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Short Biographies

Dragan Gocevski, PhD is an Associate professor of Administrative Law and Public Administration at the Ss. Cyril and Methodius University, Iustinianus Primus Faculty of Law in Skopje. He has authored and co-authored several scientific and policy papers in national and international journals, proceedings and is a co-author of a University textbook on Theory of Organization. His mail interest is public administration, theory of organization and public services.

Ms. **Frosina Ilievska** is a Project Manager in Geonardo Environmental Technologies Ltd, based in Hungary. She is involved with the preparation of proposals and project management within the Horizon 2020 programme. She holds a Bachelor of Arts in Political Science and a Master of Arts in European Institutions and Policies, both from the Ss. Cyril and Methodius University. She has over 7 years of experience managing a variety of EU-funded projects under IPA, EIDHR and EU framework contract programmes. Previously she worked as a Project coordinator for Habitat for Humanity in Macedonia and she has participated in capacity building programs from the Austrian Study Centre for Peace and Conflict Resolution, The Geneva Centre for Democratic Control of Armed forces and The German Council on Foreign Relations.

Dragan Gocevski / Frosina Ilievska

PUBLIC INTEREST IN MACEDONIA

Defining public interest (PI) is a relatively modern discourse. Awareness or ideas of similar concepts can be found throughout literature since classical times in references of public good, general good, good of all, good of the city/state and the like. Today, PI is used to describe areas of common interest to a broader community, for which a certain degree of accountability is accredited to the government, e.g. a clean environment, public safety, human rights and freedom of speech. "We need to protect the PI" is a common saying, heard in many public speeches as well as private discussions.

Following WWII, academics cited PI in classrooms and wrote about it in articles, politicians called upon it to justify their decisions and policies, media referred to it in order to discredit politicians (and/or support them). In fact, the term can be found in 98% of national legislation, yet no one really provides a concise definition of what PI

is or how far its scope reaches.[1] Perhaps the most holistic approach to defining PI is provided by Geoffrey Edwards: 'After seminal works by Beard (1934), Schubert (1960, 1982), Friedrich (1962), Tlathman (1966) and Held (1970), the literature dissecting the concepts seems to have lost focus and vigor'.[2]

Many authors throughout political theory, legal theory and philosophy provide various definitions, personal classifications and categorizations of PI in some context. This paper provides an overview of contemporary definitions of PI, its' scope and range as well as practical examples of how PI is defined in specific fields: law, politics, media, and civil society in the Republic of Macedonia (RM). The research was conducted using a mixed method approach, relying mostly on desk research, literature review and legal analysis of positive law.

EVOLUTION OF THE PUBLIC INTEREST CONCEPT

Definitions and concepts of PI have changed over the ages, throughout theory, literature and law. Contemporary authors and most legal systems today refer to roots of PI in works of classical philosophers in which the well-being of the entire community and the safety and prosperity of the polity are valued higher than the well-being and prosperity of individual members of the community. The adoption of the Magna Charta in 1215 was a milestone, restraining the Crown in exercising power against the properties of (propertied) individuals. It would later evolve to the Habeas Corpus Act in 1679, providing freedom from unlawful imprisonment to all individuals.[3] Renaissance authors like Machiavelli contributed to justifying actions which would secure the safety and prosperity of the country (republic, monarchy, or city state)[4] - a concept later popularized as *Raison d'Etat* by Cardinal Richelieu (1622-1642) that gave root to doctrines of national interest[5]. Rousseau wrote of the *will of all* and the *general will* and Beard argued that national interest and PI were phrases commonly used in England by the End of the 17th century[6]. By the 1950s, skeptical empirical scholars[7] found PI to be too normative and theoretical,[8] and many considered it to be literally nonsense, as it lacked any empirical reference, so they argued. Frank Sorauf (1957) provided one of the first structured categorizations of the term, reflecting on it in five basic contexts: rhetorical, elitist, morally pure; as a balance between individual and

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1 Dragan Gocevski and Frosina Ilievska. *Deconstrucing the Concept of Public Interest in the Republic of Macedonia (Ab)Use in the Name of Citizens.* Edited by Zaneta Trajkovska and Bojan Georgievski. (Skopje: Institute for Communication Studies School of Journalism and Public Relations, 2015.), 5-7.

2 Geoffrey Edwards, "*Defining the 'Public Interest'*" (PhD diss., Grifith Universtiy, 2007), 3.

3 A parliamentary act in force today in England, '…force the courts to examine the lawfulness of a prisoner's detention to safeguard individual liberty and thus to prevent unlawful or arbitrary imprisonment';

4 Machiavelli, Niccolò. *The Prince.* HTML. Translated by W. K. Marrion. Prods. John Bickers, David Widger and others. (The Project Gutenberg, November February. 2006), Accessed November 14, 2017. www.gutenberg.org/files/1232/1232-h/1232-h.htm.

5 Ibid.

6 Edwards, "*Defining the 'Public Interest'*", 26.

7 Due to the advent of the behavioral revolution in the social sciences, and especially political science.

8 Due to the advent of the behavioral revolution in the social sciences, and especially political science.

social interests, and as having no meaning whatsoever.[9] Based on his reflections, Sorauf accepted only a methodological significance of the term, comparable to the concept of *due process* for law.[10] Some more ample classifications of PI theories came with Held in the form of preponderance theories, common interest theories and unitary theories.[11] Today, PI encompasses a broad variety of aspects of (the quality of) human life, ranging from human rights, human security and economic growth to happiness, prosperity, standard or quality of living and well-being, constitutional heritage and religious values[12].

In practice, PI is *de iure* whatever states define it to be by law. However, states are prone to generally referring to PI and declaring actions to be undertaken 'in the name of public interest', thus determining a scope of actions rather than providing specific definitions.[13] We feel it is more practical to accept that PI is more of a 'set of rights to...', rather than a specific 'it or thing'. This means that PI could embrace the right to own property, the right to education, the right to a clean environment, the right to clean water etc. , and these rights are enacted by law (and oftentimes subsumed under *considerations of PI*) and guaranteed and protected by state institutions. Any restrictions to such rights in the name of PI must be exhaustive.

Another aspect of PI is to determine who is entrusted or obligated to define, protect and enforce it. Is it society itself, or a more structured form of organization? A common question which also deserves further explanation is, what will be the scope of PI? We argue that the following actors are principle in defining, implementing and protecting or safeguarding PI: *governments* define it through the mechanism of state legislature or law making, *administrations* articulate it as they are the direct contact citizens have with the state, the *media* act as gatekeepers of PI, drawing attention to government misconduct and real citizen' needs, separating what citizens find entertaining from what they need to know for their own well-being, and, finally, *civil society* acts as a safeguard and partner to governments and citizens. A *conditio sine qua non* for PI in democracies is effective citizen participation, i.e. direct involvement of those affected by decisions on planning, funding, advocacy or delivery of services, so the results of their involvement reflect their concerns.[14] What differentiates

9   Stephen M. King, Bradley S. Chilton, and Gay E. Roberts. *"Reflections on Defining the Public Interest." Administration & Society 41 (8)* (2010): 954-956.

10   Ibid, 958;

11   David Held, *Models of Democracy.* 3rd. (London: London School of Economics and Political Science, 1970).

12   King, *et al. "Reflections on Defining the Public Interest.",* 957;

13   Gocevski and Ilievska, *Deconstrucing the Concept of Public Interest in the Republic of Macedonia (Ab)Use in the Name of Citizens*, 8.

14   Georgia A. Persons, "Defining the Public Interest: Citizen Participation in Metropolitan and State Policy Making*." National Civic Review* (1990): 118; also P. Oberg and K Uba. "Civil Society Making Political Claims: Outcries, Interest Advocacy, and Deliberative Claims." *Public Administration Review (The American Society for Public Administration)* 74 (3) (2014): 413-422.

PI from other concepts like 'public good' is the close tie to law.[15] In fact, as we mentioned above, PI is whatever a formal sovereign declares it to be, through legislation. The two constitutive components of PI are the public and the interest.

One concept of 'the public' includes all permanent residents of a country, notwithstanding the interests of citizens as individuals or in their private lives, however considering the facilitation of personal spheres so that individuals can flourish.[16] Int erest can be defined as something a person or group finds interesting or is interested about, i.e. entertainment, the quest for knowledge, or general curiosity. Another approach to defining interest is as something an individual or group has a 'vested interest in' in a legal sense, such as the right to own property, the right to education, the right to health care etc.[17] In our opinion, the most appropriate definition to PI in a contemporary setting is a cross section of 'public' and 'legal interest', in the sense of legal interests through rights vested to all citizens as a larger community, not as separate individuals. Individual rights are exercised because the state declared such rights, as rights all are entitled to.

THE ROLE OF GOVERNMENT IN DEFINING THE PUBLIC INTEREST

As the idea of PI evolved over the ages, so did the role of the state arise to its sole creator and main protector. In developed industrialized societies with sophisticated models of governance, the task of granting rights and implementing duties is entrusted to the State. The scope of what the state must provide to ensure the well-being of all expanded, while at the same time it gained acceptance that more actors other than the state need to be entrusted with the right and duty of protecting that idea of well-being. Seeing how the State is the only actor that commands armed forces and instruments of legitimate coercion, it is only rational that states be the only subjects capable of and responsible for preventing people from infringing on eachother's freedoms, as well as collecting money through taxation which may later be channeled to fund public services (education, health care, welfare, culture, utilities etc.)[18].

This approach ties the determination and application of PI to institutions of the State, such as a national legislator, an executive government represented by a directly elected head of state or by a cabinet of ministers which form the political

15 The distinction represents attitudes of the authors. For more definitions regarding the mentioned concepts see: Biaocchi, G. "Emergent Public Spheres: Talking Politics in Participatory Governance." *American Sociological Review* 68 (1) (2003): 52-74. Accessed August 6, 2015. http://www.jstor.org/stable/3088902 ; also Habermas (1996, 1974) in Edwards, "*Defining the 'Public Interest'*, 14; also Held, *Models of Democracy*, 13.

16 Edwards, "*Defining the 'Public Interest'"*,16.

17 Gocevski and Ilievska, *Deconstrucing the Concept of Public Interest in the Republic of Macedonia (Ab)Use in the Name of Citizens*, 26.

18 Barry (1967) in Edwards, "*Defining the 'Public Interest'"*, 27); also, King, *et al.* "Reflections on Defining the Public Interest.", 960.

tier of centers of government,[19] and judicial authorities such as courts and public prosecution who act as impartial arbiters, determining whether PI has been offended, and in some common law systems even creating PI through judicial practice.[20] Through laws, policies and every day actions, the State obliges itself to "serve and protect", yet at the same time, to the most reasonable extent, it limits its scope of actions and mechanisms in achieving these goals. The type of the legal system and choice of instruments to protect PI describe a country as liberal, conservative, social-democratic, socialist, or other.

According to the Constitution of the RM,[21] the Government holds executive powers[22] and is competent to perform a wide array of normative, coordinative, supervisory and directing activities: policy making, law enforcement, drafting legislation, budgetary planning and a varietyof oversight and coordination competencies.[23] It is only during war or other extraordinary states when parliament cannot convene that the Government can adopt Regulations with force of Law.[24]

THE ROLE OF PUBLIC ADMINISTRATION IN ARTICULATING PUBLIC INTEREST

An impartial and professional instrument of the executive branch is its bureaucracy, intended to enforce laws such as they are. In a democratic state, where Rule of Law (*Rechtsstaat*) is the primary principle which all legal order lies upon and public administration is designed to be a civil service oriented to serve all, one may say that the latter serves the common good and protects PI by providing services and rights to all members of the society. Public administration, i.e., civil servants may perhaps not define PI, however, through their actions, they do articulate it.[25] The administrative authority (such as a ministry of any other government agency) applying its legal competencies (in the name of protecting PI) may determine the meaning and scope of PI only within the boundaries clearly stipulated by a legal act such as the Law and bylaws.[26] The value of a good administration for our everyday lives is immeasurable. No matter the quality of Laws or the amount of 'good will' politicians carry to their posts, if laws are implemented poorly and if basic human rights are traded for favors or

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19 Safege Baltija (Ed.) *Report on Centres of Government in the EU Member States, in Accordance with the Contract No. 76 of 8 October 2014 "Assessment of the opportunities to strengthen the centre of government"* (Eiropas Socialais Fonds, Valsts kanceleja, Sabiedribas integracijas fonds, European Union, 2015): 7- 16; also, Burgess 2004 in Edwards, "*Defining the 'Public Interest'*", 75.

20 Charles Louis de Secondat, Baron de Montesquieu. *The Complete Works of M. de Montesquieu.* Vol. 2. 4 vols. (London: T. Evans., 1777) Accessed November 14, 2017. http://oll.libertyfund.org/titles/838.

21 Constitution of the Republic of Macedonia, 1991 Official Gazette of RM No. 52/91 and amendments respectively;

22 Art.88, Ibid.

23 Art. 91, Ibid; also, Law on the Government of the Republic of Macedonia (Official Gazette of RM No. 59/00).

24 Art. 10, Law on Government, Ibid.

25 Gocevski and Ilievska, *Deconstrucing the Concept of Public Interest in the Republic of Macedonia (Ab)Use in the Name of Citizens*, 17.

26 Naum Grizo, Simeon Gelevski, Borce Davitkovski, Ana Pavlovska-Daneva, Административно право 2. издание, (Faculty of Law "Iustinianus Primus", Skopje, 2011), 516 .

personal benefits, if inspections are late or blind to injustice and misdemeanor, no matter its format, such a government cannot be called *good*.

There is no single administrative model that fits every state's need. Each state, following its geopolitical, economic, social, and demographic needs, establishes institutions to suit its requirements and capacities. Although there is no exclusive definition of public administration, a common denominator accepted by many authors, however, is direct involvement in the application (enforcement) of laws, government and (in most cases) judicial decisions, paired with the provision of public services determined by Law. This definition of public administration, in fact, holds for government in its broadest concept.[27]

In the RM, this includes 129.653 public sector employees working at 1.291 public institutions: state bodies of administration, regulatory bodies and administrative organizations, local self-government, public services (health care, social care, education, science, culture, communal services, road maintenance, national parks, sports, public broadcasting services etc.), the police, the army, intelligence, and administrative services of the cabinet of the prime minister (government in its narrow scope), the chief of state, parliament, and judiciary.[28]

PUBLIC INTEREST IN LAW

PI may be viewed upon as a concept encompassing a set of rights and duties of individuals and communities towards the State, as well as the obligations of government institutions to protect and promote respective rights contained in legal acts such as Constitutions, Laws, By-laws, International Treaties etc. International documents that comprise the 'standard' for PI in modern democracies include: The UN Universal Declaration of Human Rights from 1948, the Convention for the Protection of Human Rights and Fundamental Freedoms by the Council of Europe in 1950,[29] the Charter of Fundamental Rights of the EU proclaimed by the European Commission, European Parliament and Council in 2000, entered into force with the Treaty of Lisbon in 2009. A significant international institution regarding the standards for protection of PI is the European Court of Human Rights.

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27 Woodrow Wilson "Public administration represents a systematic and detailed enforcement of laws…Every time a general regulation, such as a law, is applied in a concrete situation, it is considered an act (action) of public administration", L. D. White "Public administration is comprised of all the operations that aim to implement public policies", Luther Gulick "public administration is a part of administrative science dealing with the affairs of government (executive branch) and above all addresses the implementation of executive policies", Dwight Waldo "Public administration is the art and science of governing (managing) state affairs", in Dragan Gocevski, Neda Maleska Sacmaroska, *"How Big and What kind of Public Sector Do we Have in the Republic of Macedonia?" An Analysis Public Sector Characteristics in Macedonia* (Skopje: Center for Change Management, 2017), 7.

28 *"Annual Report from the Public-Sector Employee Register for 2016",* (Skopje, Ministry of Information Society and Administration, Annual Report, 2017): 11-23.

29 With subsequent protocols that amended the Convention.

PI may also be perceived as the interest of any entire community which has supremacy over special needs and rights of individuals. This is typically seen in legal obligations for every citizen to fulfill a certain duty towards the state - such as paying taxes or upholding traffic regulation - because this is in everyone's best interest. In the case of the latter, PI may also be national interest. Matters of national security, strategic goals and vital interests of the nation/state, public safety, and national economy in its entirety are also areas where PI may be synonymous with national interests, and national interest is almost always synonymous with PI in foreign affairs. Other examples of legislative definitions of PI, or rather frames of PI, may be seen in various principles included in legislation. King *et. al.* contend that PI is the embodiment of principles, normative values, and policies, including the balance between political efficacy and administrative efficiency and practice issues such as the demonstration of administrative management and leadership in questions of policy and principles.[30]

We argue that though PI is found virtually in all legislation of democratic states, RM included, PI isn't explicitly defined nor is its scope determined in any one single legal act. Rather, PI is framed through specific references throughout legislation and (Government) public policies. As for RM, it is important to note that the Law on the Government of RM (2000) does not contain an explicit reference *of* PI. However it does determine a broad range of competencies of the Government in creating public policies, adopting and enforcing strategies that directly refer to the quality of life and well-being of citizens and to national interest (in domestic and foreign relations), and developing the overall economy. Given the very fact that the Government is without doubt the largest proposer of draft laws in every developed country (RM included), we find the Government role in determining, developing and protecting PI indisputable.[31]

An explicit reference of PI and to PI can be found above all in the Constitution, and then in several Laws: the Law on Organization and Operation of State Administration Bodies, the Law on General Administrative Procedure, the Law on Local Self Government, the Law on Public Institutions, the Law on Public Enterprises, the Law on Free Access to Information of Public Character, the Law on Prevention of Corruption, the Law on Associations and Foundations, the Law on the Red Cross of RM, the Law on Culture, the Law on Sport, the Law on Social Protection, the Law on Donations and Sponsorships in Public Activities, the Law on Audio and Audiovisual Media, the Law on Audiovisual Works and the Law on Expropriation.[32]

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30 King, *et al. "Reflections on Defining the Public Interest."*, 966.

31 See: "The Role of Government in Defining the Public Interest", above.

32 Gocevski and Ilievska, *Deconstrucing the Concept of Public Interest in the Republic of Macedonia (Ab)Use in the Name of Citizens*, 40.

CIVIL SOCIETY AS A WATCHDOG OF PUBLIC INTEREST

Civil society is an important and distinct segment in contemporary societies. Flourishing under democratic rule, and through utilization of internet technologies, civil society has evolved to an even more alternative, but at the same time dominant domain. Its interagent position has been replaced with the one of a warden of political stability. This shift of roles, i.e the change in the understanding of civil society and its tie to the state can be seen in the definition's evolution through history. Long-lasting definitions consider civil society as a 'community' within a larger political ruling. Initially, civil society was considered a comprehensive entity that includes all social, economic and political aspects of life. Such communities agreed to live under an established legal system.

As times changed, so did the understanding of the relationship between state and civil society, especially concerning their interdependency and the importance of their existence. Today, civil society can be defined as 'all voluntarily formed non-profit collectivities that seek to promote or to protect an interest and that are neither part of the state nor of the family sphere'.[33] As agents of non-profit activities, NGOs became voices of marginalized and unprivileged social groups in need of representation. The World bank proposes a more complex, inclusive definition of civil society as a wide array of non-governmental and not-for-profit organizations present in public life, expressing the interests and values of their members or others, based on ethical, cultural, political, scientific, religious or philanthropic considerations.[34] The term Civil Society Organizations (CSOs), therefore, refers to a wide array of organizations: community groups, non-governmental organizations (NGOs), labor unions, indigenous groups, charitable organizations, faith-based organizations, professional associations, and foundations.

Depending on their statutory mission and guidelines by the state, CSOs can work on promoting the public good. Thus, the relationship between state and civil society is twofold: the state grants financial and other benefits to the organization, while the latter honors the relationship by implementing activities of interest to the public good. Said CSOs may be referred to as PI organizations or charities.[35]

Early traces of CSOs in RM are found in the late 20th century[36], based on the Law on Societal Organizations and Associations of Citizens within the Socialist Federative Republic of Yugoslavia (SFRY). To harmonize with the Federal Law

33 Kamat Sangeeta *"The Privatization of Public Interest: Theorizing NGO Discourse in a Neoliberal Era."* (Review of International Political Economy 11 (1), 2004), 159.

34 World Bank. *"Defining Civil Society."* (The World Bank, 2010). Accessed August 28, 2015. http://go.worldbank.org/4CE7W046K0.

35 Gocevski and Ilievska, *Deconstrucing the Concept of Public Interest in the Republic of Macedonia (Ab)Use in the Name of Citizens*, 35.

36 Law on Societal Organizations and Associations of Citizens (Official Gazette of the Socialist Republic of Macedonia No. 32/83, 12/90).

on Association of Citizens in Associations, Societal Organizations and Political Organizations Established on the Territory of SFRY (1990), certain amendments were introduced, which set the ground for the establishment of various organizations. However, at that time, only a small variety of organizational forms was recognized. Subsequent changes of the text in 1998 and the adoption of new laws in 2010,[37] all challenges considered, laid the ground for a pluralistic civil society in RM,[38] evidenced by 14,774 registered organizations in 2015 (out of which 4,574 were in the phase of pre-registration). Compared to the previous years' reports, a steady increase can be observed, with 13,656 organizations registered in December 2014, and 13,021 registered organizations in 2013. The distribution of organizations, most of which (39%) are seated in Skopje, remained uneven.[39]

The relationship between the Government and civil society was placed under the competence of a Council for Promotion of Cooperation and Dialogue.[40,41] The outline of economic rights and opportunities for CSOs was set in 2010.[42] A key novelty was the option for NGOs to obtain a 'PI status',[43] but it solely provides the criteria[44] and a complex and dysfunctional procedure for application,[45] without offering any substantial provisions as would be, e.g., tax incentives. The competent state body of administration that authorizes NGOs with the status of PI is the Commission for Organizations with Status of Public Interest.[46] According to their latest document, four organizations have obtained ithis status (the PEXIM Foundation, the Macedonian Heritage Foundation Todor Aleksandrov – Resen, the Association Fund for a Better Future for Plasnica and Preglovo Plasnica, and the Macedonian Association for Protection and Rescue in Inaccessible and Mountain Terrain 'Asclepius' from Skopje).[47]

Civic trust in CSOs is an important factor for NGO activities. A 2013 research showed an increase oftrust in NGOs, proportional to a change of attitudes towards them. E.g., NGOs were no longer perceived as foreign 'spies'[48].

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37 Law on Associations and Foundations (Official Gazette RM No. 52/2010, 135/2011).

38 Ognenovska, S. 2015. *Report on the Enabling Environment for Civil Society Development in Macedonia.* Project report, Skopje: MCMS, 11.

39 Ibid, 18.

40 Department for Cooperation with NGOs, at the General Secretariat of the Government of the Republic of Macedonia. Accessed November 14, 2017. www.nvosorabotka.gov.mk/index.php?option=com_content&task=view&id=78&Itemid.

