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59

Iran and the West
Transitional Justice
Optimal Size of Government
European Western
Union and Balkan
Healthcare
Marketing
Perspectives

POLITICAL THOUGHT

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ADENAUER
STIFTUNG

IDSCS | Institute for Democracy
Societas Civilis - Skopje

59

Contents

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THE RULE OF LAW IN THE CONTEXT OF THE EUROPEAN UNION'S WESTERN BALKANS ENLARGEMENT POLICY

POLITICAL THOUGHT

59

Introduction

The major project of European unification that led to the creation of the European Union as a unique European construct was developed in a lengthy and multi-layered integration process. The creation and maintenance of peace and security in Europe after World War II is the *raison d'être* of this complex European integration process that was initiated with the foundation of the *European Communities*. The *idea of peace* was envisioned to be realised by means of economic integration of the member states, which would subsequently lead to mutual solidarity. The convergence of the member states' economic policies implied the necessity to unify policies in other areas, too, which led to a spillover effect concerning integration beyond economy and a gradual development of political union as a following stage of integration. The European Union is actually the result of a unification process based on certain values that set the ground for developing common policies to achieve common goals and realise common interests. In that context, the rule of law is recognised as one of the European Union's basic values.[1]

In science, rule of law is defined as "superiority of the law", meaning that all actions and decisions need to be in compliance with rules that have been laid down and acknowledged, without any discretionary interventions.[2] Emanating from the *rule of law* as a basic value, the primary law of the European Union is comprised of the Founding Treaties which have been unanimously adopted by all member states, so that every action of the Union needs to be based on a provision of the Founding Treaties. Those treaties are legally binding documents signed by the EU member states. Based on them, goals of integration are determined, policies and actions are defined, the rules of procedure of the EU institutions are established, and the process of decision-making as well as the relationship between the Union and its member states are outlined. The Treaty of Lisbon foresaw a more active engagement of the EU within, based on the respect and promotion of European values. The commitment to freedom, democracy, basic rights and the rule of law was now featured in the form of a legally binding provision, having evolved from the level of political will expressed in the preamble.[3]

The process of fostering and deepening internal EU integration has been accompanied by the process of enlargement by new member states. The conditions for membership are also stipulated by the Founding Treaties that constitute primary EU law. The

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[1] According to Article 2 of the Treaty on European Union, according to the Treaty of Lisbon: "The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail."

[2] Black, Henry C. *Black's Law Dictionary*, 6th ed., St. Paul, Minn: West Publishing Co., 1990, p. 1332, цитирано според Leas-Arcas, Rafael. "Essential Elements of the Rule of Law Concept in the EU." *Queen Mary School of Law Legal Studies Research Paper No. 180/2014* pp. 1-6 (Aug 20,2014): 1. Academia.edu.

[3] Petruševska, Tatjana and Ognjanoska, Leposava. „Poglavjata 23 i 24 od *acquis communautaire* vo kontekstot na politikata na uslovuvan-je zaradi integriranje vo Evropskata Unija: političkiot i teoretskiot kontekst". In: *Godišnik na Pravniot fakultet vo Skopje*, ed. Pandeva P., Irena, pp. 1-23, vol. 57. Skopje: Univerzitet "Sv. Kiril i Metodij", 2018.

consecutive EU enlargement processes have had an impact on the Founding Treaties of the EU, i.e. they have modified them with regard to specific rules that they contain. The first accessions to the European Union were based on political decisions, without any clear criteria having been established. However, in the case of the Central and Eastern European states, the political and institutional relationship framework for EU accession can be characterised as *conditionality policy*.[4] At the European Council meeting held in Copenhagen in June 1993, it was clearly stated that the states that express the will to do so should become part of the European Union. At the same time, certain membership criteria were established: the so-called *Copenhagen criteria* that set the ground for conditionality policy. These criteria are not legally binding, however they are contained in the political documents of the European Council, the highest political body of the European Union. Based on the Copenhagen criteria, an entire system of monitoring compliance with imposed conditions was developed, whereas the criteria themselves were inevitably embedded in a legal framework: the *acquis communautaire*. According to the Treaty of Lisbon, Article 49 of the Treaty on European Union (TEU) stipulates that every European state that respects the values referred to in its Article 2 (basic values of the EU) and is committed to promoting them may apply to become a member of the European Union. This statement leads to the conclusion that the enlargement of the Union will be based on achieving and respecting certain values: the fundamental values of the EU. Thus, Article 49 of the TEU implicitly reflects the Copenhagen criteria. Additionally, Article 49 stipulates that "the conditions of eligibility agreed upon by the European Council shall be taken into account," alluding to the Copenhagen criteria.

Introducing the Copenhagen criteria also meant placing certain key areas such as the rule of law high on the enlargement agenda. Hence, with the Treaty of Lisbon, the commitment to respecting the rule of law was introduced into the conditionality policy regarding EU membership. This rule is also applied to the accession of the Western Balkan states. The concept of rule of law in the EU enlargement process[5] is covered by Chapter 23 (judiciary and fundamental rights) and Chapter 24 (Justice, freedom and security) of the *acquis communautaire*. These chapters reflect the second pillar of the European Union, Justice and Internal Affairs, and contain the most significant elements

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4   In a broader sense, conditionality policy is a process during which protagonists of international law impose conditions on states by which the latter achieve benefits, and during which the level to which the conditions are fulfilled is monitored and evaluated. In the framework of its enlargement to the East, the EU introduced a fostered and complex conditionality policy against the background of the future member states' different former political and economic system, but also due to the explicit scepticism with regard to the enlargement within the Union based on insufficient preparedness for the accession on both sides. Apart from the requirement for the state to be European (to be situated on the European continent), another formal condition for accession is introduced, namely respect for the principles of freedom and democracy as well as respect for human rights, the rule of law and the principles common to the member states.

5   According to the EU's Enlargement Strategy 2011/2012 developed by the European Commission which lists the areas included in the rule of law concept.

of democracy and the rule of law.[6] Chapters 23 and 24 are tightly linked to the *political* Copenhagen criteria; they are, as it were, the key to accession. They are opened first and closed last in the accession negotiations with every state that aspires to become a member of the European Union. For those states that have not started accession negotiations, the contents of Chapters 23 and 24 is becoming an increasingly important condition on their path towards EU integration; process catalyst, so to say.

The paper at hand analyses the introduction of the rule of law into the enlargement process as a result of fostering the conditionality policy for European Union membership as it has been the case in the relations with the Western Balkan states. We also address the concept of "Europeanisation" of candidate states and look at the growing volume and complexity of the *acquis communautaire*. In this context, we elaborate on the new approach to the enlargement process and the role of Chapters 23 and 24, with a special focus on the latest commitment to reforming the enlargement process by further fostering the importance of the rule of law as a fundamental value of the European Union, in its internal as well as external relations.

Theoretical Explanation of the "Europeanisation" Phenomenon

Initially, "Europeanisation" was analysed as a concept within the borders of the European Union, limited to the bilateral processes between its institutions and the member states.[7] Due to the process of new member states joining the EU and the development of the conditionality policy in the course of the enlargement to the East, the phenomenon of Europeanisation was expanded to the area of public policy. Thus, Europeanisation as a process mainly taking place in the member states, but also in the candidate states and some third states, can be basically described as an "institutional, strategic and normative adaptation [*of the system of a certain state*] induced by European integration".[8] Defined in more detail:

„Europeanisation involves processes of (a) construction, (b) diffusion and (c) institutionalisation of formal and informal rules, procedures, paradigms and policies, styles, "ways of getting things done" and shared values which are first defined and

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6 In 2005, the EU decided to treat the following conditions as priority: independent judiciary system, respect for the fundamental rights, and fight against corruption. To this end, Chapter 23 "Judiciary and fundamental rights" was introduced, and the chapter "Justice, freedom and security" was renumbered Chapter 24.
Apropos, the EU's three pillar structure that was introduced with the Treaty of Maastricht in 1993 was formally abandoned when the Treaty of Lisbon that came into force in 2009.

7 Risse, T., Cowles, M.G. and Caporaso, J. "Europeanization and Domestic Change: Introduction." In *Transforming Europe: Europeanization and Domestic Change*, edited by Cowles, M. G., Caporaso, J. and Risse, T. Ithaca, NY: Cornell University Press, 2010, pp. 1-20.

