on the outcome of the domestic proceedings complained of.

In Republic of North Macedonia, the Law on civil proceedings adopted in 2005, in article 400, provided the opportunity to reopen civil proceedings following a final judgment of the ECtHR when the ECtHR confirmed a violation of certain human right or of fundamental freedoms guaranteed in the ECHR and its additional protocols, ratified by the Republic of Macedonia.

2. The reopening of civil proceedings following a judgment of the ECtHR in Republic of North Macedonia according to the Law on civil proceedings

Recommendation no. R (2000) 2 of the Committee of Ministers to member states on the re-examination or reopening of certain cases at domestic level following judgment of the European Court of Human Rights had been addressed in the Macedonian legislation. Namely, the Law on civil proceedings¹² in article 400, for the first time in the history of the Macedonian civil procedural law, provided the opportunity for reopening a civil proceedings following a final judgment of the ECtHR when the ECtHR confirmed a violation of certain human right or of fundamental freedoms guaranteed in the ECHR and its additional protocols, ratified by the Republic of Macedonia.

The party (applicant) can, within 30 days from the day on which the judgment of the ECtHR became final, submit a request to the court in the Republic of Macedonia that had adjudged in the first instance proceedings wherefore the decision violating some human right or fundamental freedom is adopted, to amend the decision violating such right or fundamental freedom.

The provisions on repeating the procedure shall accordingly apply to the procedure of reopening civil of proceedings following a judgment of the ECtHR¹³. In the retrial, the courts are obliged to comply with the legal stances adopted in the final judgment of the ECtHR finding the violation of a fundamental human right or freedom.

The request for reopening of the civil proceedings following a judgment of the ECtHR shall always be submitted to the court having rendered the decision in first instance. The request, in particular, contains the basis, on which the reopening is requested, the circumstances from

¹¹Recommendation No. R (2000) 2 of the Committee of Ministers to member states on the re-examination or reopening of certain cases at domestic level following judgements of the European Court of Human Rights, (Adopted by the Committee of Ministers on 19 January 2000 at the 694th meeting of the Ministers' Deputies), https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016805e2f06

¹²Law on civil proceedings (“Official Gazette of the Republic of Macedonia” nos. 79/2005)

¹³ The procedure of reopening a civil proceeding following a judgment of the European Court of Human Rights is regulated in article 395-399 of the Law on civil proceedings and it the same procedure that applies on reopening of civil proceedings in general due to the reasons stated in article 392 of the Law on civil proceedings.

which it follows that the request has been submitted within the statutory time limit, and evidence corroborating the party's allegations. This means that the applicant must submit the final judgment of the ECtHR in which it is confirmed a violation of certain human right or of fundamental freedoms guaranteed in the ECHR and its additional protocols, ratified by the Republic of Macedonia within 30 days from the day on which the judgment of the ECtHR became final.¹⁴

After the request has been received, the single judge, i.e. the President of the Chamber firstly decides whether the request for reopening is submitted timely, whether it is completed and admissible. If it is not submitted on time, if it is incomplete or inadmissible, the single judge, i.e. the President of the Chamber without holding a trial will have dismissed it. If the single judge, i.e. the president of the Chamber does not dismiss the request, he will serve a copy of the request to the opposing party. The opposing party has the right to provide his or her answer to the request within fifteen days. When the court receives the response to the request or when the period for responding expires, the single judge, i.e. the President of the Chamber will schedule hearing to hear the request.

After the hearing on the request has been held, the single judge or the President of the Chamber of the court of first instance will make a decision about the request, except when the reason for reopening relates solely to proceedings before a higher court. In the ruling by which reopening is allowed, it shall be stated that the decision made in the previous trial shall be abolished. The single judge or the President of the Chamber will schedule a trial only after the ruling by which reopening is granted has become legally effective. However, in that ruling the President of the Chamber may decide that the hearing on the merits shall commence immediately.¹⁵ At a new trial the parties may present new facts and offer new evidence.

If the reason for reopening relates solely to the proceedings before a higher court, the single judge or the President of the Chamber of the court of first instance, after the hearing on the request, will forward the record to that particular higher court in order that it may make a decision. When the record arrives at the higher court, it shall be acted in accordance with the provisions of Article 351 of the Law on civil proceedings. The court shall decide on the request for reopening without holding a hearing.

When the higher court establishes that the request for reopening is justified and that it is not necessary to hold a new trial, it shall abolish its own decision, as well as the decision of the higher court, if any, and make a new decision on the merits.