41 Gocevski and Ilievska, *Deconstrucing the Concept of Public Interest in the Republic of Macedonia (Ab)Use in the Name of Citizens*, 36.

42 Law on Associations and Foundations (Official Gazette RM No. 52/2010, 135/2011)

43 Ibid., Art 73: 'Organizations can obtain the status of public interest if they perform activities of public interest, implementation of programs and projects of the central and/or local level, alone or in cooperation with state administration bodies and municipalities in the City of Skopje and the City Skopje, and the use of funds to implement the activities.'

44 Law on Associations and Foundations (Official Gazette RM No. 52/2010, 135/2011), Article 74.

45 Gocevski and Ilievska, *Deconstrucing the Concept of Public Interest in the Republic of Macedonia (Ab)Use in the Name of Citizens*, 37.

46 The Commission for Organizations with Status of Public Interest, Accessed November 14, 2017. http://www.nvosorabotka.gov.mk/?q=node/33.

47 Ibid.; Analyzing the documents from the Commission reveals several interesting points. According to the report for 2016, the PEXIM Foundation requested to revoke the status of public interest, without specifying the reasons behind the request. The remaining 3 organizations listed in the documents obtained public interest status in 2017;

48 Nuredinoska,E., Krzalovski,A. & Stojanova (2013) Trust in civil society. Available at: http://www.mcms.org.mk/mk/za-nasata-rabota/istrazuvana-i-publikacii/istrazuvana/1436-doverbata-vo-gragjanskoto-opstestvo-2013.html, Accessed 14.11.2017, 14.

CS actions worth mentioning include the 'I love GTC' initiative:[49] a self-organized motion by (mostly) residents of the Center Municipality of Skopje initiated a referendum in reaction to the Government project to renovate an old shopping center near the City Square by adorning it with neoclassical or baroque façades, in line with the 'Skopje 2014' style. The plan to change the appearance of the post-earthquake Mall, considered by many an architectural icon of Skopje, was met by a swift referendum 'against', which failed to secure the necessary votes but still gained momentum and media attention.

Another important CS movement was 'Studentski plenum' in 2014. Fueled by dissatisfaction by reforms in higher education, students occupied state universities and organized large protests, demanding to meet with representatives from the Ministry of Education and Science. This was an exhausting process that lasted several months, with a strenuous relationship and interaction between the parties. Finally, they reached an agreement and promised to cooperate, fulfilling the students' most important request: crucial involvement in the policy making process. The Student Plenum also inspired the High School Plenum where high school students even camped in front of the Ministry of Education in revolt against the state-sponsored high-school final exams.[50]

In April 2016, after it was announced that President Gjorge Ivanov would pardon a certain number of politicians that were facing criminal proceedings on various accounts, protests were organized by the CS platform "Protestiram" ("I protest"). The protests were supported by a coalition of opposition parties led by the Social Democratic Union of Macedonia (SDSM under the name "Colorful Revolution".[51] The movement demanded more transparency for a democratic life that would serve the PI in RM. After the protests ended and SDSM managed to obtain a majority to form a government after the elections, many protesters who had been either organizers or diligent supporters were employed in the new Government. Even though new Prime Minister Zoran Zaev had actively supported civil society in the protest period, it would be interesting to know whether those positions had been negotiated before the elections, i.e. during the protests, or after SDSM had managed to obtain a majority to form a government. Howsoever, after the elections, the new Government organized consultative meeting with the NGOs to form the priorities that would ultimately serve the PI.[52] After the incidents that occurred in the Assembly on the 27th

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49 I love GTC: With a referendum against baroque, Akademik, accessed 14.11.2017, available at: http://www.akademik.mk/go-sakam-gtc-so-referendum-protiv-barokot/,

50 We did it! #pozdravplenumci, Fakulteti, available at:
http://www.fakulteti.mk/news/15-02-24/uspeavme_pozdravplenumci.aspx

51 The term Colorful revolution was used formally for the first time by the journalist Kristina Ozimec for an article written for Deutsche Welle http://www.dw.com/mk/осми-ден-од-шарената-македонска-револуција/a-19199808?maca=maz-rss-maz-pol_makedonija_timemk-4727-xml-mrss

52 Zaev and members of the new Government meet 150 representatives from the NGO sector http://ako.mk/заев-и-членови-на-владата-оствариja-cp/, Accessed 14.11.2017

of April 2017, and after a functioning government had been formed, the EU Commission sent a team of experts to help the new government with reforms. The report recommended for a greater inclusion of the civic sector in the reform process set forth in "Plan 3-6-9", consolidation of the various analyses produced by CSOs, active measures to ensure that the harassment of CSOs ends and full transparency of the public funding received by CSOs.[53]

THE MEDIA'S ROLE AS GATEKEEPERS OF PUBLIC INTEREST

Trying to list actors that comprise the Fourth Estate, in a contemporary setting, we may say that media can consist of everything from national newspapers to student magazines, global broadcasters to local radio, websites and blogs to social networks, podcasts, virtual communities, citizen journalists to public broadcasting services. Media has a distinct and significant role in society, shaping in large part the public opinion on important issues and institutions.[54] The character of media tends to determine the character of public debates in democracies. Free media is fundamental to any definition of democratic good governance.[55] The good governance proposition applies to the causal relationship between institutional and political processes and state development. According to Resolution 2000/64[56] of the Commission of Human Rights, key attributes that define good governance are transparency, responsibility, accountability, participation, and responsiveness (to citizen's needs).

Nevertheless, in order for citizens to engage in the process of good governance, they must communicate and interact with the state. Governance within the framework of media presents the regulatory structure, i.e., entirety of forms of rules,[57] practices and institutions[58] that aim to organize media systems and provide incentives for media performance. Governing media encompasses numerous forms of management and accountability within the media, as well as the institutionalized relations between media and society.[59]

Stakeholders have an important role in the process of good governance. The notion of media governance is perhaps best summarized as regulatory deliberations, processes, and outcomes that take place both within and beyond

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53 The Former Republic of Macedonia: Assessment and recommendations of the Senior Expert's Group on systemic Rule of Law issues 2017, Accessed 14.11.2017 https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/2017.09.14_seg_report_on_systemic_rol_issues_for_publication.pdf, 26.

54 Department for International Development, DFID (2008), Accessed 10.11.2017 http://www.gsdrc.org/docs/open/innovations-in-accountability/IA5.pdf, 2.

55 Ibid, 3.

56 Commission of Human Rights 2000/64, Accessed 14.11.2017 *ap.ohchr.org/documents/E/CHR/resolutions/E-CN_4-RES-2000-64.doc*

57 Puppis, M. "Media Governance as a Horizontal Extension of Media Regulation: The Importance of Self- and Co-Regulation." *Communication, Culture & Critique*, 3,(2010): 138.

58 Hamelink, C. J., & Nordenstreng, K. "Towards democratic media governance", in E. De Bens (Ed.), *Media between culture and commerce*, (2007), 232.

59 McQuail, D. *Introduction: The current state of media governance in Europe*. In G. Terzis (Ed.), (European media governance: National and regional dimensions, 2007), 17-18.

the state.[60, 61] Therefore, media governance is a multi-stakeholder concept that aims to confront any threats to media and related policy. The stakeholder approach considers different stakeholders' interests within corporate actions.[62] Companies tend to accommodate stakeholders that are vital to their success, such as shareholders, employees, suppliers, and customers, but neglect stakeholders with little or no power which nonetheless have justified claims and expectations.[63] Understanding how stakeholders interact within the media governance concept helps us to explore how media is regulated in the context of PI. However, we may argue that the very existence of regulatory reforms causes a problem between state and media, since the relationship between them is not defined and therefore results in a confusing space for regulations.[64] McQuail traces the conflict between state authority and media freedom from suppression and prohibition to permission and then prescription before a recent shift to more libertarian values.[65]

Media acts both as a channel and selective filter for information, thus influencing how we receive and perceive information. If we look through this analogy from a citizen perspective, with information being the crucial factor for citizens to be informed about their rights and well-being, we can easily conclude that media is the gatekeeper of PI. However, the sole existence of media is not a satisfactory condition, but must facilitate the objective transfer of information and be accessible to everyone.

Freedom of thought and expression as well as media pluralism are deeply bestowed in international treaties and national legislations (see chapter on PI in Law, above).[66, 67, 68, 69]

The Macedonian market is small, but extensively populated with traditional and online media outlets. According to the Media sustainability index study, "a large

60 Napoli,P.M. *Social media and the public interest: Governance of news platforms in the realm of individual and algorithmic gatekeepers.* (Telecommunications Policy, 2015): 3.

61 For a critical take on the media governance concept, see Karppinen & Moe, 2013.

62 Post, J. E., Preston, L. E. et al. *Redefining the corporation. Stakeholder management and organizational wealth.* (Stanford: Stanford University, 2002), 17.

63 Mitchell, R. K., Agle, B. R. et al. *Toward a theory of stakeholder identification and salience: Defining the principle of who and what really counts.* (Academy of Management Review, 22(4), 1997): 853-886.

64 For more, see Mike Feintuch and Mike Varney. *Media Regulation, Public Interest and the Law.* [Online]. 2nd ed. (Edinburgh: Edinburgh University Press, 2006), Available from: University Publishing Online

65 McQuail, D. *Introduction: The current state of media governance in Europe,* 17–25.

66 United Nations (1948) Universal Declaration of Human Rights, Accessed 10.11.2017, Accessed 11.11.2017: http://www.un.org/en/documents/udhr/index.shtml, Article.19
Art. 19 United Nations (1948) Universal Declaration of Human Rights, Accessed 10.11.2017, Available at: http://www.un.org/en/documents/udhr/index.shtml

67 Council of Europe (2012) European Convention on Human Rights, Strasbourg: European Court of Human Rights, Accessed 11.11.2017, www.echr.coe.int/Documents/Convention_ENG.pdf, Article 10 Paragraph 1.
Art. 10, Par. 1 Council of Europe (2012) European Convention on Human Rights, Strasbourg: European Court of Human Rights, Accessed 11.11.2017, *www.echr.coe.int/Documents/Convention_ENG.pdf*

68 European Commission (2012) Charter of fundamental rights of EU, Accessed 11.11.2017, http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:12012P/TXT&from=EN, Article 11 Paragraph 1)
Art. 11, Par. 1 European Commission (2012) Charter of fundamental rights of EU, Accessed 11.11.2017, http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:12012P/TXT&from=EN

69 Ibid, Paragraph 2.

majority of the media, including most of the largest privately owned national broadcasters and print media, are actually part of larger entities and cannot be considered the core business for their owners. The owners use them instead to promote their core activities, as a tool to use against competition, and as a bargaining chip in negotiations with authorities when core businesses are under pressure."[70]

MediaPedia, an independent research site mapping the ownership of media outlets in RM, shows that a large portion of media ownerships in the country is intransparent, thus hindering citizens' insight into knowing whether the owners of the media outlets they follow support or represent particular political views. A common characteristic of (all) media largely financed by public money is that 'they have very similar news content, quote or state the same sources, broadcast programs with almost identical content and have their news presented in identical or similar order, all to the benefit of the financier as opposed to the PI.'[71]

The legal and institutional framework surrounding the media sphere provides insight into the level of safeguarding the PI. Acting legislation[72,73] has seen its share of bumps along the road to adoption. Heavily criticized by both domestic and international experts, it was amended soon after adoption and remains a hot stone in public debates to this day.

Restriction of freedom of speech has been a long-term problem in RM,[74] evident in numerous court proceedings against journalists by influential public officials. A prominent case is that of Tomislav Kezharovski, a journalist in the daily newspaper "Nova Makedonija" sentenced to 4.5 years of imprisonment (the Court of Appeal reduced his sentence to 2 years) for revealing the identity of a "false" protected witness.[75] Kezharovski had written two articles about a murder investigation in the village of Oreshe in 2005, based on which he was accused of t revealing the name of the protected witness "Breza". Kezharovski countered this allegation by stating that he had not disclosed any information, but shed light on a false witness and suspicious police operations. Moreover, one of the prevailing theories was that Kezharovski was framed because his investigations had uncovered gaps in the investigation of the death of Nikola Mladenov who had

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70 Media Sustainability Index 2015, Accessed 10.11.2017, https://www.irex.org/sites/default/files/pdf/media-sustainability-index-europe-eur-asia-2015-full.pdf.pdf, 12.

71 Gocevski and Ilievska, *Deconstrucing the Concept of Public Interest in the Republic of Macedonia (Ab)Use in the Name of Citizens*, 28.

72 Law on Media (Official Gazette of RM No. 184/2013).

73 Law on Audio and Audiovisual Media Services (Official Gazette of RM No. 184/2013, 13/2014, 44/2014, 101/2014, 132/2014).

74 There are numerous flaws in the law. It was omitted to include bloggers and journalists that work in online media and thus they were not assigned the same rights as their colleagues in other media. Freedom of expression can be restricted when restrictions are in accordance with the Constitution, but the Constitution does not provide a clear definition of media limitation, which ultimately gives the executive branch free space to interpret. Also, the restriction to freedom of speech is justified when national security is concerned, though there is no clear definition as to what constitutes a threat, which also provides a lot of space for free interpretation.

75 Jailed for Protecting the Public Interest, MakDenes, available at: http://www.makdenes.org/content/article/25097656.html

been an editor in the magazine "Fokus". After having served 2 years in prison, Kezharovski was set free.

Macedonia's political crisis began with the release of audio materials by opposition leader Zoran Zaev which pointed to a deeply rooted wiretapping affair. SIn 2015, the country entered a political deadlock with no functioning government. The following long period of political tension and protests culminated on April 27th, 2017. While the Government parties attempted to elect a new speaker, supporters of the now opposition party VMRO-DPMNE stormed the Assembly and attacked members of the coalition between SDSM, DUI, BESA and the Alliance for Albanians, as well as the parliament security staff. After the crisis had been resolved, the EU Commission dispatched an expert group that evaluated several areas: the interception of communications, judiciary and prosecution services, external oversight by independent bodies, elections and the free media. The concluding report[76] notes a small improvement in the media landscape (as it had also been the case in a 2015[77] report).

CONCLUSIONS

The concept of PI is broad, fluid and ever changing. It has many similarities throughout literature and is often used as a synonym for national interest and local interest. Historically, it derives from the notions of general good, general will, public benefit and similar. It is through subtle interpretation that we conclude that PI, nowadays, is manifested through Law, thus created, defined and enforced by states and the mechanisms of governance. In a sense, PI is formulated as a 'set of rights to…' guaranteed to all, by Law. Often, individual rights guaranteed by those same regulations are limited in the name of PI, i.e. to provide the same or other rights to many. The understanding of the concept of PI has evolved over time, often engaging or excluding different actors or spheres of society. Today, it is perceived as a precondition for the formulation and functioning of nation states, in which PI is separated from the public sphere and private interest.

Though set by Law, public interest is seldom (if ever) defined by one single act of legislation. References to public interest are scattered in numerous legislative acts. The Government as the primary representative of the executive branch submits proposals for drafting laws and creates policies that affect the overall well-being of citizens. Administrative organizations serve to realize the objectives set in government policies, provide services and monitor events, thus in effect

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76 The Former Republic of Macedonia: Assessment and recommendations of the Senior Expert's Group on systemic Rule of Law issues 2017, Accessed 14.11.2017 https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/2017.09.14_seg_report_on_systemic_rol_issues_for_publication.pdf

77 The Former Republic of Macedonia: Assessment and recommendations of the Senior Expert's Group on systemic Rule of Law issues 2015, Accessed 14.11.2017 https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/news_corner/news/news-files/20150619_recom-mendations_of_the_senior_experts_group.pdf

articulating public interest. Civil society has proved an effective watchdog in RM, going through a turbulent period in the last five years. Hopefully, with the latest changes in the legislative and political scene, CSOs will have an active role and be included in policy creation as well as monitor their implementation, continuing to safeguard the public interest. Lastly, the media sphere needs significant reform, including experts and media representatives, improvements in the legal framework, adapting to the needs of media stakeholders, and encouraging investigative journalism.

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Short Biography

Bojan Bogevski holds a MA degree in Financial Law from the Iustinianus Primus Faculty of Law in Skopje. He is currently working in the banking sector of the country as advisor for corporate governance. He is alumni of the Konrad Adenauer Foundation and Institute Ludwig Von Mises' student (class of 2011).

Bojan Bogevski

POSITIVE VS. NEGATIVE ECONOMIC INEQUALITY: WHEN INEQUALITY IS A PROBLEM AND HOW TO ADDRESS THE ISSUE IN MACEDONIA

Macedonia is not immune to the world trends. The debate about economic (income) inequality increasingly becomes the centre of attention for political and intellectual circles, especially since the Social Democrats came to power in May 2017.[1] However, the debate does not seem to be properly framed when it comes

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[1] One of the first publications by the Ministry of Finance after the change of power is precisely about the income inequality in Macedonia: http://www.finance.gov.mk/files/neednakvost.pdf. This study is not the subject of a separate discussion, but deserves a short comment at least in a footnote. Namely, the initial feeling is that the document is more characteristic of a leftist NGO than a state ministry of finance (for comparison, see the analyzes and statistics published by the UK Treasury on Inequality:https://www.ons.gov.uk/peoplepopulationandcommunity/personalandhouseholdfinances/incomeandwealth/bulletins/householddisposableincomeandinequality/financialyearending2016). It includes, for instance, extreme examples that are not nearly representative for the entire occupation/sector, in which the manager gains amuch higher salary than other employees in the firm (for example, a news-publishing company with a manager who earns 21,000 euros monthly). Or movements of inequality for a period of 1-2 years are presentedwhich represents too short a period to be able to draw any indication, let alone a more serious conclusion. To put it in other words, in our view, the mentioned presentation resembles much more a political pamphlet to legitimize certain leftist redistributive policies rather then an objective comprehensive overview on inequality in the country.

to moral implications[2] on the one side, and economic policies to address this challenge, on the other, as is often the case at the beginning of public debate and analysis on important issues. The lack of conceptual and logical rigor, analysis and relevant data can lead to desperate calls for quick (and generally unfocused) policies that can then easily lead to negative implications for the economic development and the citizens' freedoms. There is a lack of differentiation between positive, natural and desirable inequality on the one side, and negative inequality on the other, which directly affects the question of whether and when inequality is a problem that requires political solutions.[3]

In this text, we will try to frame the debate in an appropriate context, hoping to help minimize the "ideological noise" and set the focus on the appropriate policies that will reduce inequality without negatively affecting economic growth, investment and economic freedoms of citizens.

VIVE LA DIFFERENCE!

"If men were like ants, there would be no interest in human freedom"

Rothbard, Murray: Freedom, Inequality,
Primitivism and the Division of Labor, 1970

Modern societies are built around the liberal idea of fundamental human rights and freedoms, according to which each person is unique, with a universal set of inborn rights and freedoms that the State should protect (and not encroach upon). The uniqueness of people - their different interests, tastes and abilities - inevitably leads to economic differences that in a free market society (!) reflect this diversity, productivity and contribution of everyone to the common good (i.e. the overall prosperity and economic development).

Inequality is not immoral and economically harmful in itself. The fact that free people are not equal (in economic terms) is natural and positive. Simply, the economy is not a so-called zero-sum game, and wealth is not limited: In a free market economy, the success of some citizens comes not at the expense of

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2   Bearing in mind that the topic of this text is primarily of an economic nature, we will not pay much attention to the moral issues. Only in this footnote we will note that there are serious moral issues about who and what should be "redistributed" at all, and this issue is far from closed. Redistributive policies are infringing the economic freedoms and the fundamental human rights (the right to property and the free use of the property), regardless if they are "legitimized" by the demands of the majority through democratic processes. Proponents of policies to reduce economic inequality simply assume that they have the right (through the State) to re-engineer the incomes of other people and the distribution resulting from people's free choices. For more on this topic with pro and contra attitudes, see the debate organized by the Cato Institute "When Does Inequality Matter".

3   Not every problem requires political solution. For example, we can organize a race of high school students with prizes, andthe same student wins 10 times in a row. The prizes were deservedly won. We may be disappointed and would be happier if more students got prizes, but we would not ask the director to take away some of the prizes and give them to other children. Not everything that is desirable is right. And vice versa.
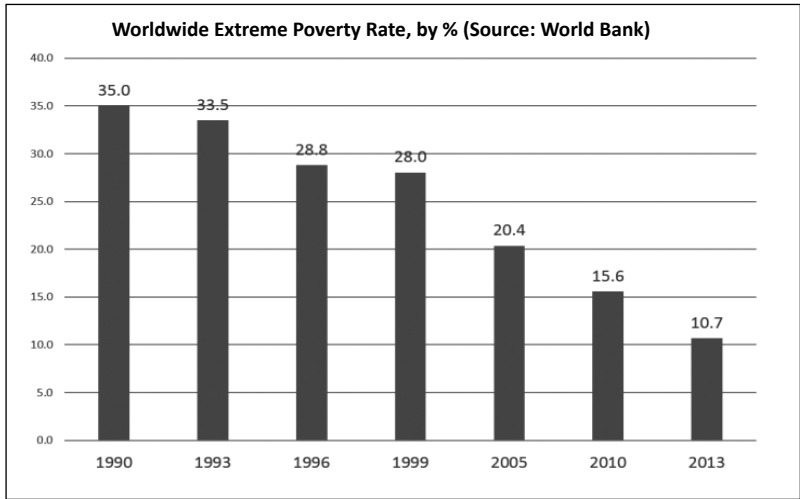
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others, and the "pie" (can and most often does) grows.[4] The success of many entrepreneurs, investors and innovators increases the opportunities and the wealth of other citizens![5] Successful people can get enormously rich (although the rich are not a homogeneous group over a constant time period), while, at the same time, the quality of life improves for the majority of citizens (often we are not even aware of the extent of improvement; - for example, the owner of a standard smartphone has pocket access to free applications worth over $ 900,000[6]).
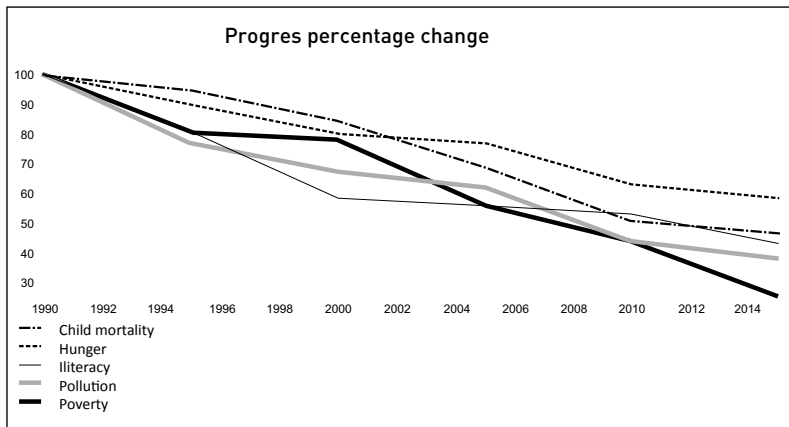
THE RICH ARE GETTING RICHER, AND THE POOR ARE GETTING POORER? NOT REALLY. THE WORLD IS MOVING FORWARD - AND WE ALL FEEL THE BENEFITS OF PROSPERITY.