8 Georgievski Sašo and Petruševska, Tatjana, Cenevska Ilina, Stamenković Nataša, Stojanovski Mihail. *Primena na pravoto na Evropskata unija vo Republika Makedonija vo periodot pred preistpuvanjeto kon EU*, Skopje: Univerzitet „Sv. Kiril i Metodij", Praven fakultet "Justinijan Prvi"-Skopje, p. 39.

consolidated in the framework of the political process in the EU and then incorporated into the logic of the domestic (national or subnational) discourse, identities, political structures, and public policies."[9]

The lengthy procedure of adapting the domestic order of the candidate states to EU law, i.e. adopting the *acquis communautaire*, is central to the Europeanisation process.[10] In the context of the enlargement of the European Union, the term *acquis communautaire* is often understood in a broader sense, as if it also included the "*acquis politique*, which *stricto sensu* is not part of the *acquis communautaire*."[11] However, the harmonisation process involves aspects of political criteria. According to some authors, there is a difference between formal changes as a result of transposing EU law, on the one hand, and a change of behaviour (change of practices)[12] which focuses on the actual implementation of the rules, on the other. EU law does not only represent a body of legal documents, but also a framework for establishing and implementing common policies and values. Hence, with regard to the EU candidate countries, the *acquis* also includes best practices of the member states concerning the founding principles of the EU, as well as *soft law*.[13] Soft law is the basis for interpreting legal documents, but it is not legally binding. In the process of harmonisation of the jurisdiction of a candidate state with EU law, the main focus has to be on primary law, secondary law and international agreements, while court rulings and soft law can be helpful for their interpretation.

Rationalists explain the process of Europeanisation and the mechanisms for its implementation by the "logic of consequences", while constructivists resort to the "logic of appropriateness".[14] Whereas the logic of consequences assumes that actors choose the behavioural option that maximises their utility under the circumstances, the logic of appropriateness stipulates that actors choose the behaviour that is appropriate according to their social role and the social norms in a given situation.

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9 Radaelli, Claudio M. "The Europeanisation of Public Policy: Theory, Methods and the Challenge of Empirical Research." Oxford University Press (2003), cited *Ibid*, p. 39.

10 Translating *acquis communautaire* as "*acquis* of the Communities" or "*acquis of* the Union" can lead to different interpretations of the term (for details, see Jordanova R. Malinka, "Transponiranjeto na *acquis communautaire* vo pravoto na Republika Makedonija: normativistička perspektiva", Doctoral thesis, Univerzitet "Sv. Kiril i Metodij", Praven Fakultet "Justinijan Prvi", Skopje 2010). In some languages, *acquis communautaire* is translated as "achievements" or "accomplishments" of the Communities/the Union, while in other languages, the translation of the term accentuates the notional element of "law" or "legal order" of the European Communities/European Union (Croatian, Slovenian, etc., as well as English, which also uses the phrase "the body of European Community law".) In Macedonian, the term *acquis* is mainly interpreted as "EU law". With the amendments to the Founding Treaties of the Union introduced by the Treaty of Lisbon, the phrase "*acquis communautaire*" was practically erased from the text of the treaties and replaced by the term "Union law".

11 Knud, Eric J. "The Social Construction of the acquis communautaire, a Cornerstone of the European Edifice." *European Integration On–line Papers*, Vol. 3, No. 5 (1999): стр. 11.

12 Schimmelfennig, Frank, and Sedelmeier, Ulrich. "Introduction: Conceptualizing the Europeanization of Central and Eastern Europe." In *Europeanization of Central and Eastern Europe,* edited by Schimmelfennig, Frank, and Sedelmeier, Ulrich. Ithaca, New York: Cornell University Press Cornell, 2005, pages 1-28.

13 Jordanova R. Malinka, "Transponiranjeto na a*cquis communautaire* vo pravoto na Republika Makedonija: normativistička perspektiva", Doctoral thesis, Univerzitet "Sv. Kiril i Metodij", Praven Fakultet "Justinijan Prvi", Skopje 2010, p. 48

14 March, J.G. and Olsen, J. "Rediscovering Institutions. The Organizational Basis of Politics." New York: Free Press (1989), цитирано според Schimmelfennig, F. and Sedelmeier, U. *The Europeanization of Eastern Europe: the External Incentives Model Revisited.* Paper for the JMF@25 conference, EUI, 22/23 June 2017, https://www.eui.eu/Documents/RSCAS/JMF-25-Presentation/Schimmelfennig-Sedelmeier-External-Incentives-Revisited-JMF.pdf [accessed 10 April 2020].

Combining the two dimensions, the external incentives model assumes that the EU drives Europeanisation by means of sanctions and rewards that change the cost-benefit calculations of domestic actors, while the social learning model posits that the authority of the EU and the legitimacy of its policies have the power to persuade domestic actors to proceed with Europeanisation.[15] Conditionality policy is the main mechanism for conducting Europeanisation of/towards candidate states, pursued with the aim to carry out reforms which would not be realised without that kind of policy. The logic inherent to conditionality policy is to "internalise" reforms within the system in the long run, which means transposing Union law into domestic law, restructuring the institutions in compliance with EU rules, and changing political practices according to European standards.[16] As the two sides in the enlargement process, the European Union and (potential) candidate states enter into an unequal partnership, due to the fact that the EU has the power to impose rules and conditions without any room for negotiations, to withdraw or suspend benefits in case of insufficient compliance, and because EU membership is usually more important to the candidate state than to the Union itself.[17] This process is also called "promoting democracy by integration".[18] However, the strategy of conditionality is effective only if the criteria are clearly defined and a credible EU membership perspective is determined as the final award, and if the threat of being excluded from the integration process in case of failure is serious enough.

According to this model and understanding of conditionality policy, its impact and influence are most distinct during the membership negotiations, but not towards the end of the accession process or after becoming a EU member state. Hence, conditionality policy is constantly developed and amplified in the context of the Western Balkans enlargement, and it has to be understood rather as a process than as a clearly defined variable.[19]

Amplifying the Conditionality Policy in the EU Enlargement Process With the Western Balkans States

The term "Western Balkans" has a geopolitical character. It was first used in the beginning of the 1990s to denote the former Yugoslav republics (but not Slovenia) and Albania.

15 Schimmelfennig, F. and Sedelmeier, U. "The Europeanization of Eastern Europe: the External Incentives Model Revisited." Paper for the JMF@25 conference, EUI, 22/23 June 2017.

16 Schimmelfennig, F. and Sedelmeier, U. "Governance by Conditionality: EU Rule Transfer to the Candidate Countries of Central and Eastern Europe." *Journal of European Public Policy*, 2004, pages 661-679.

17 Ibid.

18 For further information, see Steunenberg, B. and Dimitrova, A. "Compliance in the EU enlargement process: The Limits of Conditionality." *European Integration Online Papers*, Vol. 11, 2007, pages 11-18.

19 Sasse, G. "The European Neighbourhood Policy: Conditionality Revisited for the EU's Eastern Neighbours." *Europe-Asia Studies*, Volume 60-Issue 2, 2008, pages 295-316.

In the context of EU integration, the denomination was introduced in 1996/7 when the respective regional approach was established. By applying the term "Western Balkans", the European Union introduced a distinction between the Western Balkan and Central and East European (CEE) countries, which actually include the Western Balkan countries. That distinction is also reflected in the EU accession process of the latter.

In a historical perspective, the European Community had established political and economic relations with the Socialist Federal Republic of Yugoslavia, set down in the Cooperation Agreement that entered into force in 1983. The legal basis for this agreement had been Article 310 of the Treaty establishing the European Community, which refers to agreements establishing an association. Before the fall of the Berlin Wall, there had not been any cooperation agreements between the Union and other CEE countries except Romania, with which an Agreement on trade in manufactured goods was signed in 1980.

The collapse of Yugoslavia had a crucial impact on the design of the EU's politics towards the Western Balkans. From 1990 to 1993, the European Community was involved in the dissolution process of Yugoslavia. In its Declaration on Yugoslavia as of December 1991 that deals with the recognition of states of the former Yugoslavia, the Community imposed certain conditions in addition to the ones established for the recognition of states and governments in CEE, which was a new practice with regard to recognition.[20] That conditionality concerning the establishment of relations with the states of former Yugoslavia had, in turn, a strong impact on the further development of events and on the relations of the EC (EU) towards the Western Balkans region and towards every state individually.[21] Based on the conclusions of the European Council in 1997, the EU shaped a unified approach towards the region. It is stated at the beginning of the document that "the task in the years ahead will be to prepare the applicant states for accession to the Union and to see that the Union is properly prepared for enlargement. This enlargement is a comprehensive, inclusive and ongoing process, which will take place in stages." Hence, conditionality was established as the basic characteristic of the approach towards the Western Balkan states. The text further specified that the concept applies to the former Yugoslav Southeast European states (except Slovenia) and Albania that do not have signed association agreements with the EU. It was also characteristic of the regional approach that there were individual conditions for every state.