¹⁴In addition, we can conclude that the Macedonian legislation i.e the article 400 of the Law on civil proceedings does not provide the opportunity to the applicant to request reopening of the proceedings following a friendly settlements or unilateral declarations. The article 400 of the Law on civil proceedings does not clearly states that, the request for reopening of civil proceedings may be submitted, only on the basis on a final judgment of the ECtHR in which it is confirmed a violation of certain human right or of fundamental freedoms guaranteed in the ECHR and its additional protocols, in a same or similar legal matter with the one for whom the application had been submitted and the judgment rendered. This means that party can request reopening of the civil proceedings based on final judgment of the ECtHR concerning another (third) party if legal matter and the violation of certain human right or of fundamental freedoms in the hers proceedings are in accordance with one confirmed in the final judgment of the ECtHR (More in: Markoska, J. (2014) The final judgment of the European Court of Human Right as reason for reopening civil proceeding in the in the practice of courts in the Republic of Macedonia, Master thesis. Skopje, Republic of Macedonia: Ss. Cyril and Methodius University Skopje, Faculty of Law Iustinianus Primus Skopje, Page 30-31)

¹⁵No separate appeal shall be allowed against the ruling by virtue of which retrial is granted if a single judge or the President of the Chamber has decided that a hearing on the merits shall commence immediately. If a single judge or the President of the Chamber has granted reopening and decided that a decision on the merits shall be made immediately, or if the request for reopening was heard jointly with the merits, the ruling by which retrial is granted and the decision rendered in the previous proceedings is abolished shall be included in the decision on the merits.

3. The reopening of civil proceeding in the Macedonian jurisprudence

There are numerous examples in the Macedonian jurisprudence where applicants have requested a reopening of the civil proceedings under the article 400 of Law on civil proceedings¹⁶. It is necessary to be emphasized the fact that final judgment of the ECtHR does not have impact to the national legislation but through national legislation it can impact the jurisprudence of the national courts because as such they became sources of law, as is stated above in Law on civil proceedings in the retrial the courts are obliged comply with the legal opinions stated in the judgment of the ECrHR confirming the violation of the fundamental human rights and freedoms. This provision does not comply with provisions of the Law on courts which states that the courts shall decide and establish their decisions on the basis of the Constitution, laws and international agreements ratified in accordance with the Constitution.¹⁷

The analysis of in the Macedonian jurisprudence shows that there are cases where the question arises as to when the deadline of 30 days for the submission of the request by the party begins to run. Although it is clearly stated in the Law on civil proceedings that the time limit is 30 days from the day on which the judgment of the ECtHR became final, the domestic courts in the case of *Bajaldžiev v. the former Yugoslav Republic of Macedonia*, no. 4650/06, 25 October 2011 the court was not sure whether the time-limit should begin to be considered from the moment the applicant found out about the finality of the judgment or from the finality of the judgment itself. However, in the end the second-instance court closed this dilemma by affirming that the deadline should begin to run from the finality of the judgment, not from the moment the party found out about the finality of the judgment¹⁸. According to, the article 44 of the ECHR, the judgment of the Grand Chamber shall be final. The judgment of a Chamber shall become final: when the parties declare that they will not request that the case be referred to the Grand Chamber; or three months after the date of the judgment, if reference of the case to the Grand Chamber has not been requested; or when the panel of the Grand Chamber rejects the request to refer under Article 43. The final judgment shall be published. The HUDOC¹⁹ database provides access for everyone to the case-law of the Court (Grand Chamber, Chamber and Committee judgments and decisions, communicated cases, advisory opinions and legal summaries from the Case-Law Information Note), the European Commission of Human Rights (decisions and reports) and the Committee of Ministers (resolutions).

Another question that had arisen is whether the applicant can request reopening of the proceedings following friendly settlements? In the determination Gdz. No.3753/12 from 13.12.2012 of the Appellate Court Bitola, the Appellate Court Bitola stated that the friendly

¹⁶In the research we used documents' analysis and qualitative method. The documents were collected from web page of the Judicial Portal of Republic of North Macedonia (<http://sud.mk/wps/portal/osskopje2/sud/odluki/>), advanced search, type of case: civil cases, keyword Article400of Law on civil proceedings. We only analyzed three specific civil cases where the courts had dilemmas in implementation of article 400 of the Law on civil proceeding, because the procedure of reopening a civil proceeding following a judgment of the European Court of Human Rights is regulated in article 395-399 of the Law on civil proceedings and it the same procedure that applies on reopening of civil proceedings in general due to the reasons stated in article 392 of the Law on civil proceedings.

¹⁷ See more, article 2 of Law on courts, ("Official Gazette of the Republic of Macedonia" nos. 58/2006, 62/2006, 35/2008, 150/2010, 83/2018, 198/2018and "Official Gazette of the Republic of North Macedonia" no. 96/2019).