Globally, according to World Bank data, the global poverty has declined to 10% for the first time in human history, a staggering drop since 1981, when the percentage of people living with $ 1.90 per day was over 40%. Expressed in terms of population, this is over one billion people in the last 20 years that have risen from extreme poverty. According to the majority of economists, this is mainly due to the economic growth driven by market economies and open global trade.[7]

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4 Keith Hennessey of the Hoover Institution extensivly explains this so-called fixed-pie fallacy: "The pie metaphor representing the economy is harmful and it guides the discussion to the wrong side, especially if economic development is a high priority (...) pie division is a game in which one must always lose for another to get, the wrong metaphor which assumes that if one persons' piece grows, another person's piece will be reduced. The inadequate metaphor and the poor logic that follows it leads to the conclusion that when the wealthy have much of the economy, it is "at the expense of others" that are lower on the income scale(...)A flower garden is a better metaphor for understanding economic development and income distribution. Flowers grow depending on their individual characteristics and the particular seed (...) the rapid growth of sunflowers at one end of the garden is generally not at the expense of the tulips that struggle to flourish at the other end. A sunflower can have advantages that the tulip does not have, even that cannot be considered "fair", but the fast-growing sunflower does not "steal growth" from the tulip. The flowers will flourish in different ways and at different speeds for thousands of different reasons. " Hennessey, Keith: Metaphors matter - the economy is a garden, not a pie, 2014

5 If you look at the World Bank data for the Gini coefficient (http://data.worldbank.org/indicator/SI.POV.GINI/countries), most developed countries show a similar picture: reducing poverty despite increasing inequality, that is, standards of living have improved for all groups of citizens. The most interesting example is China, which in 1990 had a Gini coefficient of 32.43, compared to 42.06today, although, at the same time, the share of the population living below $ 1.25 a day has decreased from 60.18% in 1990 to only 11.8% today.

6 See the excellent essay by Isaac Morehouse: *Why I Don't Care About Income Inequality.*

7 Trade as a share of global GDP has increased from about 30% in 1988 to around 50% today. In the same period, average income has grown by 24% globally, global poverty has dropped to 10%, and the income of the poorest 40% of the world's population has increased by almost 50%. See in Milanovic, Branko & Lakner, Christoph: Global Income Distribution - From the Fall of the Berlin Wall to the Great Recession, Dec. 2013, p. 10

Worldwide Extreme Poverty Rate, by % (Source: World Bank)

Year	Rate
1990	35.0
1993	33.5
1996	28.8
1999	28.0
2005	20.4
2010	15.6
2013	10.7

This happens simultaneously with the improvement of almost all life quality indicators, be it mortality of newborns, poverty, indicators of environmental pollution, etc.!

Progres percentage change

Legend:
- – · – Child mortality
- ---- Hunger
- —— Iliteracy
- —— Pollution
- —— Poverty

Source: Humanprogress.org, based on World Bank data

As a result, at a global level, average life expectancy has increased from 63 years in 1980 to 71 today (Macedonia: from 68 to 75 years).
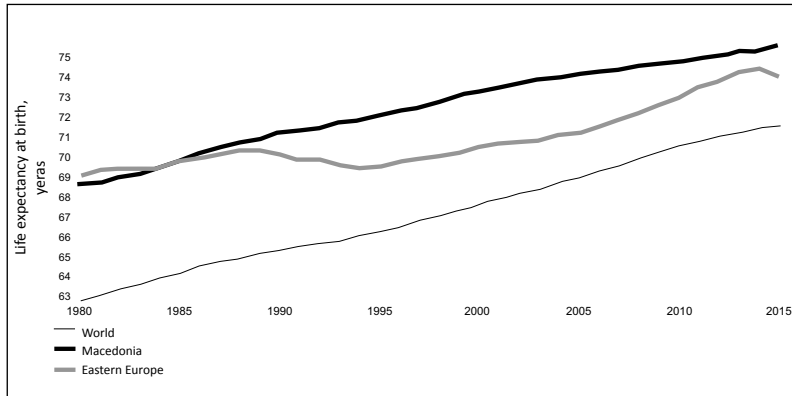
Source: Humanprogress.org, based on World Bank data

Even in Macedonia, households are much better equipped today. From the graph below we can see that today, households are supplied with about 20-30% better durable consumer goods than in 1995 (for each product) (!), have access to the Internet at relatively low prices, and use smart phones that are more powerful than the best computers in the 90's (in 2000, only 5.2% of households had a mobile phone, compared to over 82%today). Not only do we have a high coverage with commodities that improve housekeeping in almost every household, but they are also more easily available, considering the time needed for purchasing them.

Households with durable consumer goods

(structure)

	1995	2010
Fridge	93.8	98.9
Washing machine	65.6	89.4
Dishwasher	3.1	11.6
Hi-fi musical devices	11.0	27.2
TV, black and white	22.7	2.2
TV, color	76.0	97.2
Car	46.4	52.6

Working hours needed for buying one unit of product

	1992		2010	
Apple, kg		32 "		17 "
Oranges, kg	1 h	34 "		22 "
Fresh trout, kg	6 h	48 "	2 h	4 "
Bread, kg		44 "		20 "
Veal meat, kg	6 h	31 "	2 h	36 "
Refined oil, l	2 h			37 "
Coffee, kg	1 day	2 h	2 h	42 "
Sport shoes	8 days	5 h	3 days	5 h
Daily newspaper		24 "		7 "
Monthly bus ticket, city transport	3 days		1 day	6 h

Comparing with 1992, in 2010 the working hours needed to buy a product was significantly lowered.

Source: State Statistical Office "20 Years Independent Macedonia", 2015, p. 24.[8]

The intention of this section is to show that in a market economy (even a limited one), the success and enrichment of some citizens is not at the expense of others: Quite the contrary. We all enjoy the benefits of the (market!) success of some citizens. The big picture should be kept in mind. To focus on economic inequality *per se* creates a great risk of distracting the attention from the main goal, which is a general improvement of the standard of living and, in particular, the increase of opportunities for the poorer.

TWO TYPES OF INEQUALITY

According to the Gini index, the United States inequality level is similar to Ghana's.[9] At the same time, according to the UN Human Development Index - a relatively comprehensive indicator of the general well-being, Ghana ranks 136th out of 177 countries, while the United States rank 12th.[10] Obviously inequality, seen as an isolated indicator, does not tell us much. The poor and middle class may have a solid life and opportunities for social mobility in countries with high inequality (e.g. the United States), and, vice versa, they may have miserable lives and limited opportunities in high equality countries (e.g. Ethiopia). The mechanisms that have created inequality can be quite different. In fact, the main question we should focus on when discussing economic inequality is how wealth

8   The data from the SSO for 2016 (http://www.stat.gov.mk/Publikacii/SG2017/08-PrihodiPotrosCeni-IncomeExpPrices.pdf, page 317) show even more significant improvement of the general conditions.

9   The example is borrowed from Wilkinson, Will: *Thinking Clearly about Economic Inequality,* CATO Institute, June 2009, p. 10

10   Ibid, p.10 ("Since the United States and Ghana have the same level of measured income inequality, we can be sure that the huge systemic differences in the quality of institutions, which creates dramatic differences in wealth, health, education and generally prosperity between the two countries, can also produce the same mathematical ratio between the rich and the poor.").

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is created (the "sources of inequality").[11] In addition to the moral implications, the economic implications of this issue are also enormous.

In his work "The State" (1914), the political sociologist Franz Oppenheimer speaks of two diametrically opposed ways in which man creates wealth (in a broad sense): the economic/market and the political way.[12] The economic/market way is when entrepreneurs, innovators, investors and other citizens market their wealth by effectively satisfying the needs of other citizens on an open and free market. Their wealth has a positive impact on the overall economic growth and leads to an increase ofavailable wealth and opportunities for other citizens and businesses. Everyone profits from their success! The inequality created in this process is "natural" and *"creates incentives for people to progress, risk, save and invest in order to succeed in their lives. The curriculum of good education and salary differentiation can stimulate the accumulation of human capital and economic development, no matter that it leads to increased inequality. Especially for developing countries [like Macedonia], enabling certain individuals to accumulate capital allows businesses to form and take risks that the majority of citizens otherwise would not be able to take, at least in the first stages of development"[13]*. This inequality also has a positive effect on economic development by providing incentives for innovation and entrepreneurship.[14] On the other hand, there is the political way (known in terminology as cronyism), which essentially means that no new value is created, but resources (redistribution and rents) are transferred through lobbying for subsidies, special benefits, tenders, anti-competitive protection, etc., in short, using/misusing the state mechanism for private benefit. Not only that such inequality has moral implications, but it also negatively affects the economic growthand the degree of investment, it creates economic unpredictability, corruption and mistrust in the system, andit limits the possibilities for development and the choices of other citizens and firms.[15]

When the debate is framed in this way, it immediately becomes apparent that addressing inequality will require different policies than those generally promoted, which are usually aimed at punishing success and endorsing plain redistribution. Or, to put it differently, if one ignores this essential and conceptual difference in the way inequality is being created, policies might

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11 See Bagchi, Sutirtha and Svejnar, Jan: *Does Wealth Inequality Matter for Growth - The Effects of Billionaire Wealth, Income Distribution and Poverty*, November, 2013, p. 2 where it is claimed that, although there are exceptions to the rule, the professional literature in this field "insufficiently takes into account the sources of inequality (...)[and] ignores the differences in the ways of creating wealth [is it honest, through corruption, authoritarianism, political connections or market] and examines the effects of aggregate indicators of inequality on economic growth. "

12 Also see in Clemens, Jackson: *How Income and Wealth are "earned" Matters in Understanding Inequality,* Fraser Institute, Canada, July 2016where the two types of inequality are refered to as merit based inequality and crony based inequality.

13 IMF Discussion Note: *Causes and Consequences of Income Inequality, A Global Perspective,* June 2015.

14 Baro, Robert: *Inequality and Growth in a Panel of Countries,* Journal of Economic Growth 5, 2000, p. 5-32

15 S. Claessens and E. Perotti: *Finance and Inequality, Channels and Evidence,* Journal of Comparative Economics 35, 2007, p.748-73.

be promoted that can adversely affect economic development without even addressing the source problem at all![16]

HOW TO REDUCE (NEGATIVE) INEQUALITY IN MACEDONIA?

"Inequality simply did not fall from the sky. It was created ... by understanding the sources of inequality, we can better understand the costs and benefits of its mitigation. To a large extent, inequality today is the result of government policies ... ".

Joseph Stiglitz, The Price of Inequality, 2012

In a nutshell, we tried to clarify two things in the previous section: First, that there is a conceptual and essential difference (both moral and economic) in the ways one acquires wealth, market and honor, or political privileges and/ or corruption; and second, that the economy can, both quantitatively and qualitatively, develop in a way that provides prosperity and in a system in which the wealth of some citizens does not come at the expense of others. In this section, we will discuss several policies that could minimize bad/negative inequality with great impact, i.e. their impact would be brought about by systemic reforms with the potential to completely change the game in the long run.

THE RETURN OF THE RULE OF LAW IN ACCORDANCE WITH THE RECOMMENDATIONS OF THE PRIEBE REPORT

The political crisis in Macedonia has brought about serious problems in the country's political and legal system. There are grave and well-founded suspicions that serious crimes were committed by the previous government through the abuse of public authority, political processes and state institutions for personal gain, *rent-seeking* and monopolization of political power. As a result, through the mediation of the European Union and the participation of the main political actors in the country, a special Public Prosecutor's Office was established to

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16 For example, see Apergis, Nicholas and Dincer, Oguzhan: *Economic Freedom and Income Inequality Revisited - Evidence from a Panel Error Correction Model*, where they come to the conclusion that "high inequality can lead to the implementation of redistributive policies that would have a negative impact on economic freedoms. As economic freedom shrinks, inequality increases. In other words, it is possible for states to fall into a dangerous circle of high inequality and severe redistribution [and with reduced economic freedoms and opportunities: NS]. See also Easterly, William: *Inequality does cause underdevelopment*,"Journal of Development Economics (84: 2), 2007:"Confusion arises in the theoretical and empirical analyzes of inequality between what I would call structural versus market inequality. (...) Structural inequality reflects historical events such as the conquest, colonization, slavery and distribution of land or capital by the state or colonial powers, creating elites through non-market mechanisms. Market forces also lead to inequality, but only because the success of the free market is always different depending on the capabilities of the individual, the characteristics of the region, the firms and industries. Only structural inequality is undoubtedly negative for the economic development: market inequality has mixed effects - theoretically there may be negative effects, but if it is eliminated, it will obviously have adverse effects for development and incentives."

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investigate the suspicions about the existence of a "captured state". All of this was confirmed by a legal expert team sent by the EU, headed by Reinhard Priebe who identified "systemic failings in the rule of law" in Macedonia.[17]

The rich literature on this issue indicates a seriously negative impact of the "political wealth created" on inequality, economic development and the opportunities of others (on the side of immorality).[18] This negative impact comes through a number of channels, starting with the non-payment of taxes (as was also the case in Macedonia, with tacit consent from employees in the Public Revenue Office),[19] misuse of social assistance funds,[20] reducing the public funds, including those for education and health which the most vulnerable categories of citizens depend on, etc.[21] More importantly, inequality has the strongest negative impact on the economic development in countries with a weak rule of law and captured institutions (a category which Macedonia definitely belonge(d) to)[22].

This is the starting point which any (substantive) analysis and policy recommendations to address the challenge of inequality in Macedonia should start from. Priebe's report and the "bombs" of the then opposition are a severe indicator for inequality in Macedonia being largely due to the crony-elements incorporated in the country's economic and political model rather than on market mechanisms. Reducing corruption and political power to influence economic flows will significantly reduce inequality and poverty.

MINIMIZING CHANNELS FOR POLITICAL PRIVILEGES AND RENTS

Restoring the core elements of the rule of law will significantly disable corruption, system abuse and rent-seeking activities, but legal channels for political privileges, lobbying and subsidies will remain. Only half of the work will be completed. There is extensive literature and empirical research on the effect of cronyism on economic development and inequality. Barriers to entry to certain markets which provide excessive profit/return rates on capital for the players who are already inside will remain, limiting competition and choice for the citizens.

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17 The Priebe Report (2017) identifies systemic problems with the rule of law, the capture of the state by the party, legal uncertainty, etc. In the first report of 2015, the expert group noted that although it is not their focus, "corruption is the most serious problem facing the country." Systematic failings in the rule of law in Macedonia have led to impunity and enabling "direct involvement of senior government officials and party officials in illegal activities, including (...) corruption, conflict of interest, blackmail and extortion, grave breaches of public procurement procedures in order to gain illicit profit, nepotism, etc (...)"

18 Sutirtha and Jan: *Does Wealth Inequality Matter for Growth - The Effects of Billionaire Wealth, Income Distribution and Poverty*.

19 http://www.mrt.com.mk/node/42435 („37 firms have not payed the taxes " –were consciously removed from the system for forced collection of corporate income tax, and thus there were hidden millions of sums ...).

20 http://tocka.com.mk/vesti/247934/carovska-pocnata-e-istraga-za-finansiski-zloupotrebi-vo-centrite-za-socijalna-rabota
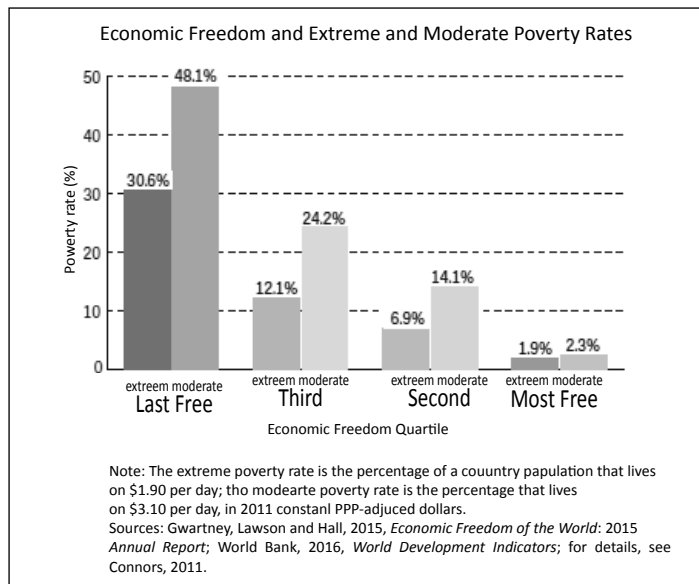
21 More on the channels of influence see in Gupta, S et al: *Does Corruption Affect Income Inequality and Poverty, Economics of Governance*, IMF, Vol. 3, 2002, pp.23-45.

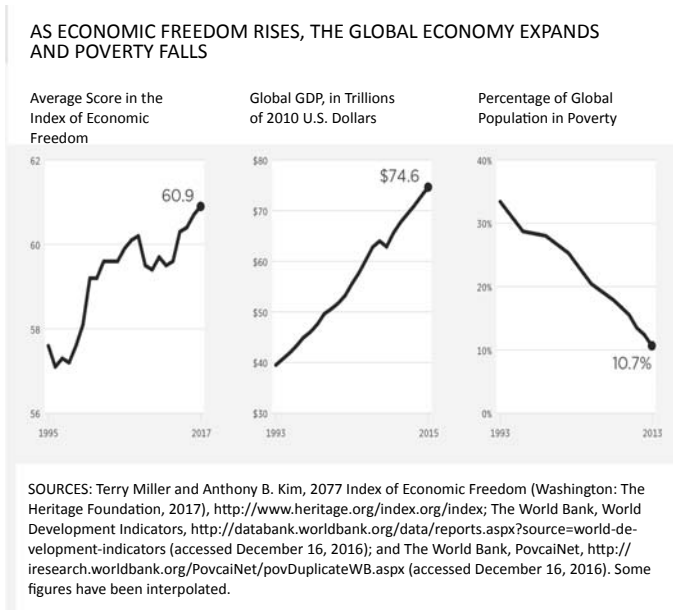**22** Begovic, Boris: Economic Inequality and Corruption, p. 8

Bearing in mind that there is a serious lack of this type of analysis in Macedonia, it would be most effective for a special government team to be tasked with analyzing the openness of the markets and how the wealth of the richest 1% is retained (not its acquisition). It is very likely for some of them to be well protected from competition and to enjoy exclusive benefits (corporate welfare) from the state. Those benefits need to be abolished in order to achieve spillover effects from these sectors to the employees and the consumers. This should be followed by parallel policies to increase the transparency of public procurement (and generally to limit the role of the State in the economy), coupled with a moratorium on employment in the state sector until the processes are completely reformed and the citizens' trust in the institutions is restored.

LIBERALIZATION OF TRADE AND MARKETS

First of all, it is important to point out that empirical data are unambiguous in that the countries with more liberal markets and free trade are not only more prosperous, but a better place of living for poor citizens, too. According to the annual report on the economic freedoms of the Fraser Institute, the poorest groups of citizens have higher incomes in the freest countries where also poverty rates are generally far lower.

Note: The extreme poverty rate is the percentage of a country papulation that lives on $1.90 per day; tho modearte poverty rate is the percentage that lives on $3.10 per day, in 2011 constanl PPP-adjuced dollars.
Sources: Gwartney, Lawson and Hall, 2015, *Economic Freedom of the World*: 2015 *Annual Report*; World Bank, 2016, *World Development Indicators*; for details, see Connors, 2011.

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Economic Freedom and the Income Share of the Poorest 10%

Sources: Gwartney, Lawson and Hall, 2015, *Economic Freedom of the World*: 2015
Annual Report; World Bank, 2016, *World Development Indicators*.

AS ECONOMIC FREEDOM RISES, THE GLOBAL ECONOMY EXPANDS AND POVERTY FALLS

SOURCES: Terry Miller and Anthony B. Kim, 2077 Index of Economic Freedom (Washington: The Heritage Foundation, 2017), http://www.heritage.org/index.org/index; The World Bank, World Development Indicators, http://databank.worldbank.org/data/reports.aspx?source=world-development-indicators (accessed December 16, 2016); and The World Bank, PovcaiNet, http://iresearch.worldbank.org/PovcaiNet/povDuplicateWB.aspx (accessed December 16, 2016). Some figures have been interpolated.

Promoting open and free markets is the most democratic and effective way to address the problem of concentration of power on politicians and businesses close to the mand, at the same time, to positively influence the reduction of economic inequality in the medium and long run.[23] For this purpose, it is

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23 J.R. Clark: *The Impact of Economic Growth, Tax Policy and Economic Freedom on Income Inequality,* The Journal of Private Enterprise, Fall 2008

necessary to re-start the regulatory guillotine in Macedonia and thus to facilitate the necessary conditions for opening new businesses, creating new jobs and achieving as low a regulatory burden as possible in order to focus efforts on meeting the customers` needs. This project should also extend to cover the policies that affect foreign trade (abolition/reduction of customs duties and other charges affecting trade). The example of Hong Kong where there are no barriers to trade (neither import nor export customs duties, except licenses for certain carefully selected products) should be studied in detail and appropriately applied to Macedonia.

ABOLITION OR SUSPENSION OF THE MINIMUM WAGE - AND FINDING APPROPRIATE ALTERNATIVES TO RAISE THE INCOME OF THE LOWEST-PAID WORKERS

While in economic circles there is an open debate about the effects of the minimum wage, there is a strong consensus that it has adverse effects precisely on the employment of the most vulnerable groups of citizens.[24] Having in mind the situation in Macedonia where employment and poverty are key challenges (and not inequality itself), it is obvious that the minimum wage can have serious adverse effects on the employment of those who are in the most risky groups. But let's move away from theory and refer specifically to the case of Macedonia.

Namely, in the latest report of the International Monetary Fund for Macroeconomic Developments in Macedonia, published in November 2017, it is stated that *"further increases in the minimum wage are a risk to competitiveness and can aggravate regional unemployment."* The report says that the minimum wage was nominally raised in the period from 2012 to 2016 by 32% compared to the productivity and inflation in the same period. At the rate of 45% of the average salary, the minimum wage is high. That in itself is certainly not a problem, but the IMF states that further increases *"can reduce employment among those with low skills, especially in sectors where a large percentage of employees take a minimum wage."* The bigger problem is that a higher minimum wage can jeopardize the competitiveness of the industries that are labor-intensive and export-oriented, which will ultimately endanger the jobs of the employees.

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24 See an excellent overview of the professional literature of the topic by Neumark, David & Wascher, William: *A Minimum Wages and Employment,* Review of Foundations and Trends in Microeconomics, vol. 3, no. 1 + 2, pp 1-182, 2007 ("A significant majority of the papers we analyzed have a relatively consistent conclusion that the minimum wage has adverse effects on employment. In addition, among those papers considered to be the most credible, almost all indicate negative effects on employment, both in the US and in other countries.(...) We have noticed very little - if at all - studies that give convincing evidence of the positive effects on employment from the minimum wage. (...) And secondly, studies focusing on the least skilled working groups have convincing evidence of strong negative effects on precisely these people.).