At the Vienna Summit in 1998, the introduction of a broader and more integrative approach towards the Western Balkan states was initiated, based on the common strategy according to the Treaty of Amsterdam concerning the Common Foreign and

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20 Rich, Roland. "Recognition of States: The Collapse of Yugoslavia and the Soviet Union." *European Journal of International Law*, (1993).
21 Jordanova R. Malinka, „Politikata na uslovenost na Evropskata Unija kon državite aspiranti za članstvo", Master's thesis, Univerzitet "Sv. Kiril i Metodij", Filozifski fakultet - Skopje, Skopje 2006, p. 80

Security Policy. At the European Council meeting in Helsinki in December 1999, some changes were introduced into the dynamics of the enlargement process. According to the adopted conclusions, the pace of the negotiations would depend on the progress achieved by every state separately. The Chapters would be opened when the Commission assesses the state to be sufficiently prepared. Hence, besides conditionality, the feature of differentiation was introduced into the enlargement methodology, according to which a state that was better prepared could advance in the negotiations faster than other states in the same group. Even if a state would start accession negotiations later, it could outpace the states that have started earlier. Nevertheless, accession dates highly depend on the attitudes and interests of the EU member states. The feature of differentiation also became important later, in the accession process of the Western Balkan states. At that time, the main reason for changing the approach was the instability of the region, first and foremost the conflict in Kosovo. Based on the conclusions, in May 1999, the European Commissions issued a Communication on the future relations of the EU and the Southeast European countries,[22] pointing out that the "countries in the region have the prospect of increasing rapprochement with the EU, in the perspective of full integration into European structures", and that this process would take place by means of "a new kind of contractual relations, taking .into account the individual situation of each country, with a perspective of EU membership on the basis of the Amsterdam Treaty and once the Copenhagen criteria have been met". The key element of this strategy was the stabilisation and association process (PSA) with five countries from the region: Albania, Bosnia and Herzegovina, Croatia, the Federal Republic of Yugoslavia and the Republic of Macedonia. The stabilisation and association process consists of Stabilisation and Association Agreements (SAA), financial support and autonomous trade measures. The SAA that are signed with every country separately are key instrument within the PSA, establishing mutual relations, rights, and duties.

The SAA as a legal mechanism of the PSA incorporate the "carrot", i.e. the EU membership perspective as a strong incentive, but at the same time, they impose complex political and economic conditions, strongly emphasising the requirement of regional cooperation. However, the SAA also show the individual approach towards every state, in line with the principle of differentiation. In order to develop closer relations with the EU, the states that sign SAA have to adapt their political and economic structures to the values and models supported by the EU: democracy, respect for human rights, and market economy. The membership perspective is conveyed in a so-called evolution clause[23] as a possible, but not entirely granted result of the process. With the introduction of the SAA, the EU's conditionality policy towards the Western Balkan states was not only approximated to the politics of the enlargement towards the Central and Eastern European countries initiated

22 European Commission. "Communication from the Commission to the Council and the European Parliament of 26 May 1999 on the Stabilisation and Association Process for countries of South–Eastern." Brussels, 26.05.1999.

23 Petruševksa, Tatjana. *Voved vo pravoto na Evropskata unija*, Skopje: Praven fakultet "Justinijan Prvi"-Skopje, 2011, p. 242.

earlier, but also expanded and amplified. At the same time, the fourth Copenhagen criterium was pointed out: absorption capacity. According to this approach, the Western Balkan states were subject to additional criteria within the PSA framework (the so-called Copenhagen plus criteria).[24] The additional criteria introduced new standards for assessing the level of preparedness for EU membership compared to the criterium of the EU's absorption capacity. At the same time, on 10 June 1999 the Stability Pact for South Eastern Europe was created by decision of the Council of Ministers. The Stability Pact represented an initiative for fostering regional cooperation, signed by over 40 states and organisations, including the EU member states, the European Commission, the USA, the UNO, the OSCE, the Council of Europe, NATO, the World Bank, the European Investment Bank, the Southeast European Cooperative Initiative and, of course, the countries of the region. The signatories declared their commitment to intensifying their efforts to foster peace and democracy.

At the Zagreb Summit in late 2000, it was repeated that EU accession would be based on the Treaty on European Union and the Copenhagen criteria, while the Stabilisation and Association Agreements would be used as starting points for establishing a EU membership perspective. At the Thessaloniki Summit in June 2003, the unambiguous support for of the European perspective of the Western Balkan states was reconfirmed, stating that "the future of the Balkans is in the European Union",[25] with the term "European perspective" meaning membership and full inclusion in the EU's institutional and political structures.[26] According to the conclusions of this summit, the EU agenda was clearly focused at providing an accession opportunity for the Western Balkan states, at the same time repeating that the European Union is based on democracy, the rule of law, respect of human and minority rights, and solidarity. In 2008, the European Commission adopted a document for evaluating the progress with regard to the implementation of the Thessaloniki agenda and the subsequent challenges, identifying certain benchmarks for the next phases of the accession process.[27] The promise given in Thessaloniki was repeated at the Ministerial Meeting on 2 June 2010 in Sarajevo, where the EU assured its "unambiguous commitment to the European perspective of the Western Balkan countries".[28]

The accession process of the Western Balkan states is characterised by the introduction of a reinforced monitoring of the rule of law and the development of an entirely new framework for analysing the enlargement process. Intensifying the process is necessary

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[24] Petrovic, Milenko, and Nicholas R.Smith. "In Croatia's Slipstream or on an Alternative Road? Assessing the Objective Case for the Remaining Western Balkan States Acceding into the EU." *Southeast European and Black Sea Studies* (2013): 560.

[25] European Council. "Presidency Conclusions." Thessaloniki, 19.06.2003.

[26] European Commission. "Communication from the Commission to the Council and the European Parliament: The Western Balkans and European Integration." Brussels, 21.05.2003.

[27] European Commission. "Communication from the Commission - The Western Balkans on the Road to the EU: Consolidating Stability and Raising Prosperity." Brussels, 27.01.2008.

[28] Council of the European Union. "Press Release, 3023rd Council meeting on Foreign Affairs." Luxembourg, 14.06.2010.

in order to boost the EU's credibility in the region, but it is also indispensable to express the transformative power of the EU with regard to the candidate states. Chapters 23 and 24 will be crucial within this approach and will additionally contribute to amplifying the conditionality policy.

The Introduction of Chapters 23 and 24 Into the Process of EU Enlargement

During the fifth EU enlargement in 2004 and the enlargement by Romania and Bulgaria in 2007, Union law was divided into 31 chapters. However, during the negotiations with Croatia and Turkey, a division into 35 chapters was introduced. The comprehensive chapters and the ones that were harder to harmonise had been split into separate chapters, so that some policies were now included in several chapters. While Bulgaria and Romania had to harmonise their legislature with about 90.000 pages of *acquis communautaire*,[29] Croatia had to deal with 170.000 pages during its accession negotiations.[30] The Union established that meeting the conditions of an independent and efficient judiciary, respecting the fundamental rights and fighting corruption should be treated as a priority and therefore introduced Chapter 23 (Judiciary and fundamental rights). Meanwhile, the chapter "Justice, freedom and security" was renumbered Chapter 24. Both Chapters 23 and 24 contain the concept of rule of law. EU policies in the area of judiciary and fundamental rights are aimed at maintaining and further developing the Union as a space of freedom, security and justice. The member states have to fight corruption effectively, since it represents a threat to the stability of democratic institutions and the rule of law. An independent and efficient judiciary system with impartial and upright judges is essential for protecting the rule of law. Respecting the fundamental and citizen's rights is an inalienable element of European identity.

The strategic decision to introduce Chapter 23 was taken in 2005 and subsequently applied during the negotiations with Croatia and Turkey, and it was also reflected in the position that was presumed during the negotiations as well as the structure of the negotiation framework itself. In case of serious and continuous violation of the principles of freedom, democracy, respect for human rights and freedoms and the rule of law, i.e. the fundamental values that the Union rests upon, the Commission, on its own initiative or by request by one third of the member states, can recommend to discontinue the accession negotiations and suggest conditions under which they can be continued. The new structure of Union law, including the additional chapters, was contained in the

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29 Communication from the Commission. "Comprehensive Monitoring Report on the State of Preparedness for EU Membership of Bulgaria and Romania." Brussels, 25.10.2005.

30 Nechev, Zoran. "Bolstering the Rule of Law in the EU Enlargement Process towards the Western Balkan." Working paper no. 22. The Hague, Netherlands: Netherlands Institute for International Relations "Clingendael", 2013.

Annex to the Negotiation Framework with Croatia[31] and Turkey.[32] In the Enlargement Strategy 2005, the Commission introduced a reinforced monitoring system with regard to the rule of law into the accession process for every Western Balkan state.[33] The enlargement policy was based on consolidation, conditionality and communication, while the carefully managed enlargement process was aimed at fostering peace, stability, prosperity, democracy and the rule of law throughout Europe. According to the conclusions of the European Council summit in Brussels in 2006, the updated consensus on the enlargement process enhanced the importance of the rule of law in the accession process: "Accordingly, difficult issues such as administrative and judicial reforms and the fight against corruption will be addressed at an early stage.".[34] Although Chapter 23 was introduced during the accession negotiations with Croatia, it was not opened first and closed last at that stage yet. That approach was first applied during the negotiations with Montenegro.