¹⁸Cuculovska, I. Reopening of the domestic civil proceedings following a judgment of the European Court of Human Rights, Legal dialogue, No, 11, Institute for human rights, p. 28.

¹⁹<https://hudoc.echr.coe.int/eng#%7B%22documentcollectionid%22%3A%5B%22GRANDCHAMBER%22%22%22CHAMBER%22%22%5D%22%7D>

settlement is not considered to be final judgment of the ECtHR in which is confirmed a violation of certain human right or of fundamental freedoms guaranteed in the ECHR, a so it cannot be base under which the applicant can request reopening of the civil proceedings²⁰.

The Basic civil court Skopje in the determination RO No.612/14 had refused the plaintiff's request for reopening of the proceedings in the case no. XIII.P.893/01-new number 210/2008 because the reasons under section 392 of the Law on civil proceedings had not been fulfilled so that the plaintiff can request a reopening of the proceedings. The court found that the facts on which the plaintiff his request for reopening, and the same supports with the evidence, judgment of the ECtHR, are none of the frame of the points 1 to 10 of Article 392 paragraph 1 of the Law on civil proceedings, and are not provided as a legal ground on which a reopening of proceedings can be required.

In the determination of the Appellate Court Skopje ROzd No.1164/14, the Appellate Court Skopje, had approved the applicant's appeal, dismissed the determination RO No.612/14 of the Basic civil court Skopje. It had stated that the first - instance court had not having regard to the fact that the plaintiff had submitted a request to reopen the proceedings pursuant to Article 400 of the Law on civil proceedings, so it is not clear on what basis the first instance court has established court that there are no conditions for reopening the proceedings without assessing whether the requirements of article 400 of the Law on civil proceedings are fulfilled.

In this case the Appellate Court Skopje gives an answer to the question whether the final judgment of the ECtHR is a separate reason for reopening a civil proceedings or it has been in correlation with the reasons stated in the article 392 of the Law on civil proceedings? In the opinion of the court, in the case, the circumstances of which could be ascertained with certainty remained uncertain whether there are conditions, i.e. whether the legal assumptions are fulfilled prescribed by the cited provision of article 400 of the Law on civil proceedings, to apply it as in the present case, and which is justified in the appeal of the plaintiff. This means that the court states that the final judgment of the ECtHR is a separate reason for reopening civil proceedings and does not have to be in correlation with the reasons stated in the article 392 of the Law on civil proceedings.

In the end we can see that the article 400 of the Law on civil procedure has one limitation. It can also be noted that the legislator has conditioned the court to reopen the civil proceedings and to amend the court's decision violating the applicant's human rights and freedoms. This needs to be changed in the future because the reopening of the proceedings does not always necessarily mean that the court in the new proceedings has to amend its decision. The judges should have the freedom to decide whether the violation of certain human right or of fundamental freedoms will also lead to a substantial change in the court's decision in the present case.

4. Conclusions

In Republic of North Macedonia, the Law on civil proceedings which was adopted on 2005, in article 400, provided the opportunity, that the party can request reopening of civil proceedings following a final judgment of the ECtHR when the ECtHR confirmed a violation of certain human right or violation of a certain fundamental freedoms guaranteed in the ECHR and its additional protocols, ratified by the Republic of Macedonia. The party (applicant) can, within 30 days from the day on which the judgment of the ECtHR became final, submit a request to the court in the Republic of Macedonia that had adjudged in the first instance proceedings wherefore the decision violating some human right or fundamental freedom is adopted, to amend the decision violating such right or fundamental freedom. The Macedonian

²⁰ More in determination Gdz. No.3753/12 from 13.12.2012 of the Appellate Court Bitola.

legislation i.e. the article 400 of the Law on civil proceedings does not provide the opportunity to the applicant to request reopening of the proceedings following a friendly settlements or unilateral declarations. The final judgment of the ECtHR is a separate reason for reopening a civil proceeding and does not have to be in correlation with the reasons stated in the article 392 of the Law on civil proceedings.

Appendix

List of cases

ECrHR

Bajaldžiev v. the former Yugoslav Republic of Macedonia, no. 4650/06, 25 October 2011

Saïdi v. France, 20 September 1993, § 47 Series A no. 261-C

National courts

Determination of the Appellate Court Bitola Gdz. No.3753/12 from 13.12.2012

Determination of the Appellate Court Skopje ROzd No.1164/14 from 14.10.2015

Determination of the Basic civil court SkopjeRO No.612/14 from 14.07.2014

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