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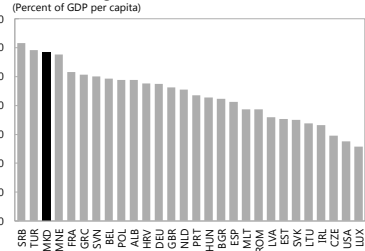## FYR Macedonia: An Assessment of Minimum Wage Level

Minimum wages have increased rapidly relative to productivity and inflation...

Compared to other emerging European countries, minimum wage relative to per capita income is one of the highest.
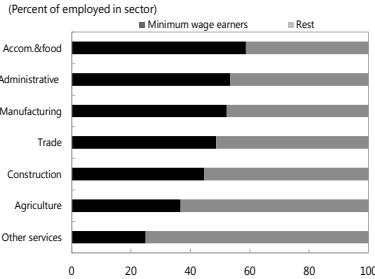

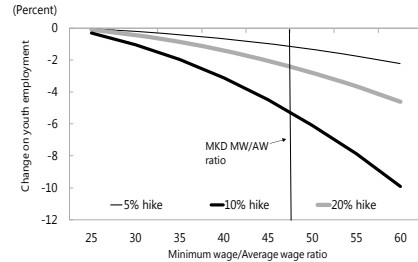**Minimum and Average Wages, 2012-2016**

Minimum Wages, latest
(Percent of GDP per capita)
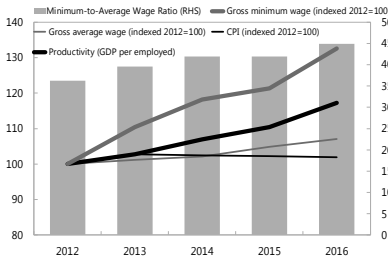
Further increases could negatively affect employment in sectors that rely on low-skilled workers...

...as well as youth workers.

Minium Wage Earners, 2013
(Percent of employed in sector)

Impact of Minimum Wage Hikes on Youth Employment, Quadratic Specification 1/
(Percent)

Sources: Eurostat; World Economic Outlook; FYR Macedonia State Statistical Office; and IMF staff calculations.
1/ The sample includes 17 central and eastern European countries during 2000-15.

Source: IMF report for the Republic of Macedonia, November 2017, p. 21

Populist solutions and quick policies without comprehensive analysis and wide expert and public debate will not only not rectify the situation, but may also have serious negative side effects, especially on the most vulnerable groups of workers in the country. It is necessary to find suitable alternatives that won t have negative effects on employment (or put serious pressure on the Budget if financed by means of subsidies). This is especially valid for Macedonia where, according to estimates by the IMF, as much as 70% of the poor are not affected by this policy because they are unemployed or working in the "gray" sector.[25]

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[25] „The ineffective targeting of poor families does not imply that the higher minimum wage generally does not help the poor. The argument is that for each dollar of income for poor families, there is a greater benefit for non-poor families. This makes the minimum wage for an ineffective redistribution policy. " Neumark, David: *Reducing Poverty through Minimum Wages*, Alternatives, Federal Reserve Bank of San Francisco, December 28, 2015

Tax exemptions on a certain limited amount that companies would use to raise salaries or increase the tax credit are possible alternatives.[26]

CONCLUSION

In this text, we argued that economic inequality is not a moral problem *per se*, but an inherent feature of a free society that reflects differences in interests and capabilities (like happiness) of people, and that the key problem lies in the way the inequality is created (economic or political). Without addressing and closing the "valve" of cronyism and special privileges, the inequality problem will remain stuck in a dead end. Populistic policies, such as minimum wages or similar redistributive policies, can only exacerbate the problem, especially if we take into account certain structural and systemic vectors of Macedonia`s economic and political model.

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26   Ibid. In the same text, Neumark analyzes the tax credit as an alternative policy for raising the standard of poor households and concludes that "a more effective poverty reduction policy is the minimum wage." In addition, he considers it a strongemployment incentive for women, especially single mothers. This is a very relevant conclusion for Macedonia as a country with one of the lowest rates of women's labor market activity.

[10] Neumark, David: *Reducing Poverty via Minimum Wages, Alternatives,* Federal Reserve Bank of San Francisco, December 28, 2015

[11] Milanovic, Branko&Lakner, Christoph: *Global Income Distribution - From the Fall of the Berlin Wall to the Great Recession,* Dec. 2013, p. 10

[12] Isaac Morehouse: *Why I Don't Care About Income Inequality*

[13] IMF Discussion Note: *Causes and Consequences of Income Inequality, A Global Perspective,* June 2015

[14] Wilkinson, Will: *Thinking Clearly about Economic Inequality,* CATO Institute, June 2009

[15] State Statistical Bureau „20 години независна Македонија", 2015

[16] Priebe'sRepport (Assessment and recommendations of the Senior Expert's Group on systemic Rule of Law issues, 2017and 2015)

[17] IMF: *Spotlight on the Macedonia: Five Ways to Reform*, November 2017

Short Biography

Flora Kadriu, PhD, is a Special Advisor on Domestic Policy Issues in the Cabinet of the President of the Republic of Macedonia, Dr. Gjorge Ivanov, with professorship at FON University – Skopje and the University of Business and Technology (UBT) in Prishtina and Ferizaj. Her engagement is in the field of political science and diplomacy. She graduated from the Faculty of Pedagogy "St. Kliment Ohridski", "Ss. Cyril and Methodius" University – Skopje. She obtained her MA degree at the Faculty of Public Administration and Political Science at the University of Southeast Europe, and her PhD title at the "Iustinianus Primus" Faculty of Law, "Ss. Cyril and Methodius" University – Skopje. Previous working experience includes participation in local and legislative government, acting as a member of the Council of the City of Skopje from 2005-2006, and as an MP in the Macedonian Assembly in the period 2006-2011. During her first term of office she was a Chairman of the Foreign Affairs Committee at the Assembly of the Republic of Macedonia, whereas, during her second term of office, she was a parliamentary group coordinator. Moreover, Flora Kadriu has a long-term experience in performing arts as an actress in the Albanian Theatre – Skopje.

Flora Kadriu

MULTICULTURAL DEMOCRACY OR DEMOCRACY IN MULTICULTURAL SOCIETIES

INTRODUCTION

The terms **multicultural society** and **multiculturalism** are usually used to describe societies in which there are different cultural perspectives and different cultures that want to survive.[1] Cultural inequalities within a society exist as a result of both voluntary and involuntary historical factors.

Cultural diversity or multiculturalism is a political and social response to the social situation in which there is no consensus on a single national culture that should integrate the plural and ethnocentric society.

It is only logical that most countries in the world are culturally heterogeneous. This diversity causes a series of important and potentially differential issues. The state of everyday political conflict or strategic confrontation between minorities

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1   Charles Taylor, "Мултикултурализам – Огледи за политиката на признавање", Evro-Balkna Press, 2004, p.57.

and the majority is inevitable. The most common topics of strategic conflicts (*strategic interactions*) are preservation of the identity of minority communities, respect for human rights, participation of minorities in the political power (*power sharing*), constitution and exercise of power, participation in political decision-making (at a representative or administrative level), the position of minority groups in the control and the division of social wealth as well as "national" income, the participation in the re-privatization of businesses (in the case of transitional economic reforms), the struggle for educational resources (use of language in public or official communication); immigration policy; national symbols (e.g., the choice of the national anthem), state holidays, etc. It is within the debates on these topics that many disadvantages - "open wounds" - are found in even the strongest democratic states. It is necessary to devise a way to a peaceful resolution of the prominent problems that at the same time represents a tempting goal for all modern countries, especially those with different modalities of cultural diversity. Therefore, multiculturalism is inevitable.

Arend Lijphart and Hannah Arendt attach special importance to the term "democracy". Namely, it enables the functioning and the development of the society as a plural, diversified and multicultural one.

Lijphart believes that the democracy of the new age is "the governance of the freely elected representatives of the people",[2] which implies the governance of the people, that is, "governance according to the preferences of all citizens",[3] while *real* democracy should simply mean[4] a "system of governance in which the people have the opportunity to elect their leaders." The true modus of modern-day democracy is the policy of diversity that seeks recognition of what is different for everyone and, at the same time, allows the recognition of distinctiveness.[5] For this purpose, "democracy should be open to peaceful change or dynamic stability."[6] Lijphart's concept of democracy will later be called consociational theory of democracy or consensus democracy.

WHEN IS A SOCIETY DEFINED AS MULTICULTURAL?

Political science distinguishes between two basic types of democracy: majoritarian and consensus democracy.[7] A similar distinction between "the player's institutional veto",[8] located in different institutions, and "the player's

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2 Arend Lijphart, "Demokracija u pluralnim drustvima", Globus, Zagreb, 1992, p. 9 – 13.

3 Arend Lijphart, "Democracies: Forms, Performance, and Constitutional engineering", European Journal of Political Research, Volume 25, January 1994.

4 Ibid

5 Чарлс Тејлор, "Мултикултурализам – Огледи за политиката на признавање", Евро – Балкан прес, 2004, p.37.

6 Arend Lijphart, "Democracies", Yale University Press, New Haven, 1984, p. 1.

7 John T Ishiyama, Marijke Breuning, (ed.) 21st Century Political Science: A Reference Handbook (Sage Publications, 2011). p. 271.

8 Arend Lijphart, "Democracies: Patterns of Majoritarian and Consensus Government in Twenty – one Country", New Haven, Conn.: Yale University Press, 1984.

acceptable veto",[9] as a party within a coalition of power, is proposed by George Tsebelis.[10] Nonetheless, there is, in political science, a surprisingly strong and constant tendency to equate democracy only with majoritarian democracy, while the consensual model of democracy is not recognized as an alternative and equally legitimate form.[11]

Arend Lijphart offers two sets of reformulated criteria, according to which, in his opinion, the ratings of the democracy "democracy" should be determined:[12]

■ Firstly, *political rights:* the rights to participate in free and competitive elections, as well as civil liberties like freedom of speech and freedom of association; and

■ Secondly, reasonable responsibility towards the wishes of the citizens.

In the early 1980s, Arend Lijphart found that, based on these criteria, there is a total of 51 democratic countries in the world, 30 of which are not completely democratic, and 21 of which are democratic in the full sense of the term.[13]

Lijphart distinguishes the model of democracy in the form of a consociation, as an alternative to the majoritarian model of democracy, but non-alternative to itself, that is, optimal and necessary for plural societies.[14] Namely, he considers the consociational democracy not only as an optimal form for deeply divided societies, but also as a possible solution for them.[15]

Consociation, advocated and argued for by Arend Lijphart, has sparked harsh reactions and debates among the scientific and political community. It was Johannes Althusius who first used the term "consociation".[16] Lijphart replaced the term "consociation" by "politics of accommodation",[17] and later with "consensus democracy". However, regardless of how this model of democracy is named, it encompasses two policies:[18] *a policy of inclusion of all possible segmented layers* (which are typical for plural societies), and *the political cooperation of the segmented elite*.[19]

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9   Arend Lijphart, "The Politics of Accommodation: Pluralism and Democracy in the Netherlands", Berkeley: University of California Press, 1975, p..122- 139.

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16   Johannes Althusius, "Politica Methodice Digesta", Cambridge Harvard University Press, 1932.

17   Arend Lijphart,"The Politics of Accommodation: Pluralism and Democracy in the Netherlands, Berkeley: University of California Press, 1975, p. 139- 181.

18   Arend Lijphart, "Patterns of Democracy", Yale University Press, New Haven and London, 1999, and Arend Lijphart," Demokracija u pluralnim drustvima", Globus, Zagreb, 1992, p. .9 - 11.

19   Ibid

The three specific features of the consociation, that is, of the model of the policy of accommodation according to Lijphart, are:[20] 1. The eminent role of leaders in the recognition of problems, and the imposition of solutions despite ideological disagreements – a process in which ordinary citizens are ignored (which is debatable because it puts the definition of democracy as "government of the people for the people" in question); 2. The participation of the leaders of all blocs in the "peace treaty" (Pacificatie); and 3. The significance of the principle of proportionality in the treaty (mainly base on election results).

Nevertheless, Lijphart believes that the consociational theory offers constructive solutions to many problems that could not be solved with the well-known constitutional models.[21] He believes that consociational theory has significant practical benefits[22] because it offers specific guidelines and recommendations for a designed power sharing, autonomy and other consociational institutions. At the same time, he emphasizes that consensus cannot be established in democracies unless there is a political culture of consensus. The model of consensus democracy has, in his opinion, ten elements, which are in contrast to those that characterize the majoritarian model of democracy. These elements are:[23] division of the executive power in broad coalition cabinets (e.g., the Swiss People's Party with about one-eighth of parliamentary seats participates in the division of seven executive positions in a proportional manner according to the so-called magical formula 2:2:2:1, established in 1959);[24] executive-legislative balance of power; a multiparty system; proportional representation; interestgroup corporatism; a federal and decentralized government (divided between the federal central government and federal units on lower levels); strong bicameralism; constitutional rigidity (the constitution calls for a special majority for decision-making, that is, certain special rules); judicial review; and independence of the central bank.

Lijphart derives two different dimensions from the majority principle and the principle of consensus: the first dimension, called *the dimension of the executive power (party),* which includes five characteristics of how the executive power, the party system, the electoral system, and the system of interest groups are organized; and the second dimension, called *the federal-unitary dimension*,

20 Arend Lijphart, "Patterns of Democracy", Yale University Press, New Haven and London, 1999, and Arend Lijphart," Demokracija u pluralnim drustvima", Globus, Zagreb, 1992, p. 9 - 11.

21 Arend Lijphart,"The Politics of Accommodation: Pluralism and Democracy in the Netherlands", Berkeley: University of California Press, 1975, p. 95 – 96 and 103- 122.

22 Arend Lijphart, "Power-sharing and group autonomy in the 1990s and the 21st century", University of California, San Diego, December 9–11, 1999

23 Arend Lijphart, "Patterns of Democracy", Yale University Press, New Haven and London, 1999.

24 Arend Lijphart, Democracies: Patterns of Majoritarian and Consensus Government in Twenty – one Countries", New Haven, Conn. : Yale University Press, 1984.

which is usually associated with the contrast between the federal and the unitary power.[25]

However, apart from majoritarian and consensus democracy, Lijphart distinguishes a third mixed system, or *intermediate forms and practices*, that is, a *mixed majoritarian - consensus* type of democracy.[26] Its features are concentration of executive power, separation of power, balanced bicameralism, two-party system, heterogeneous political parties with similar programs, –a plurality electoral system, – federalism, –a written constitution, and a minority veto.[27] Some of these features, namely the concentration of executive power, the plurality electoral system, the written constitution and the minority veto (applied in the local self-government and in all legislature that refers to cultural diversity of the groups) are also found in the the Republic of Macedonia's political system and therefore most likely characterize it as a mixed - majoritarian consensus type of democracy.

Hannah Arendt's theses go along the same lines. When referring to democracy, she points out that cultural pluralism should be a "precondition" for all political life in democracies, and that "freedom" should be their internal reason for existence.[28] Practising politics means constantly processing pluralism into freedom. This process is further complicated in culturally divided societies, where political discourses are broken down by "filters" of identity as well as cultural differences and meanings. Transforming this disturbing, antagonistic pluralism of differences into a sustainable democratic life and creating co-operativity for individuals and groups is key to building democracy.[29] Arendt believes that democracy can exercise the power of the active and interested, or the authority of anyone who is affected by the power – the incompetent and apathetic no less than the educated and civic-oriented. Democracy can try to take into account the intensity of inclinations through institutions that multiply the political effect of emotional convictions and sincere interests (primary choices, for example), or it can completely resist intensity (for example: seeking an absolute majority of the entire voting public).[30]

Nevertheless, the interest of the majority can be made up of the interest of a large fraction, and not the interest of the whole group, since popular power usually means governance of a simple majority. Namely, the interest of the whole group can be separated from the general will or the public good – an idea which in itself is a myth, especially in a representative democracy where group

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25 Arend Lijphart, "Dimensions of Democracies", European Journal of Political Research 31, nos.1 – 2 (February), 1997, p. 196 – 201.; Arend Lijphart ,"Democracies: Patterns of Majoritian and Consensus Government in Twenty – One Countries", New Haven and London: Yale University Press, 1984, p. 221 – 222, and Arend Lijphart, "Demokracija u pluralnim drustvima", Globus, Zagreb, 1992, p. 76.

26 Arend Lijphart, "Patterns of Democracy", Yale University Press, New Haven and London, 1999.

27 Ibid

28 David Miller, "Блеквелова енциклопедија на политичката мисла", MI-AN, Skopje, 2002..

29 Ljubomir D. Frckoski, "Преговарање во конфликти на идентитети", Templum, Skopje, 2010, p.48.

30 David Miller, "Блеквелова енциклопедија на политичката мисла", MI-AN, Skopje, 2002, p.96.

politics create *a pluralistic "polyarchical" society*.[31] Democracy in a pluralistic "polyarchical" society is not a system of governance that fully encompasses all democratic ideals, but a *system that approximates those ideals to a reasonable degree*.[32]

Nonetheless, the merit for the creation of a new dimension in the classical view of pluralism in democratic societies lies in the birth of the "new" role of culture: creation, protection and promotion of diversity, simultaneously managing that diversity at the social level,[33] and this "cultural pluralism" leads towards plural, segmented societies or –*mosaic states*[34] (*Strayer*), *disjunctive societies*[35] (*R. D. Grillo*) or *unknown societies*[36] (*Herman Van Gunsteren*), etc. Culturally divided societies form a particularly complicated pluralism and a specific political milieu.[37]

Cultural diversity, or *multiculturalism,* is a political and social response to the social situation in which there is no consensus on a single national culture that should integrate the plural and ethnocentric society.

Although multiculturalism is widely considered to be based on equality, tolerance, and the recognition of diversities, different authors have different notions of what it is supposed to strive for. Sheila Banhabib[38] believes that its aim should be cultural dialogue, Yael Tamir[39] considers the idea of "the right to culture", whereas other authors believe the purpose of multiculturalism is the avoidance of rigidity,[40] the need for individuals to recognize authentic identities,[41] a prerequisite for individual autonomy,[42] or the idea of tolerance as such.[43] Bikhu Parekh, however, claims that multiculturalism is not a political doctrine with a program or a philosophical theory of the human and the world, but rather a *perspective* on humane (human) life.[44] "Multiculturalism refers to the proper relation/relationships - the proper conditions for the relationships between different cultural communities."[45]

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31 Ibid.

32 Robert A. Dahl, "Poliarchy: Paricipation and Opposition", New Haven, Yale University Press, 1971, p. 3. и Arend Lijphart, "Democracy in Plural Societies. A Comparative Exploration", New Haven, Yale University Press, 1980, p. 4.

33 Ljubomir D. Frckoski, "Преговарање во конфликти на идентитети", Templum, Skopje, 2010, p.47.

34 Robert W. Strayer, "Ways of the World : A Brief Global History with Sources", Bedford / St. Martin's, Boston, 2011.

35 Ralf D. Grillo, " Pluralism and the politics of difference (state, culture, and ethnicity in comparative perspective)", Clarendon Press, 1998.

36 Herman R. Van Gunsteren,"A Theory of Citizenship : Organizing Plurality in Contemporary Democracies", Westwiew Press, 1998.

37 Ibid.

38 Seyla Banhabib, "The Claims of Culture: Equality and Diversity in the Global Era", Princeton University Press, Princeton, 2002, p. 8.

39 Yael Tamir, "Liberal Nationalism", Princeton University Press, Princeton, 1993, p. 17.

40 Jacob Levy, "The Multiculturalism of Fear", Oxford University Press, Oxford, 2000, pp. 40 – 67.

41 Charles Taylor, "The Politics of Recognition", in: Amy Gutmann, (ed.), "Multiculturalism", Princeton University Press, Princeton, 1994, op. cit., cpp25 – 73.

42 Will Kymlicka, "Multikulturno gragjanstvo", Naklada Jesenski I Turk, Zagreb, 2003, pp. 89 – 98.

43 Chandran Kukathas, "The Liberal Archipelago: A Theory of Diversity and Freedom", Oxford University Press, Oxford, 2003, p. 23.

44 Bhiku Parekh, "Rethinking Multiculturalism, Cultural Diversity and Political Theory", New York: Palgrave, 2000, p. 336.

45 Ibid

Hence, multiculturalism is most often identified with cultural differences and represents a model in which culture and cultural identity become instruments for achieving political legitimacy and influence, so that one can speak of a MULTICULTURAL SOCIETY only when there is *cultural plurality* in *one* society and in *one* state. A multicultural society is a society characterized by cultural diversity or "cultural pluralism", with an atmosphere of mutual respect and tolerance which implies acceptance of legitimate forms of diversity and thus fosters persistence of different groups distinguished by their own cultural features.[46] In fact, cultural diversity, as long-term coexistence and the common building of society, is realized through democratization of the entire society. Perhaps, this advances the view that multiculturalism, in a certain way, is helping liberal democracies to further democratize themselves.