The experience from the enlargement negotiations with Bulgaria and Romania who joined the EU in 2007 had a significant impact on the development of the negotiation structure. The accession talks with those two states had shown that shortcomings in key areas such as judiciary and the fight against corruption had not been entirely overcome. In order to overcome them, the new Chapter, Judiciary and fundamental rights, was introduced into the future enlargement process, while the accession of Bulgaria and Romania was supported by the Mechanism for Cooperation and Verification. This instrument was introduced in order to continue monitoring respective reforms in these two countries even after their officially becoming EU member states,[35] thus taking pre-accession control beyond the borders of enlargement policy. The Mechanism of Cooperation and Verification included a set of benchmarks (six for Bulgaria and four for Romania) to be regularly (twice a year) monitored by the European Commission.[36] Inconsistency with regard to the criteria would lead to sanctions such as freezing the EU's financial support and unilateral discontinuation of the bilateral cooperation with other member states on judiciary issues. The accession agreements with Bulgaria and Romania both contain a specific "postponement clause".[37] Croatia had managed to avoid the

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31   European Commission. "Croatia Negotiating Framework." Luxembourg, 3.10.2005.

32   European Commission. "Turkey Negotiating Framework." Luxembourg, 3.10.2005.

33   Commission of the European Communities. "Communication from the Commission 2005 Enlargement Strategy Paper." Brussels, 09.11.2005.

34   European Council. "Presidency Conclusions." Brussels, 15.12.2006.

35   Steunenberg, Bernard, and Dimitrova, Antoaneta. "Compliance in the EU enlargement process: The Limits of Conditionality." *European Integration Online Papers*, Vol. 11 (2007): pp. 11-18.

36   European Commission. "Commission Decision of 13 December 2006 Establishing a Mechanism for Cooperation and Verification of Progress in Romania to Address Specific Benchmarks in the Areas of Judicial Reform and the Fight Against Corruption C(2006) 6569." Brussels, 13.12.2006.

37   "If (...) there is clear evidence that the state of preparations for adoption and implementation of the acquis in Bulgaria or Romania is such that there is a serious risk of either of those States being manifestly unprepared to meet the requirements of membership by the date of accession of 1 January 2007 in a number of important areas, the Council may, acting unanimously on the basis of a Commission recommendation, decide that the date of accession of that State is postponed by one year to 1 January 2008. Act Concerning the Conditions of Accession of the Republic of Bulgaria and Romania and the Adjustments to the Treaties on which the European Union is Founded, Official Journal of the European Union L157, 21.06.2005.

establishment of this instrument for monitoring post-accession relations with regard to the rule of law. Nevertheless, based on the lessons learned, the European Union assumed a stricter position in the negotiations vis-à-vis Croatia with regard to closing Chapters 23 and 24. The EU's Accession Agreement with Croatia contained "specific commitments undertaken by the Republic of Croatia in the accession negotiations", i.a. the commitment to strengthen the independence, responsibility, impartiality and professionalism of the judiciary and to foster the protection of human rights. Additionally, Article 36 stipulated that the Council, acting by qualified majority on a proposal from the Commission, may take *all appropriate measures* if issues of concern are identified during the monitoring process, whereas the measures are not further specified. According to this approach, compliance with the criteria from Chapters 23 and 24 remained subject to monitoring even after accession. The conditionality of the process regarding these two chapters is particularly evident in the case of Turkey. Blocking the negotiations on Chapter 23 in 2010 led to a discontinuation of the entire process, since, subsequently, hardly any other chapter could be opened. This example makes it clear that the Europeanisation process is inevitably also a process of democratisation and incorporation of the fundamental values of the Union in a society - a condition that was later transferred into the so-called new approach in the enlargement process.

The mechanisms of protection and rule of law represent a pressing issue within the borders of the European Union, too. During the last few years, the EU has faced a series of events in different member states that disclose systemic threats to the rule of law. Hence, in 2014, the EU presented a new mechanism for dealing with systemic threats to the rule of law in EU member states. The goal of the EU framework for strengthening the rule of law[38] is to provide the European Commission with an instrument/mechanism for the prevention of systemic threats to the rule of law in member states that could develop into "a clear risk of serious violation of the fundamental values of the Union" according to Article 7 of the TEU, as well as for the introduction of sanctions against member states in which systemic and continuous tendencies towards violating the rule of law have been identified. The new EU framework for strengthening the rule of law is based on four principles: to focus on a solution to the identified problem in a structured dialogue with the respective member state, to ensure an objective and thorough assessment of the situation at stake, to respect the principle of equal treatment of all member states regardless of any peculiarity, and to indicate swift and concrete actions which could be taken to address the systemic threat and to avoid the use of Article 7 TEU mechanisms, the last and most severe instrument to resort to.

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[38] European Commission. "Communication from the Commission to the European Parliament and the Council: A New EU Framework to Strengthen the Rule of Law." Brussels, 19 .03.2014.

The New Approach Within the Enlargement Process

The increasing significance of the rule of law in the EU's Western Balkans enlargement process is evident and can be seen from the documents adopted in the course of this process. According to the EU's institutional setup, the European Commission is authorised to prepare proposals on the development of the enlargement policy, upon which the Council of Ministers of the EU for General Affairs and the European Council adopt conclusions. Each year, the Commission adopts an "enlargement package": a set of documents that explain its proposals on the EU's enlargement policy. The enlargement package contains reports on the situation according to the Copenhagen criteria and the chapters of Union law. In these reports, the Commission presents its evaluation of the progress in the respective areas achieved by each state involved in the enlargement process, as well as enlargement strategies that pave the way for the future development of the enlargement policy.[39] Since the rule of law was introduced into the accession process according to the Enlargement Strategy as of 2005, its role within the conditionality policy has advanced gradually and been strengthened continuously. The "new approach in the enlargement process" was officially introduced with the Enlargement Strategy for 2011/2012,[40] which clearly stated that the rule of law is reflected in Chapter 23, Judiciary and fundamental rights, and Chapter 24, Justice, freedom and security. Those two chapters are the key to accession. The new approach focuses on expanding the time frame for negotiating Chapters 23 and 24 and the introduction of periodical benchmarks in order to provide enough time for the candidate states to prove that the introduced reforms are being implemented. Thus, the Commission is provided with a better guarantee that the candidate states have functional and efficient systems in place before EU accession, which lowers the probability of the process being reversed after the state has become an EU member state. One of the main novelties is that Chapters 23 and 24 are opened first and closed last in the accession negotiations with every candidate state. For states which are not yet negotiating, the contents of Chapter 23 is becoming an increasingly important condition for progress on the path towards EU integration, practically a process catalyst. The chapters are subject to the so-called screening process, followed by a notification from the candidate state on fulfilling the benchmarks. The new approach to negotiations suggests the adoption of European standards before officially becoming part of the EU. The Enlargement Strategy 2015-2019[41] clearly states that the accession process will be conducted according to the

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39 According to the official explanation by the European Union, available at: http://ec.europa.eu/enlargement/pdf/key_documents/2010/package/strategy_paper_2010_en.pdf, [accessed 27.05.2016]

40 European Commission. "Communication from the Commission to the European Parliament and the Council, Enlargement Strategy and Main Challenges 2011–2012." Brussels, 12.10.2011.

41 European Commission. "Communication from the Commission to the European Parliament and the Council, Enlargement Strategy and Main Challenges 2015–2019." Brussels, 10.11.2015.

principle "fundamentals first", with the aim of achieving genuine results with regard to the key chapters. The development of the conditionality policy as incorporated in the Commission's accession strategies was continuously approved by the Council of Ministers of the EU and the European Council, as can be seen from their conclusions.