Frchkoski develops the thesis behind the concept of *"democratization of democracy"*, emphasizing that the tendency of *re-democratization* of democratic societies is possible through the inclusion of cultural diversity, adding the conclusion that citizenship (the national identity expressed through it) not only stands for all citizens being equals before the law, but also accepts and treats them as equally valuable and legitimate members of the community. Setting up clear cultural differences in a multicultural space is a stabilizing, not a destabilizing point. Where cultural borders between groups are clear and not being challenged, the competition between those groups focuses on the resources and the status, rather than going deeper into the non-recognition of identity and/or attempts to destroy it"[47]. Frchkoski defines multicultural societies as "societies in which cultural pluralism becomes dominant and multi-layered – on the local level in the form of micro-communities, as a way of life, and on the professional and global level, it mediates the political scene."[48]

So, in order to ensure justice for national minorities, a transition from nation-state to multinational state, and from exceptional competences to overlapping competencies should be carried outI. It is also necessary to pursue the establishment of institutions of ethno-cultural justice within the borders of the state. "No multicultural society can be stable and vibrant if it does not ensure that its constituents receive fair recognition and a fair share of the economic and political power. A multicultural society that is constituted on the basis of dialogue retains the truth of liberalism and goes beyond it. It is dedicated both to liberalism and to multiculturalism, it does not privilege any of them and directs the logic of the former through the logic of the latter."[49] By accepting some form of multiculturalism, states enable t minorities to enjoy free development and promotion of their cultures in the society, and by grounding equality and

46 Will Kymlicka, "Multicultural Citizenship", Clarendon Press, Oxford, 1995.

47 Ljubomir D. Frckoski, "Преговарање во конфликти на идентитети", Templum, Skopje, 2010, p. 85.

48 Ibid

49 Bhiku Parekh, "Rethinking Multiculturalism, Cultural Diversity and Political Theory", New York: Palgrave, 2000, p.341.

tolerance, they ensure equal treatment for all citizens. It is obvious that the state should treat all its communities equally, which does not mean identical treatment. Some communities might trust the state and authorize it to play an active reform role in their internal affairs, while others might have a contrary opinion, thus making the state remain neutral in one, but not in the other case.[50]

The complexity of politics in conditions of pluralism in multicultural societies is reflected in the particularly different relations of the various segments towards the wider society and its macro-institutions and towards the values which they are based on, thus problematizing the wider consensus.[51] Deep diversities are not "rational" and give rise to the theory of justice in crisis (John Rawls).[52] What is needed in such societies is a democratic regime that arises from consensus rather than opposition, which includes and does not exclude, and which aspires to maximize the size of the governing majority, rather than being satisfied with a narrow one, which implies a consensus democracy.[53]

Through their own affirmation and appearance on the agenda of the civic consensus, individuals bring irreversible changes to it and demand a "new theory" of liberal justice. That justice should be the basis for a more inclusive society that would be composed of multiple communities and rest on the values of individual rights and legal procedures guaranteeing rights for minorities (cultural groups). Will Kymlicka called this a model of "liberal pluralism"[54] or the search for a new foundation for social fairness and justice, a concept of multicultural citizenship.[55] Namely, according to Kymlicka, cultural diversity arises from the incorporation of previously self-governed, territorially concentrated cultures into a broader authority (State). These incorporated cultures, which are called national minorities, typically want to maintain themselves as separate societies in addition to the majority culture, and therefore require various forms of autonomy or self-government to ensure their persistence.[56] In a multinational state, the relations between the majority and minority nations should be determined by a certain agreement, which would imply a basis for sharing both groups most basic principles.[57] If such an agreement cannot be reached, the groups will have to rely on some other basis for adjustment, such as, for example, *the modus vivendi.*

The search for a *"new consensus"* presupposes a process of mutual adaptation,- tolerance and democratic coexistence between different communities (communitarian accommodations – adaptation, adjustment). It requires common

50 Ibid

51 Jakob T. Levy, "Classifying Cultural Rights, in: W. Kymlicka, I. Shapiro" (eds), New York, N. Y. University Press, 1997.

52 John Rawls, " A Theory of Justice", Massachusetts: The Belknap Press of Harvard University Press Cambridge, 1971.

53 Jakob T. Levy, "Classifying Cultural Rights, in: W. Kumlicka, I. Shapiro" (eds), New York, N. Y. University Press, 1997.

54 Will Kymlicka, "Multicultural Citizenship", Clarendon Press, Oxford, 1995.

55 Iris M. Young, "Polity and Group Diference: A Critique of the Idea of Universal Citizenship", Ethics 99/2, 1989.

56 Will Kymlicka, "Multicultural Citizenship", Clarendon Press, Oxford, 1995.

57 Ibid

institutions in which citizens would follow their own ways of life, tolerate differences, sympathize with the suffering of others (Richard Rorty)[58] and co-exist in peace. John Gray denotes this consensus with the term *modus vivendi.*[59] The pattern of adjustment, the "modus vivendi", exists between the minimum threshold of the shared and accepted liberal principles of justice such as fairness, on the one hand, and the maximalist aspirations of the communitarian stance for the incomparable and immeasurable differences and meanings of the individual cultures in a segmented society, on the other. The "modus vivendi" implies giving up the struggle for resolution between different ethical standpoints, but also implies seeking compromise between the theoretically incomparable standpoints of the different cultures. This entails that the relations between the national groups be determined through dialogue, that is, through the explanation of the implications of the liberal principles of freedom and equality.

Kymlicka speaks of multiculturalism using the terminology of group rights, referring to the legal rights that a state gives to members of the community that belong to an ethnicity different from the one of the majority; however, he clearly stresses the importance of the individual and its freedom, noting that group rights do not refer to some collective, but rather that the beneficiary of the rights is the individual. He defines liberal multiculturalism as "a standpoint according to which the states should not only support the civil, political and social rights of the citizens, which are protected in all constitutional liberal democracies, but also accept the collective cultural rights (CCR) or policies intended to recognize and accommodate the different identities and aspirations of the ethno-cultural groups."[60]

In line with the current understanding of liberalism, group rights are perceived as negation of the individual's equality in relation to the state. However, egalitarian liberalism must enable equal political and civil rights, but also equal chances for all citizens who are nationals of a country. Should certain special, group-differentiating rights need to be enabled for all groups (like equal starting positions) through a consensus among the relevant political actors on the justification of such requests, the egalitarian liberals will accept this in accordance with the rule of temporary rights.[61] The use of group rights corrects the inequalities for the smaller groups in the society and gives minorities equal opportunities to work and live in their own cultures. Group or "collective" rights are a compensation for the unequal circumstances for members of the various groups. This is the only area in which true equality does not imply equal, but rather different treatment, so that different groups can adapt to different

58   Richard Rorty, " Contingency, Irony, and Solidarity", Cambridge University Press, 1989.

59   John Gray, "Two Faces of Liberalism", Cambridge Polity Press, 2000.

60   Will Kymlicka, "Multicultural Odysseys: Navigating the New International Politics of Diversity", Oxford, Oxford University Press, 2007, p. 61.

61   Brian Barry, "Kultura i jednakost: egalitarna kritika multikulturalizma", Naklada Jesenski I Turk, Zagreb, 2006; и Milan Mesić, "Multikulturali-zam: drustveni i teorijski izazovi", Skolska knjiga, Zagreb, 2006.

needs. This kind of correction of inequality that does not refer to elections or to individual citizens or minorities ambitions represents the basis of the liberal defence of the rights of those born in one society and of the general minority rights.[62] Most of the group or collective rights are not tied to the primacy of community over individual; rather, they are based on the idea of a fair distribution of rights among the members of various groups. "*As certain individual rights stem from the interests of each individual linked to individual freedom, so certain group rights (community rights) derive from the interests for self-preservation of each group (community)."*[63] This thesis refers to a possible collision of the group rights with the fundamental liberal values of individual autonomy; hence the divide on the question to which degree the group rights can be accepted in liberal democracy.

Yet, multicultural plurality is characterized with profound moral and cultural differences (point of departure). According to the perceptions of the proceduralists, the deep diversities found in multicultural societies cannot be resolved rationally.[64] In order to support the overall situation, liberalism should strive to identify the needs and aspirations of ethnic and national minorities.[65] The liberal defence of minority rights does not give mandate for major changes. It only ratifies and explains the changes that have already taken place in the absence of theory.[66]

CONCLUSION

The research for the purpose of this paper was focused on the discussion about the policy of accommodation (acclimatization, adjustment, adaptation) of cultural groups in the context of the democratic political order. Namely, in contemporary societies, cultural group identity is imposed over other group identities and intersects the lines of loyalty and mobilization between citizens and the state. The cultural group emerges as a resonator of political articulation and mobilization and, thus, as a new political actor, a new political factor in a type of democracy that some authors choose to call consociational democracy or, in more general terms, democracy in multicultural societies. The conclusion leads us to the thesis that the emergence and mutual cohabitation between the collective cultural identity and its political articulation, and the classical individual rights and their political accommodation, creates a new political situation that requires interventions in the liberal justice system and the majoritarian democracy - an issue well known and analyzed. In fact, it requires the creation of (according to some authors) a new liberal justice system and a

62 Will Kymlicka, "Liberalizam, zajednica i kultura", Deltakont, Zagreb, 2004.

63 Will Kymlicka, "Multicultural Citizenship", Clarendon Press, Oxford, 1995, p. 70.

64 Bhiku Parekh, "Rethinking Multiculturalism, Cultural Diversity and Political Theory", New York: Palgrave, 2000, p. 199.

65 Will Kymlicka, "Мултикултурно граѓанство", IDSCS, skopje, 2004, pp.282 – 289.

66 Siegler, Jay, "Minority Rights: A Comparativ Analysis", Greendwood, Westport, Conn, 1988.

consociational system of democracy that stems from it. In this system, a new and effective balance will be found between individual rights (individual citizenship and the political institutions that result from it) and collective cultural rights (a differentiated citizenship and participatory political institutions that result from it). Accomplishing this project is not at all simple and easy, yet, multicultural societies do not have many options to choose from, and so finding this new balance becomes an "urgent" topic of the day.

In multicultural societies, the issue of accepting diversity remains a powerful source of conflict, so it is necessary to find a solution that will replace the model of domination with a model of partnership: with the consensual model of democracy, or consociation.

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Short Biography

Dejan Dimitrievski (1987) was a scholar of the Konrad Adenauer Foundation in Skopje from October 2008 to March 2012. He obtained his BA degree in Political Science from the Faculty of Law, Ss. Cyril and Methodius University in Skopje in 2009, and his MA degree in Political Management in 2012. His MA thesis examines the fields of elections, electoral systems and political campaigns. Started working at the Parliamentary Institute of the Assembly of the Republic of Macedonia in 2013.

Dejan Dimitrievski

IN SEARCH OF THE RIGHT ELECTORAL SYSTEM – ONE VERSUS SEVERAL ELECTORAL DISTRICTS

Although a quite young electoral democracy, the Republic of Macedonia has gained rich experience by applying various types of electoral systems, beginning with the multi-party electoral system in two rounds used in 1990 and 1994 which was replaced by combining the majority and proportional into a combined electoral system in 1998, before the country ended up introducing a proportional electoral system with party lists from 2002 onwards. According to the electoral legislation,[1] 120 MPs are elected at the parliamentary elections in the Republic of Macedonia, using the D'Hondt election formula for calculating the results, whereby the state is divided into six electoral districts, each of which elects 20 MPs.[2]

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[1] Electoral Code ("Official Gazette of the Republic of Macednia ", No. 40/06, 136/08, 148/08, 155/08, 163/08, 44/11, 51/11, 54/11, 142/12, 31/13, 34/13, 14/14, 30/14, 196/15, 35/16, 97/16, 99/16, 136/16, 142/16, 57/17 and 67/17)

[2] In 2011, the so-called "Diaspora voting" was introduced, with the addition of three electoral districts outside the territory of the Republic of Macedonia, in which one MP from each was elected, applying the electoral system with a plurality majority. In 2016, the three electoral districts outside the territory of the Republic of Macedonia were united in one electoral district, and from that constituency, up to three MPs were elected with the help of the proportional system, with the election of these MPs conditioned by winning the required number of voices.

One of the most frequently asked questions, especially in the period before and after every parliamentary election, is the issue of the electoral system in the Republic of Macedonia. The dilemmas that arise refer mainly to the type of voters lists (open versus the previously applied closed ones) and the number of electoral districts (one versus the previously applied six). Those who advocate changes to the system often refer to the favourable position of large parties and coalitions vis-à-vis the smaller ones, the lack of internal party democracy, the reduction of the personal responsibility of MPs, minimizing the possibility for small parties to enter parliament, and the loss of a significant number of votes won by parties that fail to enter parliament.

Regarding the number of electoral districts, as noted in one of the analyzes, the problem is "the barrier and the dominance of large political parties and the threshold of over 7,000 votes per electorate per election district."[3] Hence, the question arises, would the composition of the Parliament of the Republic of Macedonia change; that is, whether and how would the mandates won by the parties be different if the state represents one electoral district instead of the existing six? In this regard, this research presents a **simulation** of the mandates won in the parliamentary elections from 2002 onwards, using the D'Hondt election formula for calculating the results, assuming that the territory of the Republic of Macedonia were one electoral district instead of six.

DISTRIBUTION OF THE MANDATES IN PROPORTION TO THE ELECTORAL RESULTS

With regards to the main characteristic of the proportional electoral systems, Siljanovska-Davkova states: "According to the model of proportional representation, the representative seats are distributed in accordance with the votes won, that is, each party is represented in parliament in proportion to the votes received from the electorate."[4] In other words, each party receives a percentage of representative mandates that is proportional to the percentage of votes that the party won during the elections.

The basic idea behind the application of the proportional electoral systems is that, first and foremost, the distribution of mandates should be in proportion to the election results. The most significant feature of the proportional electoral systems with party lists is the incitement to form multi-party systems, which very often leads to the formation of coalitions and coalition governments. On the one hand, this is considered an advantage because multiparty systems and the formation of broad coalition governments lead to representation of the interests

3   SUMNAL – Association for Development of the Roma Community, "Analysis of the programs of the political parties and the representation of Roma and the Roma issues in the Republic of Macedonia", Skopje, 2016, p. 5

4   Siljanovska-Davkova, Gordana, *„На патот на распределбата на изборните мандати - изборни модели"*, in *Constitutionalism, universalism and democracy*, Rotterdam, 1999, p. 3

of many different society groups within the parliament and in the government. On the other hand, this can be considered a disadvantage of the electoral system, given that a large number of parties and broad government coalitions often lead to destabilization of the political scene, as well as the formation of unstable governments which then face difficulties to effectively make important decisions.[5] The size of the electoral district (one of the main differences according to which different proportional systems are differentiated) refers to the number of parliamentary mandates assigned to one electoral district. With respect to the importance of the electoral district, Karakamisheva emphasizes: "When considering the issue of the electoral district, the question about its size is inevitable."[6] So, when the territory of a country is divided into several smaller electoral districts, "these units provide the closest contact between voters and candidates. This relationship does not end, but on the contrary, it continues and deepens, and after the completion of the election process, stronger ties are established between the candidates and the local communities."[7] On the other hand, when the number of electoral districts is higher, i.e. the electoral districts are smaller in size, the threshold for the entry of parties into parliament is higher too, which means that it is rather difficult for smaller parties to even enter parliament. Additionally, "if the state is divided into small electoral districts, the number of votes that are lost in vain in the process of counting increases."[8]

In contrast, in cases when we have a smaller number of larger electoral districts, or when the entire territory of one country is one electoral district, greater representation of different ideas and views in the society is encouraged. Karakamisheva writes, "In multi-mandate units, the moment of greater representation of a minority or ethnic groups is much more pronounced. The same applies to the representation of women."[9] The proportionality of the distribution of parliamentary mandates is considered one of the biggest benefits of the use of large electoral districts, especially when the whole territory is one electoral constituency. According to Farrell, "the best way to maximize proportionality is when the entire territory of the state is one electoral district."[10] In the large electoral districts, the number of votes required for a party to win a mandate is fairly low, giving a chance to the small political parties to enter parliament, that is, it allows for a large number of parties to be represented in the Parliament. Turpen explains that if "there are more places to be filled by districts (thus, fewer electoral districts), most parties, even small ones, will have a chance to be represented."[11] On the other hand, Farrell

5   Sartori, Giovanni, „*Comparative Constitutional Engineering: An Inquiry Into Structures, Incentives and Outcomes (second edition)*", New York: New York University Press, 1997, p. 58-59

6   Karakamisheva, Tanja, „*Избори и изборни системи*", Skopje: Kultura, 2004, p. 110

7   Ibid, p. 112-113

8   Farrell, David, „*Electoral Systems: A Comparative Introduction (second edition)*", London: Palgrave, 2011, p. 74

9   Karakamisheva, Tanja, „*Избори и изборни системи*", p. 113-114

10   Farrell, David, „*Electoral Systems: A Comparative Introduction (second edition)*", p. 74

11   Turpin, Dominique, „*Droit Constitutionnel (2e èdition)*", Paris: Presses Universitaires de France, 2007, p. 366

notes that the weakening of the relationship between MPs and the electorate is one of the main disadvantages of one electoral district on the entire state territory. According to him, "the problem with an electoral system in which the entire territory of the country is one electoral district is that this reduces the connection between lawmakers and voters."[12] Furthermore, the role of local interests in politics, as well as the direct responsibility of lawmakers towards the electorate are reduced . According to Marković, "in large electoral districts that comprise a high number of voters and from which many candidates are to be elected, it is unlikely that the voters will know all the candidates, resulting in voters voting for candidates they do not know."[13] As another drawback, Farrell points out that "there is a danger that the geographical location of MPs is concentrated in the urban, more populated areas, thus leaving much of the electorate 'unrepresented'."[14]

Marković also writes about the influence of the size of the electoral districts on political actors, as well as on the relations in the parties themselves. "In general, large electoral districts are more responsive to parties, as they give party leaders a dominant role in creating candidate lists, while small electoral districts put the voters in a favourable position during the run-up period. Here, the following rule applies: The fewer the number of electoral districts, the greater the power of the party leadership."[15]

The proportional electoral system is the most widely used electoral system among the member states of the European Union. Out of a total of 28 countries, 23 countries use a proportional election system, two countries use majority, while three countries use a mixed election system.[16] In most countries with a proportional electoral system using party lists, the territory of the state is divided into several electoral districts. Only in the cases of the Netherlands and Slovakia, the territory of the whole country is one electoral district. Out of the three countries applying a mixed electoral system, two of them, Hungary and Lithuania, have the territory of the whole country as one electoral district within the proportional component, while the third one, Germany, is divided into several electoral districts.

12 Farrell, David, „*Electoral Systems: A Comparative Introduction (second edition)"*, p. 75

13 Marković, Ratko, „*Уставно право (деветнаесто прегледано и поправљено издање)"*, Belgrade: Faculty of Law at the University in Belgrade, 2014, p. 228

14 Farrell, David, „*Electoral Systems: A Comparative Introduction (second edition)"*, p. 75

15 Marković, Ratko, „*Уставно право (деветнаесто прегледано и поправљено издање)"*, p. 228

16 The data for the election systems are taken from the Interparliamentary Union's databases (http://www.ipu.org/parline-e/parlinelist.asp) and from the International Foundation for Election Systems (http://www.electionguide.org/countries/).

COMPARISON OF THE RESULTS FROM THE SIMULATION
OF THE PARLIAMENTARY ELECTIONS IN THE REPUBLIC OF
MACEDONIA WITH THE RESULTS OF THE PARLIAMENTARY
ELECTIONS HELD FROM 2002 UNTIL TODAY

Starting from the parliamentary elections in 2002 onwards, a proportional electoral system with party lists is applied in the elections of MPs for the Parliament of the Republic of Macedonia. For this paper, a **simulation** of the parliamentary mandates won in all parliamentary elections since 2002 was made, using the D'Hondt election formula for calculating the results, assuming that the territory of the Republic of Macedonia was one electoral district instead of the existing six.[17] The simulation was conducted as follows: The votes of each political party from the six electoral districts were collected, thus obtaining the total sums of votes won by the parties in the elections held. Then, with the help of the D'Hondt electoral formula, 120 parliamentary mandates from the single electoral district were allocated to the parties, based on their total votes. The resulting allocation of mandates is compared to the actual allocation, and the process repeated for all parliamentary elections since 2002.

The aim is to analyze the results of each elections considering three aspects: 1) the difference in the number of political parties/coalitions that would enter the parliament, that is, would have won at least one parliamentary mandate; 2) the difference in the final distribution of mandates, that is, the number of mandates that were allocated to one party coalition, which would have been allocated to another; and 3) the difference in the number of seats won by the large parties versus the number of seats won by small parties. [18]

EARLY PARLIAMENTARY ELECTIONS
IN THE REPUBLIC OF MACEDONIA IN 2016

In the 2016 elections,[19] a total of six parties or coalitions managed to win parliamentary mandates. In the simulation of the Republic of Macedonia as one electoral district, nine parties or coalitions enter parliament.

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17 It has to be emphasized that for the purpose of this paper, only the votes and mandates won on the territory of the Republic of Macedonia are taken into consideration, but not the votes and mandates won in the "diaspora".

18 Large political parties and pre-election coalitions would be considered those that have won five or more parliamentary mandates in the given elections, that is, that have the possibility to form a parliamentary group in the Parliament of the Republic of Macedonia independently, whereas small political parties would be considered those that have won less than five MP seats.

19 Report on the Early Parliamentary Elections, held on December 11, 2016. State Election Commission, Skopje, 2016, http://www.sobranie.mk/content/Избори/Izvestaj-Izbori dekemvri 2016.pdf (visited on 15-02-2017)

Table 1: Parliamentary elections in 2016

	MP mandates won	MP mandates won in a one electoral district model
VMRO DPMNE and others	51	48
SDSM and others	49	47
DUI	10	9
BESA	5	6
Aliance for the Albanians	3	3
DPA	2	3
VMRO for Macedonia	0	2
Levica	0	1
KPP– Third Block	0	1

The final distribution of the parliamentary mandates in the Parliament of the Republic of Macedonia would differ in six mandates, that is, six parliamentary seats that belonged to one party/coalition would belong to others. In these elections, large parties won a total of 115 seats, while small parties won five. If the entire territory of the state constituted one electoral district, the large parties would lose five mandates in relation to the small political parties, that is, they would end up with a total of 110 mandates against ten mandates for small parties.

EARLY PARLIAMENTARY ELECTIONS IN THE REPUBLIC OF MACEDONIA IN 2014

Carrying out the simulation for the 2014 elections,[20] nine parties or coalitions would enter the Parliament of the Republic of Macedonia instead of the six that actually managed to win parliamentary mandates.

Table 2: Parliamentary elections in 2014

	MP mandates won	MP mandates won in a one electoral district model
VMRO-DPMNE and others	58	55
SDSM and others	34	33
DUI	19	17
DPA	7	7
NDP	1	2
GROM	1	3
VMRO NP	0	1
Coalition for Positive Macedonia	0	1
Dostoinstvo	0	1

20 Report on the Early Parliamentary Elections in the Republic of Macedonia, held on April 27, 2014, State Election Commission, Skopje 2014, http://www.sobranie.mk/content/Избори/izveshtajpredvremeniparlamentarniizbori27.4.14.pdf (visited on 13-02-2017)

In the final distribution of parliamentary mandates, six parliamentary seats that belonged to one party/coalition would belong to others. The division of mandates by large and small parties is 118 versus two. If the entire territory of the state constituted one electoral district, the large parties would get six mandates less, that is, they would hold a total of 112 mandates against eight mandates for the small parties.

EARLY PARLIAMENTARY ELECTIONS IN THE REPUBLIC OF MACEDONIA IN 2011

In 2011,[21] we observe the largest deviation in the results obtained with the simulation, compared to the actual election results, both in terms of the number of parties/coalitions that won parliamentary mandates as well as the final distribution and ratio of mandates for large and small parties. If the entire territory of the state were one electoral district, five more parties or coalitions would have entered parliament, that is, ten parties or coalitions in total, instead of the five that managed to win the parliamentary mandate.

The final distribution of parliamentary mandates shows the largest deviation, too, with nine parliamentary mandates that belonged to one party/coalition belonging to others. The large parties, which won a total of 118 seats, versus two for the small ones, would lose nine seats and end up with 109 seats versus 11 for the small parties.

Table 3: Parliamentary elections in 2011

	MP mandates won	MP mandates won in a one electoral district model
VMRO-DPMNE and others	53	49
SDSM and others	42	41
DUI	15	12
DPA	8	7
NDP	2	3
VMRO NP	0	3
New Democracy	0	2
United for Macedonia	0	1
LDP	0	1
Dostoinstvo	0	1

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21 Report on the Final Results from the Parliamentary Elections in the Republic of Macedonia, held on June 5, 2011, State Election Commission, Skopje, 2011, http://www.sobranie.mk/izbori-2011.nspx (visited on 13-02-2017)

EARLY PARLIAMENTARY ELECTIONS
IN THE REPUBLIC OF MACEDONIA IN 2008

Unlike the 2011 elections with the biggest deviation, in the 2008 elections,[22] the results obtained by the simulation largely correspond with the original election results. Even if the entire territory of the state were one electoral district, the same five parties or coalitions would enter parliament, i.e. no other party or coalition would succeed in winning a parliamentary mandate.

Table 4: Parliamentary elections in 2008

	MP mandates won	MP mandates won in a one electoral district model
VMRO-DPMNE and others	63	63
SDSM and others	27	30
DUI	18	16
DPA	11	10
PEI	1	1

The only difference would concern the distribution of mandates among the parties/coalitions, but it would differ by three mandates only. Additionally, the large and small parties would hold the same number of mandates, 119 against one in favour of the large parties.

PARLIAMENTARY ELECTIONS IN THE REPUBLIC OF
MACEDONIA IN 2006

The simulation of the results for the 2006 elections[23] shows that if the territory of the state were one electoral district, then four more parties or coalitions would have entered parliament, that is, a total of 12 parties or coalitions instead of the eight who actually entered.

If the Republic of Macedonia constituted one electoral district, the final distribution of the mandates would vary by seven mandates. The small parties would have won five more seats, or the ratio would be 113 seats for the large and seven for the small parties, unlike the actual 118 seats for the large and only two for the small parties.

22 Report on the Early Parliamentary Elections in the Republic of Macedonia, held on June 1, 2008, State Election Commission, Skojpe, 2008, http://www.sobranie.mk/izbori-2008.nspx (visited on 13-02-2017)

23 Report on the Parliamentary Elections in the Republic of Macedonia in 2006, State Election Commission, Skopje, 2006, http://izbornaarhiva. mk/dokumentacija/Парламентарни избори 2006/5_Извештај од избори/Извештај за избори на пратеници - 2006.pdf (visited on 14-02-2017)

Table 5: Parliamentary elections in 2006

	MP mandates won	MP mandates won in a one electoral district model
VMRO-DPMNE and others	60	55
SDSM and others	33	33
DUI	16	16
DPA	7	7
NSDP	2	2
VMRO-NP	1	2
DOM	1	2
PEI	0	1
Agricultural People's party	0	1
Party for Economic Renewal	0	1
DA	0	1
SDPM	0	1

PARLIAMENTARY ELECTIONS IN THE REPUBLIC OF MACEDONIA IN 2002

Concluding from the simulation of the results of the 2002 elections[24] a total of ten parties or coalitions would have won parliamentary mandates instead of the actual seven. Three additional parties or coalitions would have entered parliament.

The final distribution of parliamentary mandates would differ by five, that is, five parliamentary mandates that belonged to one party/coalition would belong to others. The large parties would lose five mandates to the small ones and hold a total of 111 seats versus nine mandates for the small parties, in contrast to the actual 116 seats versus four in favour of the large parties.

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24 Report on the Parliamentary Elections in the Republic of Macedonia in 2002, State Election Commission, Skopje 2002, http://izbornaarhiva.mk/dokumentacija/Парламентарни избори 2002/5_Извештај од избори/Извештај за избори за пратеници -2002.pdf (visited on 14-02-2017)

Table 6: Parliamentary elections in 2002

	MP mandates won	MP mandates won in a one electoral district model
SDSM and others	60	55
VMRO-DPMNE and others	33	33
DUI	16	16
DPA	7	7
PDP	2	2
NDP	1	2
SPM	1	2
Democratic alternative DA	0	1
Democratic Alliance	0	1
VMRO- Macedonian	0	1

ONE VERSUS SEVERAL ELECTORAL DISTRICTS IN THE REPUBLIC OF MACEDONIA - WHAT WOULD BE DIFFERENT?

Several interesting conclusions can be drawn when comparing the results obtained from the simulation of the parliamentary elections in the Republic of Macedonia, with the entire territory of the state considered as one electoral district instead of the existing six, taking into account the results of all parliamentary elections since 2002. First of all, it can be noted that the final distribution of parliamentary mandates between political parties/coalitions differs from the original in all cases (with the largest difference in 2011 and the smallest in 2008). Then, in all cases except one, the number of political parties/coalitions that won at least one parliamentary mandate increases, that is, more political parties/coalitions enter parliament (with the exception of the 2008 elections with the same number of parties/coalitions). Additionally, in all cases except one, the number of parliamentary seats won by small parties increases on account of the parliamentary mandates won by the large parties (only in 2008 the difference remains the same). It is worth mentioning that in none of the cases the winning party/coalition (the party/coalition that won the most parliamentary mandates) loses its leading position.

It can be concluded that the shift from six electoral districts to only one would bring about a certain degree of change on the political scene in the Republic of Macedonia. The main effect that would be achieved with this change is the pluralisation of the political scene within the institutions, with more political parties represented in parliament and hence more institutional viewpoints. One of the main arguments of the supporters of a system with one electoral district is

confirmed by the comparison of the results, namely that "it would give a greater chance to smaller parties or independent candidates."[25] Lowering the threshold for entry into parliament would greatly encourage parties that represent the interests of the minority ethnic communities in the country to independently participate in the elections, rather than the current practice of joining one of the two major political entities, easily giving up their own positions on the account of getting a parliamentary seat. Thus, according to the analysis of the Association for the Development of the Roma Community, SUMNAL, "one electoral district would give greater chances to the smaller parties and above all the parties of the smaller ethnic communities, including the Roma, to elect their representatives into Parliament, and not have their representatives as part of the coalition lists of the larger parties."[26]

It should be considered that the type of electoral system and the number of electoral districts are only a small part of the factors that create the political landscape within a society. The introduction of one electoral district instead of the existing six does not preclude a change in the way in which politics is conducted in the Republic of Macedonia. However, if we assume that a certain change is necessary in order to consolidate the role of the Parliament and restore the debate within the institutions, unlike the current practice of leadership meetings and agreements behind closed doors, the findings of this paper point out that the introduction of a system with only one electoral district would be a good initial step.

Keywords: elections, electoral system, proportional election systems, electoral district, political parties.

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Short Biography

Mare Ushkovska is a PhD candidate in International Law at the Ss. Cyril and Methodius University in Skopje, in the later stages of her dissertation work. She holds an MA in Diplomacy and International Relations from the same university, as well as an MSc in Public Policy from University College London. Her research primarily covers topics on power politics, self-determination, EU policies, and public diplomacy, among others. Ushkovska is a member of the renowned London based think-tank Chatham House - The Royal Institute of International Affairs, as well as an alumni of the Konrad Adenauer Foundation and the Mercator Foundation. Throughout her academic life she has received multiple scholarships, among which a research grant from the Swiss Agency for Development and Cooperation. Ushkovska is currently a consultant on a UNDP project in Macedonia, after serving as the Head of the international office in Scotland for Invest Macedonia for over two years.

Mare Ushkovska

SOFT POWER AND THE EU: CHALLENGES AND SUCCESSES OF EU FOREIGN POLICY IN THE SERBIA-KOSOVO DISPUTE

INTRODUCTION

The European Union has been repeatedly hailed as the most prominent contemporary model of soft power, both by EU representatives themselves and many political scientists. With the European Union aiming at a more decisive role in the international arena, politicians and theoreticians alike often juxtapose EU soft power to USA foreign policy – the traditional embodiment of hard power. This has been particularly emphasised in the past decade as the EU is taking pride in the development of its soft power capacity. The direction taken might be seen as a product of both the desire for international reputation and past dissatisfaction with the European Common Foreign and Security Policy.

Looking back to the beginnings of the Kosovo conflict, the EU's capabilities as a regional power turned out to be greatly limited and its foreign and security policy

insufficiently prepared, focused, and appropriate for the task at hand. There was an unequivocal one-sided dependence on NATO's hard power measures to bring the bloodshed to a halt. Aware of the weakness of its military dimension, the EU proceeded with developing its new soft power approaches to the region, based on diplomacy, negotiations, and promotion of norms. Its goal was to position itself as a credible leader of the European continent and its neighborhood, to regain the reputation of a relevant actor in international relations, and to export its values. The EU recognised the opportunity to demonstrate its soft power capacity as a mediator between Serbia and Kosovo on their most prominent points of discord. The breakthrough came with the "Brussels Agreement": Signed between the Prime Ministers of Serbia and Kosovo, it was hailed by Western media as a great achievement of the EU's soft power, none the least because, in the broader picture, it implied a step toward fostering Western Balkan stability and integration within the EU.

Even so, figures like NATO Secretary General, Rasmussen, have expressed their concerns, remarking that EU soft power "is really no power at all".[1] He stated that the European Union cannot be a credible regional force, unless it can back up its diplomatic steps with military and economic measures. With regard to the Serbia–Kosovo dispute, while Rasmussen appreciated the positive outcome of the EU's mediation, he reminded that the success of the Brussels Agreement depended exclusively on the ability of NATO to ensure the peaceful implementation of the process.[2]

Hence, the question at hand is, how successful are the EU's soft power policies? Particularly, how well adapted are they to ascertaining the image of regional leadership and to taking charge of problems arising in the EU neighbourhood? This paper examines the topic by looking at the diverse soft power mechanisms employed by the EU with regard to the challenges linked to the Serbia-Kosovo conflict and its current status. The research addresses several variables that impact decision-making processes on this matter in concerned states and puts the EU's political influence into perspective, so as to draw specific conclusions on its foreign policy achievements.

HARD VS. SOFT POWER IN THE EU CONTEXT

Let us begin by first elaborating on the theory behind "hard power" and "soft power". The concept of hard power is most frequently explained as the ability to influence other actors in the international political arena through the threats of military interventions. It denotes the superiority in weaponry which serves to pressure and intimidate other countries into accepting the leadership role of

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1   Andrew Rettman, "NATO Chief: EU Soft Power is 'No Power at All'", *EUobserver*, May 6, 2013, https://euobserver.com/defence/120046.
2   Ibid

mightier states. Hard power is the concept most commonly referred to by the proponents of the realist theory of international relations[3] according to which, to paraphrase the ancient historian Thucydides, strong states do what they want and small states accept what they must.[4] It is associated with the idea of an anarchical global order in which there is no supra-national authority regulating state relations and mediating disputes, and states, therefore, regularly fight amongst eachother to establish dominance and to acquire resources, with the goal of safeguarding their security and continuity. Countries that exercise hard power normally have greater resources, vaster territory, and strong military capacity.[5] Hard power is an easily measurable concept, contrary to soft power, because its manifestations tend to be rather concrete and visible. Powerful countries coerce smaller nations into complying with their demands through the use, or threat, of invasion, bombing, regime change, cutting supplies, etc. For most scholars of international relations, hard power also entails economic strength and the ability to align smaller countries to one's interests through conditionality, sanctions, or financial aid. Economic sanctions and inducements are applied following the "stick and carrot" method: financial rewards for those nations that submit to the authority of the great power and retributions for those that disobey. Due to the fact that there is a disproportionate distribution of wealth among states, and economic dependence lends itself to susceptibility to outside influence, economic power is a considerable element of hard power politics. Throughout the history of man, from the Roman conquests to the Cold War, hard power has been the most common form of imposing and expanding spheres of influence and control. In the contemporary international order, the United States of America are perceived as the prime example of hard power politics, with the NATO representing one of its key instruments for exercising that power.

Unlike hard power, soft power is far more complex to define, none the least because its political and theoretical proponents offer varying views and interpretations of the concept. The term "soft power" was coined in 1990 by Harvard professor Joseph Nye, who later developed it in more detail in his 2004 book "Soft power: The means to success in world politics". Nye defines soft power as "*the ability to get what you want through attraction rather than coercion or payments*".[6] While hard power imposes and forces, soft power "seduces" and expresses itself as the capacity to get other countries to want the same outcomes that you want and to co-opt independently on your side. Nye further writes:

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3 For more see Kenneth Waltz, Theory of International Politics (Reading, MA: Addison-Wesley Pub. Co., 1979) and John Mearsheimer, *The Tragedy of Great Power Politics* (New York, NY: Norton, 2001).

4 Thucydides, *History of the Peloponnesian War* (New York: Dover Publications, 2004), 269.

5 Hans Morgenthau, *Politics Among Nations: The Struggle for Power and Peace* (Chicago: University of Chicago Press, 1945).

6 Joseph Nye, *Soft Power: The Means to Success in World Politics* (New York: Public Affairs, 2004), 3.

> *"(...) Hard power, the ability to coerce, grows out of a country's military and economic might. Soft power arises from the attractiveness of a country's culture, political ideals and policies. When our policies are seen as legitimate in the eyes of others, our soft power is enhanced".*[7]

Since then, the term has been used as a popular catch phrase in many scholarly articles and political speeches, often erroneously, to signify almost all forms of global influence short of military power. This is primarily due to the fact that soft power, unlike its counterpart, is a definitively more abstract concept, whose sources, means, and applications are often intangible. One can easily visualise the size and effect of tanks and missiles, but cultural appeal, for example, is a form of influence whose scope, time-frame, and strength prove far more challenging to measure. Hence, as Nielsen puts it, "soft power has become a term more used than understood".[8] For example, former Commissioner for External Relations and the European Neighborhood Policy, Benita Ferrero-Waldner, regarded soft power as the EU's defining characteristic and considered the Union's application of positive conditionality and economic inducements as its manifestations.[9] However, this contradicts the original understanding by Nye, who regarded expressions of economic power, such as sanctions, embargoes, preferential trade agreements, negative/positive conditionality, as well as aid, as a form of hard power, albeit less daunting than military might.[10]

When talking about the European Union and power it is necessary to consider the peculiarity of its position. The EU is not a state, but rather a collection of states which makes it stand out against other global actors. Each member state is sovereign and has specific interests, goals, capabilities, and influence that do not always translate to the Union as a whole. Any argument for the EU exhibiting hard power would be heavily reliant on its economic dominance over neighbouring regions. The EU's economic growth in past decades (notwithstanding periodic crises) has established it as one of the global economic authorities and a hegemon on the European continent. The European Union has, therefore, been in the position to influence other countries' policies through financial "sticks and carrots" which, as Nielsen explains, can take the form of "trade agreements and development assistance, both typically accompanied by conditionality clauses".[11]

Military hard power, on the other hand, cannot be attributed to the European Union. As the popular saying goes, the EU is an economic giant, a political dwarf, and a military midget. While each individual member state employs its own

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7   Joseph Nye, "Soft Power and American Foreign Policy", *Political Science Quarterly* 119, no. 2 (Summer 2004): 256
8   Kristian L. Nielsen, "EU Soft Power and the Capability-Expectations Gap", *Journal of Contemporary European Research* 9, no. 5 (November 2013): 727.
9   Ibid, 729.
10   Nye, *Soft Power: The Means to Success in World Politics*, 31.
11   Nielsen, "EU Soft Power and the Capability-Expectations Gap", 729.

national army, the EU as a whole is not a power of military capabilities, nor has it aspired to become one (until recently when changing global circumstances led to a declaration for a joint EU army being signed by a majority of member states). Until the end of the 1990s, Western European countries were greatly dependent on NATO and U.S. nuclear power for their security and defense, making it unrealistic to discuss an independent EU common defense and security policy before the Cologne and Helsinki European Councils in 1999,[12] due to security policies dating from the Cold War era. The wars in the Balkans during the 1990s provided momentum for breaking that pattern, for the situation required the EU to take up a more dynamic role as a regional power. It presented an opportunity for the Union to demonstrate the capacity to put pressure on the leaderships of the emerging Yugoslav nations and utilise the influence to prevent the exacerbation of the conflicts. However, the EU failed to position itself as a credible authority of hard power, and the circumstances only served to expose the weaknesses of the underdeveloped common foreign policy. This is why, in 1999, the member states signed the Helsinki Headline Goal to employ joint military crisis management units of about 60 000 troops, thus setting in place a basis for common security capability, although it did not constitute an official EU army. Today, these troops are mainly geared toward conflict prevention and stabilisation as well as humanitarian interventions, rather than toward classical territorial defense or coercive projections of military might.

This historical perspective shows us the reasoning behind the European Union's dismissal of the "hard power image" and its turn to the prospect of establishing itself as a soft power in the modern world. Former EU High Representative for Foreign Affairs and Security Policy Catherine Ashton stated at an event in Budapest in February 2011 that "… the EU has soft power with a hard edge – more than the power to set a good example and promote our values, but less than the power to impose its will".[13] The statement indicated that despite the lack of arsenal power, the European Union stands as a global force on the rise. The Union's power does not stem from any army, but from its values, laws and public image. In that context, researchers have described the EU as a civilian power,[14] a normative power,[15] as well as a soft power, terms which are not mutually exclusive and often used interchangeably. These adjectives point to the potential of the EU to persuade through attraction, to exude power by strengthening its legitimacy as a frontrunner of a new type of authority, based not on coercion, but on "contractual agreements".[16] At a conference

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12 Mathias Jopp, "European Security and Defence Policy", in *Europe from A to Z: Guide to European Integration*, eds. W. Weidenfeld and W. Wessels (Skopje: Konrad Adenauer Foundation, 2009), 172.

13 Nielsen, "EU Soft Power and the Capability-Expectations Gap", 724.

14 See François Duchêne, "The European Community and the Uncertainties of Interdependence", in *A Nation Writ Large? Foreign Policy Problems Before the European Community*, eds. M. Kohnstamm & W. Hager (London: Macmillan, 1973). Also Mario Telò, *Europe: A Civilian Power?: European Union, Global Governance, World Order* (Houndmills: Palgrave Macmillan UK, 2007).

15 Ian Manners, "Normative Power Europe: A Contradiction in Terms?", *Journal of Common Market Studies* 40, no. 2 (February 2002).

16 Robert Cooper, "Hard Power, Soft Power and the Goals of Diplomacy", in *American Power in the 21st Century*, eds. D. Held & M. Koenig-Archibugi, (Cambridge: Polity Press, 2004). 168.

in 2006, Eneko Landaburu, former EU Director General of External Relations, characterised the European Union as being a 'pole of attraction', as well as a 'gravitational power',[17] alluding to the broadening prospects of EU's alternative forms of influence and its soft power image.

The argument for the EU's soft power relies on the premises that the EU has means other than economic and military might with which to accomplish its foreign policy goals. There can be several interpretations of what individual soft power means could be in the EU context, but the principal ones can be grouped in two categories:

■ Membership incentive

■ Public diplomacy and political values

The membership incentive is a powerful tool in the EU's political arsenal that serves to motivate other countries to enlist voluntarily to EU guidance. Tulmets notes that "policies of enlargement […] represent the first external policies of the European Union where the notion of soft power was explicitly formulated in official public discourses".[18] Furthermore, enlargement is very closely related to the spread of political norms and values which are seen as both a key source of EU leadership and its goal. Moreover, the culture, history, traditions, and arts in EU countries are widely venerated and viewed as a strong reference point for national development and success. This appeal of democratic morals and living standards in the EU should entice other countries, who "admiring its values, emulating its example, aspiring to its level of prosperity and openness — want to follow it".[19]

SERBIA-KOSOVO DISPUTE: A CASE STUDY OF EU SOFT POWER

EU foreign policy toward South-East Europe developed as a response to the political shifts in the 1990s that erupted in several military conflicts. The newly independent states emerging from the ashes of Yugoslavia represented a significant challenge for the barely established EU Common Foreign and Security Policy. Acknowledging the momentum to step up as a regional power, the European Union developed a policy toward South-East Europe based on peacemaking, stabilisation, and integration.[20] This umbrella approach included Kosovo which, following the war in 1999, unilaterally declared independence from Serbia in 2008. The European Union lauded the success of its soft power

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17 Elsa Tulmets, "Can the Discourse on 'Soft Power' Help the EU to Bridge its Capability-Expectations Gap?", *European Political Economy Review*, no.7 (Summer 2007): 205.

18 Tulmets, "Can the Discourse on '*Soft Power' Help the EU*", 201.

19 Nye, *Soft Power: The Means to Success in World Politics*, 5.

20 Barbara Lippert, "Policies toward Southeast Europe", in *Europe from A to Z: Guide to European Integration*, eds. W. Weidenfeld and W. Wessels (Skopje: Konrad Adenauer Foundation, 2009), 327.

policies after the signing of the Brussels Agreement on the normalisation of relations between Serbia and Kosovo in 2013. Nevertheless, many would argue that the continued division between these two countries and the lack of universal recognition of Kosovo's independence indicates that the success of EU foreign policy, in this regard, has been overestimated. These doubts over the EU's soft power role become even more severe, considering the military interventions that were necessary to initially reach a ceasefire. An assessment of the European Union's soft power with regard to the relations between Serbia and Kosovo should be based on adequate indicators. Consequently, this would mean to examine the strength of its two major instruments: membership incentive and public diplomacy. Furthermore, evaluating the level of success of soft power politics would give insight into the real challenges and prospects of the current direction of EU foreign policy concerning the Serbia-Kosovo issue.

MEMBERSHIP INCENTIVE

The potential to become an EU member state is deemed to be the EU's most powerful instrument when dealing with countries in the wider European region. This was also expressed by Olli Rehn, the Commissioner for Enlargement who saw membership incentive as a strong soft power tool for the purpose of reforming other countries into prosperous democracies.[21] And in fact, the EU does wave the "membership card" as a reward for compliance with its strategic interests. Enlargement became the soft power alternative to economic aid, since it does not grant immediate financial benefits that can be interpreted as "international bribes", but rather offers the potential for long term growth and development in the footsteps of successful EU member states. This alone has incentivised all the countries in the Western Balkans to work toward opening the accession negotiations. Nye touched upon the success of this soft power tactic by the EU, stating that "the goal of joining the EU became a magnet that meant the entire region of Eastern Europe oriented itself toward Brussels".[22]

Serbia and Kosovo are no exception to the aforementioned, as both have expressed their clear desire to join the EU. This opened a window of opportunity for the European Union to deepen its regional leadership by demonstrating ability to take charge of the processes between the two states.[23] Serbia applied for EU membership in 2009 and has been guided through the process by the union with the speed and measures deemed necessary to align Serbian policy toward Kosovo, the International Criminal Tribunal for the former Yugoslavia, and other internal policy areas with the EU's expectations. Since Serbia's lack of recognition of an independent Kosovo implied undesirable complications of

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21 Tulmets, "Can the Discourse on '*Soft Power*' Help the EU", 201.