The EU's approach to the enlargement process develops and advances with every enlargement. As we have seen above, Chapter 23 was introduced during the negotiations with Croatia, but the new approach was first used in the negotiations with Montenegro. At the December Summit of the European Council in 2011,[42] Montenegro's progress during 2010 according to the Progress Report of the European Commission was welcomed,[43] but the start of the negotiations was postponed until June 2012, based on the Commission's positive opinion on the progress achieved by then. In all its conclusions, the European Council stated that the accession negotiations would be led according to the "renewed enlargement consensus" emphasised in the 2006 conclusions, the established practice, but also according to the "new approach" with regard to Chapters 23 and 24. At the same time, the Council called on the Commission to prepare a draft negotiation framework and to start the analytical overview of the situation in Montenegro with regard to Chapter 23 and 24. In May 2012, based on the adopted conclusions, the Commission prepared a report on the additional progress by Montenegro since 1 September 2011 with regard to implementing the reforms in the key priority areas, with a special focus on judiciary, fundamental rights, and the fight against corruption and organised crime.[44] Based on this report, at a meeting in June 2012, the EU Council decided to set a date for opening the accession negotiations, 29 June 2012.[45] Thus, the Commission emphasised once again that the experience from previous accession negotiations would be taken into account, and that the new approach concerning Chapters 23 and 24 would be applied, meaning that they would be opened in the early phase of the negotiations in order to provide maximum time for establishing the legal and institutional framework and a subsequent successful implementation. The Conclusions of the Council of the EU were adopted by the European Council at its meeting on 29 June 2012.[46]

The negotiation framework for Montenegro was introduced with a modification of the suspension clause in order to provide a balanced progress during the negotiations on the individual chapters. Should the progress on Chapters 23 and 24 lag behind considerably compared to the other chapters, the Commission would be authorised, on its own initiative or by request by one third of the member states, to withdraw the recommendation to open or close any other chapter as long as the backlog would

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42 European Council. "Conclusions." Brussels, 9.12.2011.

43 European Commission. "Commission Staff Working Paper Montenegro 2011 Progress Report." Brussels, 12.10.2011.

44 European Commission. "Report from the Commission to the European Parliament and the Council on Montenegro's Progress in the Implementation of Reforms." Brussels, 22.05.2012.

45 Council of the European Union. "3180th Council meeting General Affairs Conclusions." Brussels, 26.06.2012.

46 European Council. "Conclusions." Brussels, 29.06.2012.

prevail. The Council would decide on a respective proposal with a qualified majority, and the member states would have to respect the decision, regardless of the principle of unanimosity on decisions of the Intergovernmental Conference. In the approach established in the framework of the negotiation process with Montenegro, there were also differences in terms of defining the benchmarks. Chapters 23 and 24 would be opened based on the adoption of action plans. With the aim to better monitor and harmonise these chapters, the Commission introduced periodical benchmarks with regard to the adoption of appropriate legislation and strengthening the public administration structures, in order to achieve medium-term results. Thus, the Commission was provided with the possibility to change the benchmarks during the process, as well as the action plans and other correction measures. Subsequently, the system for monitoring the harmonisation was strengthened. It was foreseen for the Commission to submit progress reports on Chapters 23 and 24 to the Council twice a year. The new approach was also applied to the phase of analytical analysis of Chapters 23 and 24 in Montenegro. The screening was initiated even before the official starting date of the negotiations. In addition to being applied during the accession negotiations with Montenegro, the new enlargement process approach was also consequently applied in the negotiations with Serbia.

The Rule of Law and the Proposal on a New Negotiation Methodology in the Enlargement Process

The EU's transformative power is at its strongest during accession negotiations. The case of our state shows that a standstill can have a very negative impact on the entire Europeanisation process. Given that the name issue was considered as the main process catalyst, compliance with the Copenhagen criteria was compromised.[47] Due to the course of events, the implementation of reforms in key areas was put into question, and internal problems with regard to democracy and the rule of law were disclosed, which, meanwhile, have became more important factors for the future integration of our state in the European Union than the name issue with Greece. However, even in October 2019, when the name issue was solved and key area reforms were implemented, the European Council did not reach an agreement on assigning a date for the start of EU accession negotiations.[48] If we analyse this event against the background of compliance with the Copenhagen criteria and the new approach to the enlargement process with a forstered conditionality policy with regard to the rule of law, this time, the decision was made

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47 Jordanova R., Malinka and Jovanoski, Aleksandar, Stojanoska, Biljana: *Izveštajot na Evropskata komisija za napredokot na Republika Make-donija za 2012 godina pod lupa: Ista preporaka, nova poraka.* Skopje: Institut za evropska politika, 2012, p. 6.

48 According to the published conclusions from the European Council meeting on 17 and 18 October 2019, the European Council will revisit to the issue of enlargement before the EU-Western Balkans-summit planned to be held in May 2020. For further information, see: https://www.consilium.europa.eu/media/41123/17-18-euco-final-conclusions-en.pdf.

rather due to the "absorption capacity of the Union", i.e. the capability to include new members.[49] The introduction of this condition provides the possibility to diverge from the procedure and make a political decision in case a country fulfils the membership criteria while the Union itself, for different reasons, is not prepared for further enlargement. The increased importance of this condition is partly due to the slow pace of the stabilisation and transformation process, but also to inner limitations within the EU and disunity with regard to its further enlargement.

The EU institutions, particularly the Commission, committed themselves to finding a way to renew the dynamics of the enlargement process within a short time. Its efforts were preceded by the French non-paper on reforming the EU enlargement process drafted in November 2019. The renewed approach was to be based on the following four principles: gradual accession (association), strict conditions, essential benefits, and reversibility. The enlargement approach confirmed in December 2011 that we discussed above was hereby reaffirmed, i.e., the rule of law and fundamental rights are essential conditions from the moment of opening negotiations, but with a strengthened requirement that they be included as criteria at every stage of the process, up to the official conclusion of the negotiations and the subsequent accession of the state. With regard to the negotiation process, the progress criteria need to be defined in more detail in order to allow for a monitoring of the entire adoption process, as well as an efficient and sustainable implementation of the acquis relevant to the area at stake and the policies created. Meanwhile, progress has to be based on sustainable and irreversible improvement of the rule of law. This proposal served as a basis for the subsequent proposal of nine EU member states, their contribution to reforming the EU enlargement process, in which the importance of Chapters 23 and 24 and the rule of law was also highlighted.[50]

Consequently, the proposal on a new methodology for the EU enlargement process that was prepared by the European Commission and presented on 20 February 2020 was focused on the rule of law.[51] As pointed out in the document, the proposal is about a balanced approach that should lead to a process which is more dynamic and credible, but, at the same time, focuses more on the role of the basic fundamental reforms which are indispensable on the path to the EU. Just like to date, the chapters relevant to the rule of law should be opened first and closed last, but it is foreseen to

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49 An analysis of the public discourse on this decision leads to the conclusion that France was the main opponent. In an interview with The Economis published on 7 November 2019, President of France Emmanuel Macron said: "We can't make it work with 27 of us (...). Do you think it will work better if there are 30 or 32 of us?" And they tell me: "If we start talks now, it will be in ten or 15 years." That's not being honest with our citizens or with those countries. I've said to them: "Look at banking union". The crisis in 2008 with these big decisions; end of banking union in 2028. It's taking us 20 years to reform. So even if we open these negotiations now, we still won't have reformed our union if we carry on at today's pace.
For further information, see: https://www.economist.com/europe/2019/11/07/emmanuel-macron-in-his-own-words-english.

50 The proposal was submitted in December 2019 by Austria, the Czech Republic, Estonia, Italy, Latvia, Lithuania, Malta, Poland and Slovenia. For further information, see: https://europeanwesternbalkans.com/2019/12/11/nine-eu-members-release-a-new-proposal-for-the-reform-of-enlargement-process/.

51 The proposal on a new methodology for the enlargement process was presented by Enlargement Commissioner Olivér Várhelyi on 5 February 2020. For further information, see: https://ec.europa.eu/commission/presscorner/detail/en/statement_20_208.

have "sign posts" on the rule of law and the functioning of the democratic institutions, as well as a stronger connection to the economic reforms. The new feature in the new enlargement methodology is an increase in conditionality and complexity of the process, from a political as well as technical point of view. The political nature of the process is reflected by regular summits and a tighter schedule of minsterial meetings, using the bodies that have been established during the stabilisation and association process, as well as the introduction of inter-governmental conferences. It should be pointed out that the additional emphasis on the rule of law is coupled with a division of the chapters into thematic clusters and the introduction of benchmarks for opening each cluster. Negotiations will be opened on each cluster as one entity instead of individually, while the closing benchmarks will be defined for each chapter separately. Meanwhile, not one single chapter can be closed, even temporarily, before the specific benchmarks with regard to the rule of law are fulfilled. To this aim, incentives are increased, such as access to EU programmes, financial support, investments in the implementation of reforms, as well as the Instrument for Pre-Accession Assistance that focuses on the reforms. At the same time, sanctions in case of "serious or continued stagnation or even regression" are enhanced, too. The proposed methodology would be applicable to the negotiation process with our country as well as Albania.

Conclusions

The ability of the European Union to impact the candidate states so that they carry out required reforms in order to create internal policies and sufficiently stable and strong institutions to handle the responsibilities that EU membership will impose on them is essential for a successful enlargement agenda. Conditionality policy is a key instrument of the EU's for achieving the necessary level of harmonisation in the framework of enlargement methodology. The transformative power of conditionality policy is particularly reflected in the accession process of the Western Balkan states. The Europeanisation of the candidate countries will have to lead to democratisation and acceptance of the fundamental values of the Union. Establishing and maintaining the rule of law is one of the biggest challenges on that path.

The key conditions for EU membership and the principle of rule of law are enshrined in the Copenhagen criteria. Amplifying the conditionality policy meant that political criteria were introduced into the EU membership negotiation process by means of differentiating two chapters within Union law: Chapter 23, Judiciary and fundamental rights, and Chapter 24, Justice, freedom and security, thus creating the basis for the new approach at the enlargement process according to the motto "fundamentals first". The reason for introducing this approach was the requirement to achieve results in the areas that represent the pillars of a democratic society and are an indispensable precondition for conducting the remaining reforms. This requirement is particularly reflected in the

latest proposal on a new enlargement methodology that followed the summit in October 2019, when appointing a date for the start of negotiations with Albania and our state was postponed and the accession process, again, reached a dead end. The proposed methodology focuses even more on the "fundamentals", taking into account that democratic institutions and economic criteria are also affected by the rule of law. Thus, political criteria are linked to economic criteria in one logical entity, as foreseen according to the Copenhagen criteria. The importance of the rule of law is even more emphasised by the fact that no chapter may be closed even temporarily if the standards of respect for the rule of law are not met, representing a fundamental value of the European Union. Institutional, normative and strategic convergence, which are aspects of Europeanisation, have to be accompanied by an approximation of the system's values and results "in the field". Otherwise, the process will hardly be irreversible.

However, the latest decisions on the EU enlargement process, mainly with regard to our state, have led to an update of the "neglected" fourth Copenhagen criterium: the absorption capacity of the Union itself, i.e. its capability to include new members. The introduction of this condition provides the possibility to diverge from the procedure and make a political decision in case a country fulfils the membership criteria while the Union itself, for different reasons, is not prepared for further enlargement, which is actually happening in the given case. Therefore, we can conclude that the decision to further enlarge the Union, nevertheless, is a question of political will. The mechanisms proposed to reform the enlargement process can be incorporated and can lead to the required results and achieve the desired effect only if they are applied, which, again, requires the political will of the stakeholders.

Finally, the importance of the rule of law as a fundamental value of the Union and an advancement of the mechanisms for its protection is increasing within the borders of the Union, too. The values that are promoted in the enlargement process also need to be strengthened inside the Union. First and foremost, the accession process has to serve as a means to strengthen the democratic institutions and the rule of law, but the reforms in these areas have to be continued beyond that process.

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THE OPTIMAL SIZE OF GOVERNMENT: SMALL IS BEAUTIFUL

POLITICAL THOUGHT

59

Introduction

> *"In framing a government which is to be administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed; and in the next place oblige it to control itself"*
>
> James Madison,
> *Federalist Paper No.51 (1788)*

The main challenge for "good governance" is basically the balance between control and freedom. Regardless of the type of collective/organisation, the rules of decision-making, i.e. what is decided by whom and how, are of fundamental importance.

This paper discusses this issue in the context of the State/Government as the most powerful organisations within a society. Thinkers have been intrigued by the issue of assessing the proper role of government for centuries. In theory, a government can have complete control over all activities in a given society ("perfect" totalitarian model), while a society without any government (an anarchy) is possible as well. The hypothesis on the optimal size of government is based on the belief that *even under the best leaders*, a government can be beneficial *only up to a certain point* beyond which it becomes a burden to both liberty and economic well-being.

We will argue that the state, as a principle, should be minimal(but capable and efficient),[1] in order to be properly governed and controlled while economic growth is maximised. The argument is economic *and* practical: if the state focuses on a few well-established core functions that support economic growth, *then* it can be efficiently governed to assists and support the market and overall society. This logic is well captured in an article by Robert J. Samuelson (Samuelson 2013) where he discusses "the collapse of confidence" in government due to the fact that the "essence of the problem" is that we are not rigorous enough "about defining what government can and should do":

" Some [responsibilities] are unattainable; others are in conflict. Government is, among other things, supposed to: control the business cycle, combat poverty, cleanse the environment, provide health care, protect the elderly, subsidize college students, aid states and localities. There are more. As I've written before, government becomes almost "suicidal" by pervasively generating unrealistic expectations. The more people depend on it, the more they may be disappointed by it. ...political leaders find it almost impossible to confront government's over-commitment. They find it difficult to withdraw or modify promises previously made and

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[1] State capability (or "state capacity") is defined as the ability of governments to achieve their goals. See in Timothy, B. and Persson, T. (2009). "The Origins of State Capacity - Property Rights, Taxation and Politics", *American Economic Review 2009, 99:4, 1218 - 1244*

programs previously created — to define what really matters and discard or shrink what's secondary, outdated or ineffective. ...the essence of our problem... is being more rigorous about defining what government can and should do."

In the paper at hand, we review and discuss the most relevant literature on our subject, provide further arguments in favour of small government using the Rothbardian contribution to the theory of the firm and the calculation-imposed limits on its size. We then discuss applying the findings to the Republic of North Macedonia and conclude that governments should direct their attention at a small number of core areas on the margins (i.e. where private alternatives fail) and accept a *laissez-faire* approach for all other segments of society.

History of government growth

"There is no reason to assume that a compulsory monopoly of power, once acquired [by the State] will remain "limited"...Certainly, historically no government has long remained "limited" in this way."

- Murray Rothbard,
The Anatomy of the State (1974)

Governments are complex organisms. They may affect the economy in ways that are difficult to capture in reported statistics.[2] It is well-documented today in public-choice literature that corruption, rent-seeking, regulatory capture or tweaking of the political and regulatory regime by special interest groups, etc., have a negative effect on economic growth (quantitative effects). In addition, these inherent elements of politics influence the *structure* of the economy in ways that cannot be captured in the official GDP numbers, (qualitative effects) (Peltzman 1980; Acemoglu et. al 2005).

Nevertheless, the available data provides important insights. The government expenditure expressed in per cent of the GDP is most commonly used to measure its size.

An overall view shows that, at the end of the 19th century (the earliest period for which reliable data is available, at least for the developed countries), the governments of most countries spent less than 10% of the GDP. Today, with few exceptions, this figure exceeds 50% in many of the developed countries. What has changed so dramatically?

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2 Higgs, R. (1991). "Eighteen problematic propositions in the analysis of the growth of government." *The Review of Austrian Economics 5 (1991): 3-40.* Also see Kahn. J. (2011). "Can We Determine the Optimal Size of Government?", *Cato Journal No. 07, September 2011*

Graph 1: Total government spending, including interest government expenditures, as % of GDP
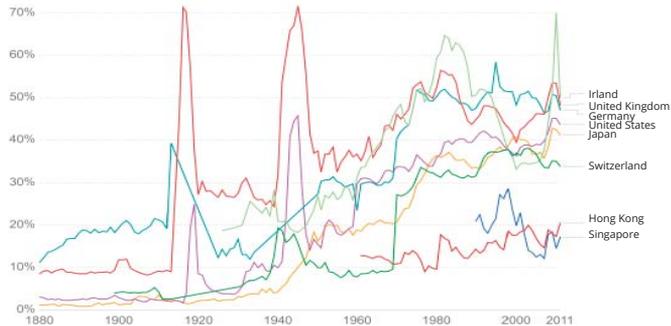
In their research on government spending (2020), Esteban Ortiz-Ospina and Max Roser identify four broad periods:

> From 1880 until World War I, public spending was *minimal*. The government expenditures in the developed countries amounted to about 10% of the GDP, which remained remarkably stable for a long period (in the US, the total government expenditure was about 2% of the GDP until 1916). Nevertheless, the governments were able to perform their basic functions: implement law and order, enforce property rights, engage in large public works, etc. Discussing the issue in 1888, Paul Leroy-Beaulieu, a well-known French economist of his time, concluded that tax revenues above 12% of the GDP would be "exorbitant" and would thus damage the growth prospects of states (quoted in Tanzi, 2005).

Between 1915 and 1945, public spending was generally volatile due to the World Wars and the introduction of socialism in some parts of the world. On the whole, the world witnessed a rise of the state due to extreme conditions:

> "*Pressures from both the political right and political left were coming for enlarging the role of the state. These pressures, together with developments such as the Russian Revolution, World War I, World War II, the advent of totalitarian regimes (both fascist and communist) in several important countries, and the Great Depression created a social environment and some of the economic conditions that ultimately were to encourage the phenomenal expansion of the economic role of the state that would take place in the rest of the 20th century*" (Tanzi 2005, pg. 618).