22 Nye, *Soft Power: The Means to Success in World Politics*, 77.

23 The author acknowledges that Kosovo does not have universal international recognition as an independent state.

the EU project for stabilisation and integration of the Western Balkans region, the membership incentive was used as a method to steer Serbia's government toward accepting certain conditions by speeding up, or slowing down, the accession negotiations process. The EU signed the Stabilisation and Association Agreement as well as the Interim Accord with Serbia in April 2008, mere two months after Kosovo unilaterally declared independence. Similarly, the country was granted candidate status after succeeding to comply with the demands to arrest and extradite to the ICTY its last war fugitives. The greatest momentum for EU soft policy came in April 2013, when EU High Representative Catherine Ashton, with the membership prospect as a bargaining chip, mediated an agreement between the prime ministers of Kosovo and Serbia that aimed to reconcile the relations between both states. The agreement was a relative success and both Serbia and Kosovo showed a constructive approach to the negotiations: the former accepted the administrative authority of the Prishtina government over Kosovo territory, while the latter agreed to a decentralised community of Serb municipalities in the north.[24]

Table 1. EU accession progression of Serbia

Event or compliance by Serbia	Reward by the EU
February 2008 – Unilateral declaration of independence of Kosovo	**April 2008** – The EU signs the Stabilisation and Association Agreement as well as the Interim Accord with Serbia
July 2008 – Radovan Karadžić arrested upon the ICTY request	**December 2009** – Serbia gets visa-free travel to Schengen zone
May-June 2011 – Ratko Mladić and Goran Hadžić arrested and extradited	**March 2012** – Serbia receives EU candidate status
April 2013 – Serbia and Kosovo sign the Brussels Agreement	**September 2013** - Entry into force of the Stabilisation and Association Agreement
	January 2014 – EU membership negotiations with Serbia begin

Nevertheless, the EU could not get Serbia to formally recognise Kosovo's sovereignty. The soft power could only deliver so much, as there haven't been significant shifts or mitigation in Serbia's policy toward Kosovo ever since. As Gvosdev notes, "the European Union opted for pragmatism" at this point, evaluating the extent of its soft power capabilities and aiming for additional concessions by Serbia further along the accession negotiation path.[25] Time will tell whether this will be a successful foreign policy tactic. It would appear, however, that the authority of the Brussels Agreement is even weaker in Kosovo, as there have been multiple attempts from internal actors, as well as mass protests, to stop the implementation of Kosovo's end of the bargain – the establishment of an Association of Serbian Municipalities. Ultimately, the very

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24 Nikolas K. Gvosdev, "Kosovo and Serbia Make a Deal: Debalkanazing the Balkans", *Foreign Affairs*, April 24, 2013, http://www.foreignaffairs.com/articles/139346/nikolas-k-gvosdev/kosovo-and-serbia-make-a-deal.

25 Gvosdev, "Kosovo and Serbia Make a Deal".

politicians who spread tear gas inside Kosovo's parliament in 2015 in an attempt to block this Association and the compliance with the terms of the Brussels Agreement, have recently been elected to government.[26] Negotiations between Serbia and Kosovo are currently in a stalemate.[27]

Ultimately, the membership incentive aimed at Kosovo is a far hollower "carrot". Five EU member states do not recognise Kosovo as an independent country, a solid roadblock to any future accession bids. Given the circumstances, the EU's soft power outreach is only as good as its credibility concerning the willingness to eventually incorporate Kosovo within the EU family if it meets all the prescribed accession criteria. The Stabilisation and Association Agreement with Kosovo was initiated in 2014, and the EU's statements reaffirm Kosovo's membership potential as part of an integration of the wider Western Balkans region.[28] Nevertheless, at the same time, the divide over Kosovo's status and prospects remains at a status-quo among member states.

PUBLIC DIPLOMACY AND POLITICAL VALUES

Diplomacy, as the flip side of the armed interventions coin, is the most popular association with the concept of soft power. However, classic diplomacy has had to evolve to accommodate the fact that public opinion gains an increasing influence over international relations. If foreign audiences are attracted by the values, norms, and culture of a certain country or intergovernmental organisation, then the governments of those audiences will be more likely to align to the leadership of the said countries or /intergovernmental organisations (IOs).[29] Hence, *public diplomacy* extends from the understanding that public opinion in foreign countries can be the key to expanding spheres of influence. Commonly described as the battle for the hearts and minds of people around the world, public diplomacy is believed to be as important as military might, particularly because it boosts the credibility of countries and IOs. Cross defines public diplomacy as a government's engagement with foreign audiences, with the goal of improving a country's image by molding the perceptions of the audiences for that country.[30] The same is applicable to intergovernmental organisations, and the European Commission has already incorporated public diplomacy as an important EU foreign policy strategy. Faced with mounting

26 For more see Erwin Qafmolla, "Kosovo Opposition MPs Hurl Tear Gas in Parliament", *BalkanInsight*, October 8, 2015, http://www.balkaninsight.com/en/article/opposition-teargases-kosovo-parliament-10-08-2015. Also Igor Jovanovic, "Serbia Accuses Kosovo of Reneging on EU Deal", *BalkanInsight*, October 29, 2015, http://www.balkaninsight.com/en/article/serbia-slams-kosovo-over-obstructing-brussels-agreement-10-29-2015. Erjone Popova, "Kosovo Opposition Builds Resistance to Brussels Agreement", *BalkanInsight*, January 12, 2016, http://www.balkaninsight.com/en/article/kosovo-opposition-swell-ranks-against-brussels-agreements-01-12-2016.

27 Die Morina and Maja Zivanovic, "Kosovo-Serbia Talks Fail to Defuse Tensions", *BalkanInsight*, February 2, 2017, http://www.balkaninsight.com/en/article/dialogue-of-normalizations-or-tensions-02-02-2017.

28 Lippert, "Policies toward Southeast Europe", 327.

29 Mai'a K.D. Cross, "Conceptualizing European Public Diplomacy", in *European Public Diplomacy: Soft Power at Work*, eds. M.K.D. Cross and J. Melissen, (New York: Palgrave Macmillan, 2013), 5.

30 Ibid, 4.

EU-skepticism, the European Commission acknowledged the need to explain its foreign policies and decisions to the wider public of both member states and non-EU countries, so as to regain trust in EU values and improve the Union's reputation as a regional power.[31] It was stated in the 2002 report of the German Ministry of Foreign Affairs that public diplomacy is seen as a number one priority in Europe.[32]

The cultural and historical appeal of the EU member states is understandably one of the most valuable assets of the EU's public diplomacy. The admiration of their key cultural features and alleged cultural superiority makes other countries, including those in South-East Europe, follow the EU's lead through "attraction, not coercion". It is a powerful instrument with the potential to steer the preferences and value systems of people in various states, such as Serbia and Kosovo, and consequently their governments. It is arguably the most successful aspect of the EU's soft power, since, to put it in Nye's words, people in these countries are "admiring its values, emulating its example, aspiring to its level of prosperity and openness — [and] want to follow it".[33] Since 2000, the EU has continuously designed foreign policies that foster the spread of its norms and ideals, principally those of democracy and market economy, to neighbouring countries. The Stabilisation and Association Agreements offered to Serbia and Kosovo include several key democratic principles to be upheld, namely respect for human rights, rule of law, good neighbourly relations, and free market economy.[34] The public diplomacy cause was enforced when, in December 2009, the EU lifted the visa requirement for Serbian citizens, making it easy and accessible for them to visit EU countries, to be exposed first hand to cultural traits, behavioral norms and political views within the EU, in order to later adopt and import those values to their home state. In Kosovo, it is mainly popular media and statements by key EU representatives that strengthen local admiration for the intergovernmental economic giant and thus help diffuse its norms. Finally, the European Union has been described as the greatest peace project since WWII, a remarkable union of cooperation between countries with a centuries-old history of war and conflict. Therefore, approaching the EU, for most citizens in Kosovo and Serbia, means bringing that sphere of stability and peace closer to home.

Nonetheless, the EU´s public diplomacy is far from flawless. The reasoning stands that the cultural, architectural and artistic heritage that attracts foreign audiences is a trait of individual member states, not the European Union as a whole. There is no such thing as an EU culture. Consequently, a significant

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31 Anna Michalski, "The EU as a Soft Power: the Force of Persuasion", in *The New Public Diplomacy: Soft Power in International Relations*, ed. J. Melissen (New York: Palgrave Macmillan, 2005), 142.

32 Jan Melissen, "The New Public Diplomacy: Between Theory and Practice", in *The New Public Diplomacy: Soft Power in International Relations*, ed, J. Melissen (New York: Palgrave Macmillan, 2005), 11.

33 Nye, *Soft Power: The Means to Success in World Politics*, 5.

34 Lippert, "Policies toward Southeast Europe", 329.

portion of the success of EU cultural and normative appeal is thanks to the public diplomacy conducted by its member states' governments, instead of joint EU institutions. In her thorough research on EU soft power, Michalski finds that there is no shared, coordinated EU public diplomacy strategy, mainly due to the lack of political consensus between member states over common objectives, as well as divergent national interests.[35] She also argues that, despite the Commission's best efforts to strengthen the understanding and legitimacy of EU institutions through new communication and information approaches with audiences in third countries, most officials in Brussels and EU delegations, interviewed for the purpose of her research, failed to embrace, or even comprehend, the concept of EU public diplomacy.[36] Categorically, public diplomacy involves much more than just issuing statements to the media. This remains one of the EU's soft power strategy's main challenges.

An issue arises, however, from the fact that a substantial component of the EU's public diplomacy methods seems to be the promotion of EU funded projects and availability of financial incentives. Therefore, the primary challenge to the claim of the EU as a soft power can be found in its status as an economic superpower. The indisputable economic dominance the EU has over the wider European region casts doubt on whether other countries indeed respond to its cultural, diplomatic and normative appeal, or rather to the financial enticements. Measures such as economic sanctions, embargoes, and development aid, which the EU has utilised and still utilises regularly to influence policies in third countries through positive/negative conditionality, are a definitive example of hard power politics. Through the Instrument for Pre-accession Assistance (IPA funds), the EU has transferred around €5.3 billion in aid to countries in South-East Europe between 2007 and 2012,[37] with the same trend set to continue until 2020 under IPA II. The EU budgeted for about €166.4 million in IPA funds for Serbia in 2016 alone,[38] while in previous years this sum had reached over €200 million annually.[39] A total of €1.5 billion in financial assistance under IPA was allocated to Serbia between 2007 and 2013,[40] with another €1.5 billion to be spent between 2014 and 2020.[41] The assistance for Kosovo between 2014 and 2020 is set at €645.5 million,[42] which is roughly equal to the amount they

35 Anna Michalski, "The EU as a Soft Power: the Force of Persuasion".

36 Anna Michalski, "The EU as a Soft Power: the Force of Persuasion", 133.

37 European Commission, *Instrument for Pre-Accession Assistance - A New Focus to EU Assistance for Enlargement* (Luxembourg: Office for Official Publications of the European Communities, 2009), 5. Accessible at https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/publication/ipa_brochure_2009_en.pdf.

38 Ministry of European Integration of the Republic of Serbia, "Minister Joksimovic and Commissioner Hahn have signed a financial agreement worth 96.2 million Euro", *Ministry of European Integration of the Republic of Serbia*, June 7, 2017, http://www.mei.gov.rs/src/vesti/1000/189/335/detaljnije/ministar-joksimovic-i-komesar-han-potpisali-finansijski-sporazum-vredan-96-2-miliona-evra/

39 European Commission, Instrument for Pre-Accession Assistance, 5

40 Ibid

41 "Funding by Country", European Neighbourhood Policy and Enlargement Negotiations, European Commission, last updated December 16, 2016, https://ec.europa.eu/neighbourhood-enlargement/instruments/funding-by-country_en

42 Ibid

received in the 2007-2013 period.[43] It could be argued that this is the primary source of EU's power over Serbia and Kosovo and, conversely, their principle incentive for adjusting to EU's demands. Nevertheless, this paper acknowledges that correlation does not imply causation, and further quantitative research would be beneficial to address this query.
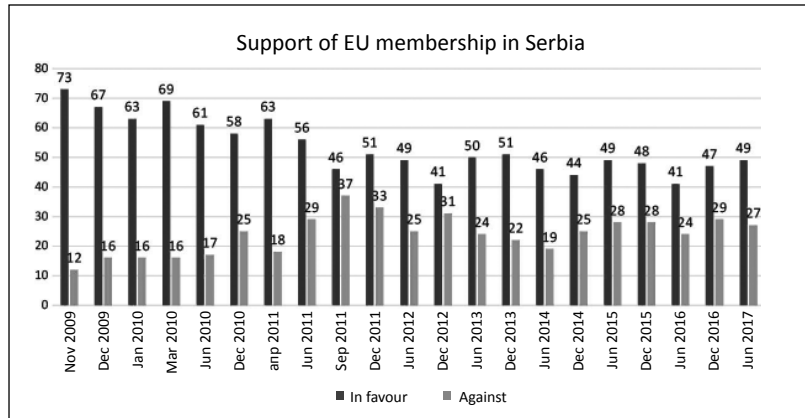
*Source: Ministry for European Integration of the Republic of Serbia

Finally, with the developments following the global financial crisis of 2008, such as the Eurozone crisis, subsequent austerity measures, budget cuts, government bailouts, and Brexit, the EU's reputation as a regional economic power and the magnetism of its image have started to dwindle.[44] The latest public opinion poll (June 2017) conducted by the Ministry for European Integration of the Republic of Serbia shows that only 49% of Serbs would currently want their country to join the EU.[45] This is a whopping 21 percentile points lower than the approval shown in 2009 when the support for EU membership stood around 70%. This was about the time when visa-free travel to the Schengen zone became available to Serbian citizens; the figure represents the strongest level of support for EU membership to date. One of the lowest approval rates was noted in December 2012, when merely 41% were in favour of joining the Union, while a total of 31% were opposed to it,[46] even though the country had received official EU candidate status only nine months prior. There is a steady decline in support since the end of 2013, which shows an obvious trend of diminishing enthusiasm among the Serbian population and a weakening of EU's public diplomacy. No data was available as to the Kosovar support for EU integration at the time of this research.

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43 European Commission, *Instrument for Pre-Accession Assistance*, 5

44 Cross, "Conceptualizing European Public Diplomacy", 2.

45 "European Orientation of the Citizens of Serbia: Public Opinion Poll (June 2017)", by *Ministry of European Integration of the Republic of Serbia*, accessible at: http://www.mei.gov.rs/upload/documents/nacionalna_dokumenta/istrazivanja_javnog_mnjenja/javno_mnjenje_jun_17.pdf, 19.11.2017.

46 Ibid

CONCLUSION

The EU's foreign policy toward South-East Europe since 2000 has been conceptualised to embody a new form of authority based on diplomatic legitimacy, contractual agreements, and normative appeal. An important step toward consolidating its role as a regional leader was to demonstrate the capacity to independently mediate European conflicts, to bring the two sides of the dispute over Kosovo's status to the negotiating table, and to stabilise the wider region. The preferred foreign policy approach substituted coercion with enticement and cooperation. The EU's soft power strategy is primarily based on the membership incentive and public diplomacy.

The perspective of EU membership is certainly the strongest instrument in the EU's hands for spreading its influence, because it creates an environment where countries independently opt to follow EU rules and leadership. The success at incentivising both Serbia and Kosovo to take a more pragmatic approach toward their points of dispute should not be marginalised or underestimated. That said, the problem arising from this soft power policy thus far is that its impact appears to be rather short term. As time passes, if the EU integration process of both countries stagnates, the main challenge for the EU's soft power will be retaining credibility and legitimacy. This is particularly true for Kosovo, as it remains unrecognised by five EU member states.

Another strong tool for diffusing EU power can be found in the cultural and normative appeal that is used to attract foreign audiences. Through effective public diplomacy, the EU can be portrayed as a warrantor of prosperity, and the admiration of foreign audiences will serve to influence and pressure their governments' policies into incorporating democratic values, respect for human rights and freedoms, as well as the rule of law. The EU is successful in acknowledging this potential. Still, the level of coordination among member states and compliance with the public diplomacy strategy by EU officials require improvement.

The economic dominance over its wider region and the use of financial conditionality, however, represent a significant challenge to the promoted soft power reputation of the EU. Nevertheless, according to Benita Ferrero-Waldner, former Commissioner for External Relations and the European Neighbourhood Policy, the EU's soft power politics does not rule out hard power tactics entirely, nor should it. The complementary use of military threats and economic sanctions are necessary, as the EU needs to "link intelligently firm action to soft influence".[47] The interpretation that soft power does not require exclusivity in order to be legitimate is shared by Joseph Nye himself, who believes that the two different types of power mutually reinforce eachother. Speaking in these

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47   Tulmets, "Can the Discourse on 'Soft Power' Help the EU", 206.

terms, the EU is quite successful in applying its foreign policy goals. Still, going back to Rasmussen's claims, it is little surprising that the combination of soft and hard power measures damages the ultimate perception of the EU as an effective agent of soft power. This issue is of particular relevance now, as the ongoing plans for establishing an EU army are being brought to the forefront of EU politics. Inevitably, and especially if those plans will be implemented, a reassessment on the soft power status of the EU will be required.

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Short Biography

Hristina Runcheva Tasev is Assistant Professorat the Faculty of Law "Iustinianus Primus" in Skopje. She graduated from the Faculty of Law in 2007 with an average grade of 9.89. She received an Award and Golden coin by the Rector of the Ss. Cyril and Methodius University of Skopje for the best student of the generation (2006/07). She has also received the 26th of July- Frank Maning prize for the best grades in the final year of studies.

In 2011, Runcheva Tasev has obtained her MA degree in EU Institutions and Policies at the Faculty of Law "Iustinianus Primus" in partnership with the Karl- Franzens Univesity of Graz and the University of West Bohemia in Pilsen. She obtained her PhD in law in 2015.

She is an author of numerous scientific articles published in domestic and international academic jouranls and proceedings and has participated in different academic projects and international conferences.

Hristina has been a Member of Parliament for two terms and has also served as a foreign policy associate in the Cabinet of the Speaker of the Parliament of the Republic of Macedonia. She is one of the founders of the Macedonian Institute for European Studies (MIES).

Hristina Runcheva Tasev

THE EU CHARTER OF FUNDAMENTAL RIGHTS AS AN INSTRUMENT FOR OVERARCHING THE LACK OF LEGITIMACY OF THE EU

Rights, together with democracy, play an essential role in the creation of legitimacy of the European Union. "Protection of fundamental rights is a founding principle of the Union and an indispensable prerequisite for her legitimacy". This was stated in the Presidency Conclusions of the Council, 3 and 4 June 1999 in Cologne, when the Heads of State and Government took the decision to draw up a Charter of Fundamental Rights of the European Union. But why, if at all, does the Union lack legitimacy? And is there a way to enhance it by strengthening the mechanisms for fundamental rights protection?

In fact, throughout the history of the European Union, its legitimacy has been a matter of concern. Many political actors in the EU have addressed the problem of legitimacy over the years in a variety of ways, but yet more political action is needed. The legitimacy issue has come to surface especially after the ratification of the Treaty on European Union (TEU) in 1991-92, and later, in the process

of reforming the EU to prepare for its biggest ever enlargement in 2004, the issue of legitimacy was reopened again. It has been attached to many new challenges in the Union, such as the constitutional Treaty, further enlargement, the economic and the fiscal crisis etc. The purpose of this paper is to address the perceived problem of legitimacy of the European Union by shortly explaining the theoretical framework of legitimacy itself and by testing it against the effects of the Charter of Fundamental Rights in the EU. The main research question that will be applied is: To what extent does the EU Charter of Fundamental Rights contribute to a more legitimate EU?

CONCEPTUAL FRAMEWORK

Essentially, there are two main methods for assessing the legitimacy of any political system. The first one is by evaluating the political system on the basis of criteria derived from normative theory. The second one is by determining empirically to what extent the political system is 'right' in the eyes of the beholders – the members of the particular polity.

The normative approach is well explained by Beetham's analysis of political legitimacy as a multi-dimensional concept, comprising the different elements of *legality, normative justifiability* and *legitimation.* Political power is legitimate, we can say, to the extent that:

■ it is acquired and exercised according to established rules (legality);

■ the rules are justifiable according to socially accepted beliefs about (1) the rightful source of authority and (2) the proper ends and standards of government (normative justifiability); and

■ positions of authority are confirmed by the express consent or affirmation on the part of appropriate subordinates, and by recognition from other legitimate authorities (legitimation)[1].

Focusing on the key dimensions of *normative justifiabilit*y, Bentham and Lord[2] identify two key normative principles of liberal democracy, and those are popular sovereignty (rule by the people) and proper ends of government, relying on the protection of basic rights (freedom, security, welfare). The legitimating belief that the people constitute the ultimate source of political authority raises the question 'Who constitutes the people?' and opens the issue of political identity, equally crucial for political legitimacy. The principle of popular sovereignty also refers to what it means for the people to rule, and this aspect of popular sovereignty, in turn, refers to electoral authorization of government and

1 David Beetham. *The Legitimation of Power,* (London: Macmillan, 1991).

2 David Beetham and Christopher Lord "Legitimacy and the European Union" In *Political Theory and the European Union*, ed. Albert Weale and Michael Nentwich, (London: Routledge,1998)*,* 15.

stipulates the requirements of representation and accountability.[3] Regarding the second dimension of 'the proper ends and standards of government', it can be summarized in its most classic form as the protection of the Lockean rights (life, liberty, and property), complemented with welfare rights and securing the conditions for economic growth. This principle yields criteria to judge the performance of government.

To summarize, in this central domain of normative justifiability, the legitimacy of a liberal democratic system depends on three criteria: an agreed definition of the people or 'political nation' as defining the rightful bounds of the polity; the appointment of public officials according to accepted criteria of popular authorization, representativeness and accountability; and the maintenance by government of defensible standards of rights protection, or its routine removal in the event of 'failure'. These criteria are specific and distinctive for each political system and depend upon its tradition and historical evolution. They are reflected in numerous normative theories of democracy. The most precise summary is presented in Abraham Lincoln's famous definition of democracy, 'government of the people, by the people, for the people.'

The second method for determining the political legitimacy of the European Union is based upon empirical data and requires and analogous approach. In order to apply this method, we should first determine the indicators that are relevant for the legitimacy of the political system. Most researches using an empirical approach are based on the system theory, originally developed by David Easton, who distinguished between attitudes towards the political community, the regime, and the authorities.[4] Easton defined input into the political system as consisting of citizens' demands and support (conferred not only through elections, but also by citizen identity and sense of system legitimacy) and output as government decisions and actions (leaving the internal developments in the political system itself largely vague and unclear).[5] Scharpf[6] considers that democracy aims at collective self-determination. He has defined it as a two-dimensional concept, relating to the *inputs* and to the *outputs* of the political system at the same time. On the input side, self-determination requires that political choices should be derived, directly or indirectly, from the *authentic preferences* of citizens and that, for that reason, governments must be held accountable to the governed. On the output side, however, self-determination implies *effective fate control.*[7]

Easton's framework will be used as an indicator to help us acknowledge two presumptions: if people that are part of a certain entity (i) are able to take

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3   Ibid, p.16.