Between 1945 and 1980, public spending grew significantly. Taxation, government employment and all other aspects of government control (especially the hyperinflation of regulation) expanded at the same time. This is mostly due to the growth in social spending (from about 2 to 3% in the 1920s, social spending has risen to about 30% of the GDP today), the governments' increased capacities to extract taxes, as well as significant rent-seeking by special interest groups (such as industrial conglomerates, oligarchs, unions, etc., that obtain non-market benefits granted by governments and political processes).[3]

Since 1980, the growth of governments has slowed down, but it has still retained the trend of increasing its control role within society, especially in times of financial, security, health or other types of crises.

The available data clearly shows that the enormous growth of the governments is a "*general phenomenon*", even despite large differences in the institutional capacities of states. Professor Murray Rothbard was right: once a government starts to expand its authority, it is hard to stop it. It is not just the *supply* of governments that grows, there is also an increasing *demand* by the public and special interest groups for more government. As Robert Higgs (2010) summarised in his research on government growth:

> "*Modernizing economic transformation, collectivist ideological drift, and democratic political reconfiguration tended to bring about a changing balance of forces that favored, not always but as a rule, increases in the size, scope, and power of government*".

Regardless of the reasons, the history of government spending is a history of a perpetual reinvention of the state's authority and position, while constantly increasing its share and fostering its role within society.

Theoretical review and empirical findings

> "*Government is essential both as a forum for determining the "rules of the game" and as an umpire to interpret and enforce the rules decided upon*".
>
> - Milton Friedman,
> *Capitalism and Freedom (1962)*

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3   See e.g. Tullock, G. (1998). "Government spending".

*"The data can realistically only say that smaller governments are
better, and suggest that the optimal size of government is smaller than
what we observe today"*.

- James A. Kahn,
Can We Determine the Optimal Size of Government? (2011)

It is a truism that free-markets do not exist in a vacuum. Most economists believe that
some kind of government is necessary to establish and enforce the "rules of the game"
and other functions that cannot be provided by the free market.[4] However, a huge debate
about the limitations to the authority of the state has been going on for ages. We will not
go into this discussion (at least not directly). However, for the scope of this paper, it is
important that there is a broad consensus among economists that a government which is
larger than a certain optimal size has a detrimental impact on economic growth because
of the inefficiencies inherent to governmental operations.

The idea of an optimal size of government hab been put forward in the theoretical and
empirical research of a few economists: Robert Barro (1989), Dick Armey (1995), Richard
W. Rahn (1996) and Gerald W. Scully (1998, 2008) (hence the famous "BARS" curve that
shows an "inverted U" relationship between the government size and economic growth).
The core of the argument is intuitive and straightforward: as the size of the government
expands from zero (a society without a government) and successfully provides its basic
functions,[5] it creates stability and an environment which is suitable for economic growth.
However, as government continues to grow, more and more resources are channeled
by populism into private benefits and pure politics, rather than by cost-benefit analysis
and economic sense. The state undertakes more activity in which it is inherently less
efficient than the private sector. The law on diminishing returns starts to kick in, and the
government becomes a burden to the economy.

Taxation and public expenditures distort the market and decrease the disposable income
of people and firms, sclerotic bureaucracies crowd-out private sector employment
and lead to a dependency on public transfers and public wages (Alesina and Wacziarg,
1998), large public administrations can also give rise to organised interest groups
which are keen on exploiting their powers for their own benefit, rather than facilitating
a prosperous private sector. To sum up, the larger the government, the larger the
possibilities for rent-seeking, the higher the costs for state monitoring and control,
and the lower the probability of any significant reforms (Olson, 1982). Even when
governments provide goods like infrastructure, health care and education, which are

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4   Some notable economists and thinkers disagree. See e.g. Friedman, D. (1973). "The Machinery of Freedom"; and many others who, in
     Austro-libertarian tradition, argue that the markets and other voluntary organisations can provide all services that are needed for a
     functional society.

5   Gwartney et al. (1998) estimate that expenditures for "*core functions of government—protection of persons and property, national defence,
     education, monetary stability and physical infrastructure*" amount to no more than 15 % of the GDP.

generally considered beneficial to the society, the negative effects of taxes and public debt that finance these expenditures, in addition to rent-seeking and corruption, may trump the positive effects. Over and above this, how do we determine the value of the public services? In a free-market, the value of a product or service is determined by its price, which reflects the amount of money that consumers spend *voluntary*. But then, what is the productive contribution of the government?[6]

Graph 2: The size of government - growth curve
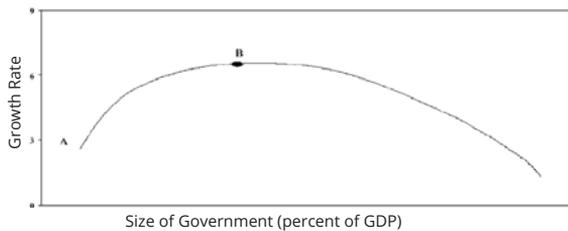
Source: Gwartney, J. Lawson, R. and Holcombe, R. (1998). "The size and functions of government and economic growth," Joint Economic Committee, p. 5, Exhibit 2

In public finances, there is a significant interest towards this topic. The empirical studies are not conclusive. There are various theories about the growth of the government (e.g. Wagner's Law[7] that stipulates that the size of the government increases as a society becomes richer), and there is a group of economists who argue that a larger state is necessary in order to restrain the excesses of the markets, provide more public goods than the basic functions, strong social protection, and especially to prevent and/or manage various types of crises (financial, health, etc.)[8]. Nevertheless, *"a long-run negative impact of government outlays on per capita GDP finds strong support in the literature"* (Kahn, 2011). We briefly summarise the main findings of the review of the empirical literature below:

There is a strong negative relationship between the size of government and GDP growth, as well as between the increase in government expenditures/spending and

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6 Rothbard, M. (1962/2009). "Man, Economy and State with Power and Market", *Ludwig von Mises Institute, 2nd. edition, pg. 941* ["*Since the value of government is not gauged on the market, and the payments to the government are not voluntary, it is impossible to estimate".*]

7 For an interesting discussion on Wagner's Law, see Mitchell, D. (2016). "Does "Wagner's Law" Mean Libertarians Should Acquiesce to Big Government?", *Cato At Liberty*, November 28, 2016

8 Colombier, C. (2009). Growth Effects of Fiscal Policies: An Application of Robust Modified M-Estimator. *Applied Economics Vol. 41, 2009, pg. 899-912*; also see the influential older research by Ram, R. (1986). "Government Size and Economic Growth: A New Framework and Some Evidence from Cross-Section and Time-Series Data", *The American Economic Growth vol. 76, March 1987, pg. 191-203.*

GDP growth. For example, Gwartney et al. (1998)[9] show that an increase in government expenditure of 10 percentage points with regard to the percentage of the GDP leads to a decline by about 1 percentage point in the growth rate of real GDP. Today, the governments of most industrial countries, including the neighboring countries of North Macedonia, are much larger than the optimal size.[10]

Table 1: Estimated optimal government size vs. real government size in selected European countries

Country	Size of government (% of GDP, 2009)	"BARS curve" optimum (% of GDP)	% change in spending as a share of GDP
Austria	52.2	38.2	-14.0
Belgium	53.5	35.4	-18.1
Denmark	55.4	38.6	-16.8
France	55.1	39.5	-15.7
Germany	46.0	42.0	-5.7
Greece	50.0	39.3	-10.7
Ireland	46.7	44.5	-2.2
Italy	51.5	37.7	-13.9
Bulgaria	35.6	25.0	-10.6
Turkey	36.7	25.2	-11.5
Romania	37.8	20.4	-17.4

Source: Estimations in studies analysed for this essay on largest optimal government size (see Bibliography).

At large, even in the few states in which high taxes and a large government occur together with above average growth, this is due to high social trust and/or significant "compensation" by strong market-friendly policies in other areas (ex. Scandinavian countries are home to some of the most globalised, open, and market-friendly societies) (Bergh and Henrekon, 2011).