4   David A. Easton "A Re-Assessment of the Concept of Political Support", *British Journal of Political Science,* no.5, (1975):435-57.

5   See more at David A. Easton, *A Systems Analysis of Politcal Life*, New York: John Wiley, 1965.

6   F. W. Scharpf. *Governing in Europe*, Oxford: Oxford University Press, 1999.

7   F.W. Scharpf. 'Economic integration, democracy and the welfare state' Journal of European public policy, vol. 4(1), (1997): 18-36.

part in decision-making and (ii) at the same time receive protection of their fundamental rights, they will consider the political system as more legitimate. So, the main issue we are interested in is, to what extent does the EU Charter of Fundamental rights affect the legitimacy of the EU? In this case, the legitimacy lies upon the acknowledgement of fundamental rights, but since the EU is not like any other political system, we should be careful about to what extent the criteria of democratic legitimacy in nation states can be applied to the Union. For the purpose of the research, three types of legitimacy are distinguished within the conceptual framework: input legitimacy, output legitimacy, and identity/social legitimacy, using the concept of Scharpf, adjusted to the purpose of this paper.[8] He uses Lincoln's triple identity, equating the *governed* ("government of the people") with social legitimacy[9], the *governors* ("government by the people") with input legitimacy and the *beneficiaries of government* ("government for the people") with output legitimacy.

FUNDAMENTAL RIGHTS PROTECTION IN THE EU

The concept of fundamental rights protection, according to modern political thought, is considered as setting boundaries to the political power. The establishment of the European Union, as a *sui generis* creation that goes beyond the boundaries of the traditional concept of the nation-state, has created a new challenge: how to protect the fundamental rights in a community whose priorities are dominantly economic? The necessity to provide proper protection for the fundamental rights in the EU has gradually transformed the priorities from economic into political ones.

In the beginning, the European Court of Justice (CJEU) played a key role in providing fundamental rights protection by its judicial activism because the Founding Treaties did not contain any provisions on this issue. Before a bill of rights was adopted, human rights protection of the European Union was based on case law, and the European Convention on Human Rights (ECHR) was recognized as a special source of inspiration for the general principles of the EU law. Fundamental rights protection was considered an integral part of the Community law, and therefore the European Court of Justice and the Court of First Instance made an extensive reference to the case law of the Strasbourg Court. By resolving different cases, the CJEU has created a catalogue of human rights that later was included in the EU Charter of Fundamental Rights.

The long debate among the Member States of the Union about whether the Union should have a separate Bill of Rights was resolved after the European Council in Cologne in June 1999. The arguments for consolidation of the human

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8 F.W. Scharpf, 'Interdependence and democratic legitimation' MPIfG working paper, No. 98/2, 1998, 2.

9 Beate Kohler-Koch, Berthold Rittberger, ed. *Debating the Democratic Legitimacy of the European Union,* (New York: Rowman and Littlefield Publishers Inc., 2007), 13.

rights applicable at EU level in a Charter prevailed, especially after the adoption of the concept of "citizenship" of the Union that opened a new chapter of the political integration. In fact, Article 8 of the Maastricht Treaty, by introducing citizenship of the Union, indicates that the European legal order is no longer constructed only as a contract among economic actors, but also as a political union that needs to keep the legal certainty on fundamental rights protection.[10] Even though the rights that were attached to this citizenship had already existed before, the introduction of the institution of citizenship itself brought about a direct connection between the European Union and the people of its Member States.

The Charter of Fundamental Rights, although adopted at the Nice European Council in December 2000, became legally binding for the first time when the Treaty of Lisbon entered into force in December 2009. The need for the European Union to adopt its own, legally binding catalogue of fundamental rights was doubtless. The enforcement of the Charter resulted in benefits for the EU citizens. The Lisbon Treaty provided that the Charter of Fundamental Rights of the European Union acquired the same status as the two Union Treaties and therefore became binding upon the Union institutions and the Member States when implementing Union law[11].

Concrete evidence of the Charter's growing importance comes in the form of case law of the CJEU. Between 2010, the first year in which the Charter was legally binding, and 2014, the number of references to the Charter in CJEU decisions quadrupled, reflecting its increasing prominence as a legal point of reference at EU level.[12] At the same time, the use of the Charter at national level, according to the Fundamental Rights Agency and its online tool 'Charterpedia', report that the Charter is also contributing to fundamental rights protection through Member States' legal systems, but it is not yet fully exploited.[13]

The Charter is the point of reference not only for CJEU but also for EU legislature, notably when EU legislation gives 'specific expression to fundamental rights', as is the case for EU policies dealing with anti-discrimination, asylum, data protection transparency, good administration, and procedural rights in civil and criminal proceedings. Moreover, fundamental rights can also be at stake in EU legislation covering all other domains of Union competence such as transport, competition, customs and border control.[14]

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10 Treaty on European Union, Article 8, See more at https://europa.eu/european-union/sites/europaeu/files/docs/body/treaty_on_europe-an_union_en.pdf

11 Article 6 TEU and article 51(1) Charter

12 European Union Agency for Fundamental Rights "Between promise and delivery: 10 years of fundamental rights in the EU", 8. http://fra.europa.eu/en/publication/2017/between-promise-and-delivery-10-years-fundamental-rights-eu

13 Ibid.

14 Francesca Ferraro and Jesus Carmona, *'Fundamental Rights in the European Union- The role of the Charter after the Lisbon Treaty'.* EPRS. PE.554.168. (2015):1.

Three key Court of Justice cases which interpret the Charter have led to annulment of EU measures: In 2010, the Court annulled an EU measure in the field of agricultural policy because of data protection concerns;[15] in 2011, it partially annulled an EU measure dealing with insurance services because of gender-based discrimination;[16] and in 2014, the Court annulled the Data Retention Directive[17] because it violated the principle of proportionality when limiting fundamental rights to privacy and data protection.[18]

THE LINK BETWEEN 'RIGHTS' AND 'LEGITIMACY'

In the process of searching the link between the concepts of 'rights' and 'legitimacy', it is clear that rights do not provide legitimacy by themselves because they are dependent on other concepts that provide justification. The justification may rely on the concept that human rights have natural character or that they are a created product that make social coexistence possible. Therefore, legitimacy can't be built just on respect for fundamental rights, but needs other elements, too. Habermas sees the essence of legitimacy as the tension and mediation between some notion of human rights (whatever their justification might be), on the one hand, and the principle of popular sovereignty, on the other.[19] At the same time, most studies of legitimacy from a political science perspective begin with some kind of threefold typology of legitimacies, such as the above-mentioned one of David Beetham and Christopher Lord. In these studies, legitimacy on the basis of fundamental rights is not mentioned *per se*, but the effective protection of fundamental rights can be, to a certain degree envisaged as contributing to the 'output' legitimacy of a political system. At the same time, any kind of 'social' legitimacy which reflects shared feelings or expectations of the citizens also seems difficult to imagine without an underlying notion of fundamental rights in a democratic system where they ensure the autonomy of the individual.

John Eric Fossum is one of the authors focusing on the role of fundamental rights in legitimating the EU, and he explicitly envisages that "legitimation through rights is an important element", especially in his case study of the European Union, where "legitimation through outcomes and values is problematic". However, he also acknowledges that the three 'modes of legitimation' would need to be combined 'to get an overall sense of how entities are legitimated'.[20]

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15 Joined Cases C-92/09 and C-93/09 Schecke
16 Case C-236/09 Test-Achats
17 Joined Cases C-293/12 and C-594/12 Digital Rights Ireland
18 Articles 7 and 8 of the Charter
19 See more at Habermas, 'Zur Legitimation durch Menschenrechte'.
20 J. E. Fossum, 'Constitution-making in the European Union', *Democracy in the European Union? - Integration through Deliberation?* ed. Eriksen & Fossum, (London: Routledge, 2000), 137.

INPUT LEGITIMACY

Input legitimacy is concerned with the moral authority of the source from which the decision-making body derives the legitimacy to legislate. The EU input legitimacy suffers the most, due to a couple of reasons.

Decisions in a certain polity are legitimate if they are based on the participation and consensus to be bound by them, of all its members. It is clear that direct participation by everybody in a large-scale polity is impossible. The main issue is, therefore, how to legitimate majority rule, exercised by representatives that are elected only at regular intervals. Therefore, even the concept of a democratic deficit of the EU can be overarched if the Union manages to target the issue of input legitimacy, i.e. to organize a certain degree of participation and representation that can provide conditions for development of other elements of legitimacy, such as output and social/identity legitimacy.

There have been certain attempts of the Union to improve its input legitimacy, mainly through institutional reforms. One of them was the decision by the Paris Council of 1974 to hold direct elections to the European Parliament in 1979, so that it became a directly elected representative body. Later, the initiatives to improve the democratic input of the EU were connected with increasing the European Parliament's powers. Additionally, there is a debate about the representativeness and transparency of the Council, which consists of elected national government ministers who are only in some cases directly accountable to their national Parliaments for decisions at the European level.[21] Criticism has been directed towards the unelected and unaccountable European Commission, in particular after the Commission combined functions of executive and legislative nature. They should be separated and exposed to scrutiny by the voters, because the voters, so far, cannot control the executive powers of the Union.

In answer to this critique, the response of the Union was focused on institutional reforms, especially on strengthening the parliamentary powers as a legislator (introduction of cooperation and co-decision procedures). Later, the TEU established the office of the European Ombudsman and the right to petition, as a consequence of European citizenship. Another distinctive feature of the EU, in this context, is the involvement of interest representation groups in the formulation and implementation of policies. It increases the legitimacy of certain decisions in specific sectors, but it does not add legitimacy to the overall capacity of the Union to decide upon general issues that affect most of the citizens. Even the institutional changes introduced later, such as the extension of the co-decision procedure intended to increase the European Parliament's influence, the citizens' initiative as a direct democracy tool, or including the

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21 Conclusions of the Cologne summit, Annex IV, 3/4. June 1999.

principle of public decision making when the Council acts in its capacity as legislator, etc., did not solve the problem of EU legitimacy: The citizens don't use them in full capacity. The same is the case with the application of the Charter of Fundamental Rights of the Union: Its provisions are not always used for reference by the citizens, be it due to the fact that there is a need of increased visibility of the Charter and the level of acknowledgement of rights, or because of its limited scope of application.[22]

▌ OUTPUT LEGITIMACY

Output legitimacy is concerned with the substantive righteousness of the outcome of legislation. The measure to assess this type of legitimacy is the people's policy preference. If the people agree with the results of a decision-making process, the results are legitimate. If they do not agree or find them unfair, they lack legitimacy.[23] This legitimacy is connected with the notion of 'government for the people.' And according to Scharpf, 'collectively binding decisions should serve the common interest of the constituency'.[24] Mechanisms of input legitimacy and output legitimacy complement each other. For instance, fundamental rights should be respected, but legislation should be reasonable and acceptable as well. Therefore, the collective government decisions should meet the citizens' demands and needs and reflect them, and at the same time remain binding.

The issue about what kind of output can legitimate the competences and powers of the EU has been a challenge for a long period of time. The conclusion is clear that the Union has to improve its performance and to enhance its capabilities in order to be more legitimate. Additionally, the acquisition of new competencies by the Union, or expansion of its legal or administrative capacities, is subject to close scrutiny by the member states because of the legitimacy problem. This means that any new competencies for the EU can be accepted only if functional gains can be presented. This is due to the specifics of the EU legitimacy, compared to national level legitimacy. They are explained by Beetham and Lord, who distinguish two different arguments about EU level legitimacy: on the one hand, it is legitimacy based on the superior knowledge of technocrats, and on the other, it relies on the Union's overall superior capabilities to provide solutions to certain cross-border problems.[25] The second argument has been accepted both by the intergovernmentalists and neofunctionalists.

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22 The provisions of the Charter are addressed to the institutions and bodies of the EU with due regard for the principle of subsidiarity and the national authorities only when they are implementing EU law.

23 Hester Kroeze 'The Acknowledgment of Political and Fundamental Rights as a Source of Legitimacy – A Comparison between the European Union and Switzerland' in *Being a Citizen in Europe: Insights and Lessons from the Open Conference,* Zagreb, 2015, 151.

24 F.W. Scharpf, 'Interdependence and democratic legitimation' MPIfG working paper, No. 98/2, 1998, 2.

25 Beetham & Lord, *Legitimacy*, esp. Ch. 4.

However, a step towards resolving the issue of the EU's output legitimacy was the adoption of the principle of *subsidiarity* in the TEU of 1991. This Treaty made an attempt at clarifying the definition of legitimate EU output as an action taken by the union 'only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale or effects of the proposed action, be better achieved by the Community'.[26] Still, the actions of the EU are often contested on the basis of the legitimacy of its competences and are often addressed to the CJEU.

In this context, effective protection of fundamental rights can be envisaged as contributing to the 'output' legitimacy of the political system of the European Union. One of the greatest steps towards a more comprehensive approach to the legitimacy problem was the establishment and development of EU citizenship.[27] Later, the Charter of Fundamental Rights of the EU gave a specific impact towards a more legitimate Union, once again, opening the issues of clarifying the Union's legal nature and its identity and canalizing them into institutional public debates. Additionally, the Lisbon Treaty made an attempt to strengthen political rights of EU citizens upon remarks that the EU cannot respond to their demands. In fact, Article 10(1) TEU states that: 'The functioning of the Union shall be founded on representative democracy', and the form of this representative democracy is embodied in citizens representation at Union level in the European Parliament. The Lisbon Treaty introduced the European Citizens' Initiative (article 11(4) TEU), which allows citizens to engage and give general legislative proposals. Proposals that are already concretized into legislative texts cannot be submitted, and they must refer to policy fields that are already developed in the Union. The European Citizens' Initiative is not binding and it cannot be used to apply pressure on the Commission to execute the will of the people. This leads to the conclusion conditioning the popular initiative weakens the citizens' position in the European Union, and it weakens the Union's attempt at adding more legitimacy.

Regarding the European Parliament elections, citizens of the EU can only vote for candidates from their Member State of residence. Even for national elections, citizens have 'the right to vote and to stand as candidates in elections to the European Parliament and in municipal elections in their Member State of residence, under the same conditions as nationals of that state'. In this context, the Union is often criticized for lacking a citizens' right to vote for national elections in their residence country of which they are not a national.

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26 Article 3b TEU
27 European citizenship was firstly introduced in the Maastricht Treaty. Article B(3) of the TEU clarified that this step in the integration process was meant 'to strengthen the protection of the rights and interests of the nationals of its Member States through the introduction of a citizenship of the Union.'

The criticism about the legitimacy crisis of the EU are still being addressed on the European Commission, which is considered the executive organ of the European Union. The Commission is not formed out of the European Parliament, but appointed by the Member States' heads of government (the European Council).[28]

Increasing popular approval of the policies of the EU can be also done through referenda. The referendum is not institutionalized as an instrument for policy-making in the European Union, but Member States use this tool for gaining consent from their citizens for further European integration and, as we are aware, they have strong impact on the European decision-making. The referenda have national character and their organization lies upon the will of the Member States. Their results may vary where organized, but when some Member States do not provide referenda, inequality between citizens from different Member States is created.

▎IDENTITY AND LEGITIMACY

Political legitimacy refers to some notion of feeling of belonging, commonality or shared identity between the members of a polity. It is considered an emotive connection which the trust among the people who are expected to build relations and decide by majority is based on. Identity (or social) legitimacy rests on the assumption that democracy is not merely an electoral matter, but also requires socio-cultural cohesion in an institutional context or a public sphere in order to determine the common will of the people. This assertion is based on the notion that this common will – or common interest – consists of the accumulation of the individual opinions of the entity's citizens.[29]

But is there a link between identity and social legitimacy in the case of the European Union? The answer of the question is unclear, due to the fact that many scholars of democratic theory pre-suppose a shared identity to set the boundaries of legitimate government - and this is complicated for a political system like the EU. In order to find the relation between identity and social legitimacy in the EU, the issue of identity has to be measured and quantified by presenting an exact number of individuals at a given moment that share the feeling of belonging to a community, and determining whether their number is high enough to satisfy the criteria for legitimate joint decision making. This is quite a subjective matter, but identity affects the sustainability and functionality of EU institutions. There is not sufficient empirical data available on the issue how the EU integration affects the emotive bonds between individuals and political subjects. Nevertheless, some data provided by Eurobarometer[30] show

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28 Article 17(5) TEU

29 Hester Kroeze. 'The Acknowledgment of Political and Fundamental Rights as a Source of Legitimacy – A Comparison between the European Union and Switzerland' *Being a Citizen in Europe: Insights and Lessons from the Open Conference,* Zagreb, 2015, 152.

30 Eurobarometer, n 121.

that a very general feeling of community exists, but this feeling is fading, the more concrete the questions asked become. In this case, there is a declining trend in identification with the Union and its institutions which shows the persistency of the lack of legitimacy.

The EU has a long and repetitive history of attempts to use the concept of identity for the purpose of legitimation. Many different approaches and strategies have been used over time. The founding Treaties don't contain a word on the concept of a common identity of the Europeans, however this idea occured at the 'Declaration on European Identity' at the Copenhagen Summit in 1973. The idea was launched to 'define the European Identity with the dynamic nature of the Community in mind'[31] with the purpose to provide a means 'to achieve a better definition of their (the member states') relations with other countries'.[32] This declaration is considered an exceptional statement for the perceived origins of European identity, besides the fact that it was directed outward, with no intention to create a common identity for sustainability of the Union at a supra-national level. In addition, the Member States declared that they show commitment 'to defend the principles of representative democracy, of the rule of law, of social justice – which is the ultimate goal of economic progress –, and of respect for human rights'. These principles, with some small interventions, have become core elements of the EU identity discourse, and they also provided the starting point for the EU Charter. In fact, the Charter of Fundamental rights is one of the attempts of the Union to present its distinctiveness and its special bound with the people in the process of identity building.

After the idea of a European identity was created, it became immediately linked with the growing concern about improving the legitimacy of the EU. The next crucial step in this development was the report on the idea of a 'European Union' by former Belgian Prime Minister Leo Tindemans in 1974/75. Tindemans proposed a series of measures under the heading 'citizen's Europe', in order to promote a 'common vision of Europe' and restore the European idea as a mobilizing force.[33] Significantly, the protection of human rights appears among Tindemans' proposals, since the report insists that 'the democratic nature of the European Union, which should be explicitly stated in the Treaty of Union, means that the protection of human rights is a fundamental element in the new political edifice and in the operation of its institutions'.[34]

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31 EC 'Declaration on European Identity', *EC Bulletin*, EC 12/1973, 2501, 118–22.

32 Ibid. p. 118.

33 L. Tindemans, 'Report on European Union,' *EC Bulletin*, Supplement 1/76.

34 Ibid., p. 26.

Later, the Adonnino report[35] on 'A People's Europe' in 1985 proposed '[a] strengthening [of] the special rights of citizens, in particular voting rights, improvement of citizens' complaint procedures and simplification of Community legislation'.[36] The Report attempts to create an emotive attachment to integration, and some of the proposals even include creating a stronger common identity through cooperation on television programmes, a Euro-lottery, a European Academy of Science, Technology and Art, University exchanges, twinning of sports teams and schools, a European Voluntary service, and adoption of a flag, an emblem and an anthem 'to be used at national and international events, exhibitions and other occasions where the existence of the Community needs to be brought to public attention'.[37] The reality showed that, no matter how strong common identity was created for the Union, it did not affect the citizens for immediate identification with it. The symbolic action did not give any results, because as the EU was growing through the years, the key political actors became increasingly aware that it is hard to propose a uniform European identity as an answer to the legitimacy issue of the Union. This is due to the fact that the European identity was considered as a threat to the national identities of its Member States, and therefore the EU political actors decided to postpone opening the issue of defining Europe's political and cultural identity.

CONCLUSIONS

The debate about the EU's legitimacy has been present both at the academic and at the political level. As the Union's activities become ever more invasive of peoples' lives, and as any new enlargements challenge the very concept of 'Europe', the legitimacy of the entire process depends more and more on the Union's ability to legitimate itself independently of the member states. A coherent approach to this problem is difficult, due to many uncertainties about the nature of the polity emerging at European level and the lack of adequate analytical and normative concepts.

Throughout the years, different European-level actors have been concerned with the need to legitimate the Union in the eyes of the citizens. The EU has undertaken actions that were prompted by these concerns and, at the same time, visible for the citizens. In fact, the Union has managed to expand its output, and it is trying to improve its efficiency and transparency. The democratic input has been constantly increased since the first direct election of the European Parliament. There have also been attempts at fostering a European identity. European citizenship is an increasingly important conceptual frame to address

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35 EC 'A People's Europe: Report from the ad hoc Committee' [chairman: Pietro Adonnino], to the European Council (part I 29/30.03.1985, Brussels; *Notes* 181part II 28/29.06.1985, Milan) in *EC Bulletin*, Supplement 7/85 (1985): 7–32.

36 Ibid. p.7.

37 Ibid. p.29.

all elements of the legitimacy question. In addition, there is a growing number of requests for protection of citizens' rights at European level directed to the CJEU. The Court has expanded the fundamental rights protection over the years on the basis of the European Convention on Human Rights and constitutional traditions of the Member States of the Union.

However, a quantification of these initiatives for fostering the EU's legitimacy is not possible. The issues of identity, legitimacy and emotive bonds of the individuals with the community are very complex, subjective and psychological and cannot be measured. The general success or failure of these initiatives is the fact that the Union has not (yet) disintegrated, but the legitimacy issue has not been solved either.

The EU Charter of Fundamental Rights with its binding nature was a further attempt at overarching the legitimacy problem of the EU. It marked both a symbolic and a substantive move towards opening wider legitimacy issues and was at some points even considered as a step towards constitutionalisation of the Union.

Nevertheless, the legitimacy issue could not be completely solved by the Charter, since it only applies to the Union institutions, and to the Member States when they implement Union law.[38] This means that there is no general applicability of the Charter, and when a certain case does not fall within the scope of Union law, citizens are deprived of its protection. This strong limitation of the Charter's scope impedes its effectiveness because it reduces the rights it contains. This is why the Charter is considered to have rather symbolic value, and therewith it jeopardizes the effects it could have on the Union's legitimacy.

The link between fundamental rights and legitimacy is a very complex one, and the ability of a political order to protect its members' fundamental rights relies on individuals who need to relinquish part of their individual freedom and form collective structures endowed with coercive power. At the same time, the respect of fundamental rights is a necessary precondition for the legitimacy of a democratic regime: a political system that violates certain fundamental rights of its members cannot be legitimate. Legitimate political systems are expected to provide a balance between different individual rights, and between rights and collective powers necessary to enforce them. The EU Charter of Fundamental Rights contains important rights which organize the political process to achieve such a balance. But more concrete steps and more effective protection are required in order to improve fundamental rights as well as the EU's legitimacy. The Charter is one of the instruments for overarching the legitimacy issue in the Union, but it is not enough for the EU to achieve legitimacy in full capacity.

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38 Article 51(1) Charter.

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