Governments that are larger than optimal size have worse negative effects in non-democratic countries with weak institutions (a poor legal system, insecure property rights, inefficient bureaucratic administration, ethnic conflicts, corrupt judicial system, etc.) (Gusesh, 2007).The negative impact in non-democratic societies is three times higher than in countries with strong institutions and control. In other words, the quality of

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9   Also see Karras, G. (1997). "On the Optimal Government Size in Europe: Theory and Empirical Evidence, "*The Manchester School of Economic & Social Studies, Blackwell Publishing, vol. 65(3), pages 280-94, June.* In a study of a sample of 20 European countries for the period 1950-1990, Karras concluded that the public sector may be more productive when smaller, and that the optimal government size is ~16% of the GDP. Similar findings were achieved by Gunalp and Dincer from a study on the optimal size of the government in 20 transition countries. According to them, the optimal government size is 17% of the GDP (+/- 3%). See Gunalp, B. &Dincer, O. (2005). "The Optimal Government Size in Transition Countries". *Department of Economics, Hacettepe University Beytepe, Ankara and Department of Commerce, Massey University, Auckland*

10   See Nijkamp, P. and Poot, J. (2002). "Meta-analysis of the impact of fiscal policies on long-run growth," Tinbergen Institute Discussion Paper, 02-028/3. See also Afonso, A. and Furceri. D. (2008). "Government size, Composition, Volatility and Economic Growth", *European Central Bank, Working Papers No. 849, January 2008*

government has a significant and positive impact on economic growth. As explained by Chobanov and Mladenova (2009):

"...*for developing economies that already allocate a considerable share of public resources to social services, further spending may not improve growth outcomes. Increases in the size of the government can impede growth due to the disincentive effects of taxes, increased rent seeking and the crowding out effect on private investment. The results indicate that good governance can improve growth outcomes*."

Having in mind that governments are much larger than optimal in most countries, maybe the most important finding is that **the government size could be reduced significantly without sacrificing much in terms of social or economic objectives**.[11] Ryan Bourne and Thomas Oeschle (2012) analysed economic growth in advanced countries between 2003 and 2012 and concluded that countries with smaller government tend to grow faster, or, at the very least, do not perform systematically worse than large governments in terms of social outcomes. Obviously, an efficient public administration, good governance and prudent control of the state play a key role.[12] The UN Human Development Index and other socioeconomic indicators of countries with small but efficient governments such as Singapore, Taiwan, Hong Kong, etc. are almost as high as in most developed countries with large governments.

Rothbardian-Misesian flavour

"Every human action means planning. What those calling themselves planners advocate is not the substitution of planned action for letting things go. It is substitution of the planner's own plan for the plans of his fellow man".

Ludwig von Mises,
Planned Chaos (1947)

As discussed hereinbefore, the theory and empirical research shows that there is an optimal size of government, and, in principle, smaller is better, both in terms of economy

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11 Tanzi, V. and Schuknecht, L. (1996). "Reforming Government in Industrial Countries," The Institute for Public-Private Partnerships, Finance & Development, p. 3. ["*Some of the countries with the highest HDI scores and with high levels of public spending, such as Norway, Canada, Sweden, Belgium, the Netherlands, and Finland, have in recent years significantly reduced their public spending while retaining their high HDI index. Thus, there is life after public spending reduction. These countries have shown that public spending can be significantly reduced without causing the large fall in public welfare that many expect. A scatter diagram shows that there is no identifiable relationship between levels of public spending and HDI.*"]

12 See Afonso, A. and Jalles, J. (2011). "Economic Performance and Government Size", *European Central Bank Working Paper Series No. 1939 November 2011* ["*...the negative effect of government size on GDP per capita is stronger at lower levels of institutional quality and the positive effect of institutional quality on GDP per capita is stronger at smaller levels of government size.*"].

and freedom.[13] In the following, we will provide additional arguments in favour of a smaller state. Thus, it is important to acknowledge some interrelated points.

Let us start with the question that was raised by the Nobel laureate Ronald H. Coase in 1937, when he was analysing the "nature of the firm":"*why is not all production carried on in one big firm?*" (Coase 1937, pp.42-43). He explained that firms exist due to the inherent "transaction costs" (discovering relevant prices, negotiating and enforcing contracts, etc.) on the markets: within a firm, the entrepreneur tries to manage the costs of doing business by coordinating these activities. Professor Murray Rothbard (2009) adapted Mises' argument that socialism cannot calculate (Mises, 1920; Hayek, 1945)[14] to the size of firms (Klein, 1996). He explained that the free market limits the size of firms (or, for that matter, to *any type of organisation*), and theorised on why there is not one big cartel that owns everything:

> *...in order to calculate profit and losses of each branch, a firm must be able to refer its internal operations to external markets for each of the various factors and intermediate products. When any of these external markets disappears, because all are absorbed within the province of a single firm, calculability disappears and there is no way for the firm rationally to allocate factors to that specific area. The more and more these limits are encroached upon, the greater and greater will be the sphere of irrationality, and the more difficult it will be to avoid losses.* (Rothbard, p.609)

Rothbard pointed out that his argument is applicable to the discussion on the optimal size of government:

> *...any governmental operation injects a point of calculation chaos into the economy; and since all markets are interconnected in the economy, every governmental activity disrupts and distorts pricing, the allocation of factors, consumption/investment ratio, i.e. distorting the markets and spreading calculation chaos. The greater the extent of government ownership, of course, the more powerful will this impact become.*

Hence, the state cannot calculate. Given the coercive nature of taxes, governments are isolated from the profit and loss system that indicates the entrepreneurs on the market which projects are profitable and worth pursuing. Thus, it is impossible to rationally estimate the optimal choice in governmental collective decision-making. This, in turn, is the reason why most decisions are based on rough "calculations" on how many votes the project will "buy".

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13 Actually, we did not touch upon this issue here, but we should keep in mind that the debate on the size of government is also about freedom, the ability of people to choose how they prefer to spend their money, what choices they will make, etc. Every denar spent by the government is a denar less in the pocket of the citizen who earned it.

14 That socialism cannot calculate was a renowned argument by Ludwig von Mises. In the 1920s,he argued that socialism would fail because state ownership excludes markets in capital goods, so that there are no prices that would guide the central planners. For a summary of the most important discussion in economic history, see Rothbard, M. (1991). "The End of Socialism and the Calculation Debate Revisited", *The Review of Austrian Economics No. 02, 1991*

So, we can see that *even under the assumption that a government is lead by omnipotent people,* there are still theoretical limits to its size.

The Size of Government in the Republic of North Macedonia

"The State is the great fictitious entity by which everyone seeks to live at the expense of everyone else".

Frederick Bastiat,
The State (1848)

First of all, we should point out that the discussion on the size of government in the Republic of North Macedonia (and similar "transition economies") is limited since there is relatively few data on the time since the state gained independence in 1991. It makes more sense to analyse the issue based on the empirical estimations of optimal size of government for similar countries (i.e. ~20-25% of GDP). As we can see, there is a need for further empirical research of the government spending in North Macedonia and the mechanism for restraining the growth of its size. In the following, we will only discuss fragmentary insights and trend that should be pursued by *any* government in the near future .

Graph 3: Government expenditure as % of GDP in Republic of N. Macedonia, 2006-2019
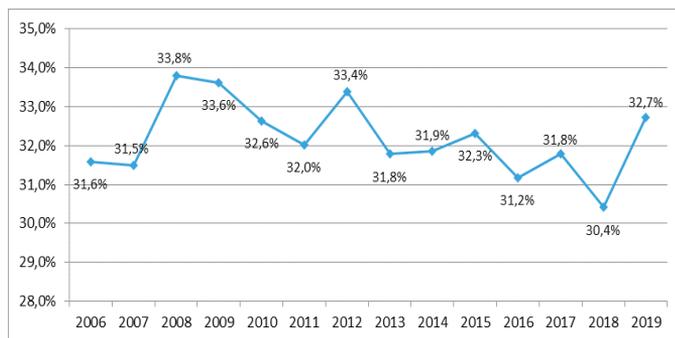
Source: Table 4. Budget expenditures, Ministry of Finance of North Macedonia (excluding expenditures of local municipalities and state-owned companies)

With government expenditures of 32.7% of the GDP in 2019, North Macedonia has amid-size government (in Armenia, Albania, and Georgia, government expenditures are below 30% of the GDP; in Romania, Latvia, Lithuania, and Bulgaria, they amount to 30 to 40%; Serbia's and Montenegro's government expenditures are above 40%; and in Hungary, even above 50%). However, empirical research indicates an optimal government

size of about 20 to 25% of the GDP for the countries in the region (see Table 1). If the government size of a country is above 10% +/- of its optimal level, this can be a serious drag on the country's economic growth, especially if it is coupled with double-digit unemployment, a significant informal economy,[15] an ageing population and young talents leaving the country.

In addition, there are highly developed countries such as Hong Kong (government expenditures of 20.2% of GDP) and Singapore (17.1% of GDP) with a *significantly* smaller government than North Macedonia where the state efficiently provides public goods. Other highly developed countries such as Ireland, Korea, and Switzerland have managed to establish free market economy and a highly functional government, restraining its size to ~30% of the GDP. The point is that it is *not* necessary to have large government to support a functional and growing economy. As shown above, in most of the countries the "core functions" are provided with expenditures of ~15% of the GDP. A significant part of North Macedonia's state budget is spent for social welfare (especially for pensions), subsidies, salaries in public administration, as well as "other purposes" that are not related to its core role.

Graph 5. Current budget expenditures, 2020 (%)

Budget 2020, Current expenditures
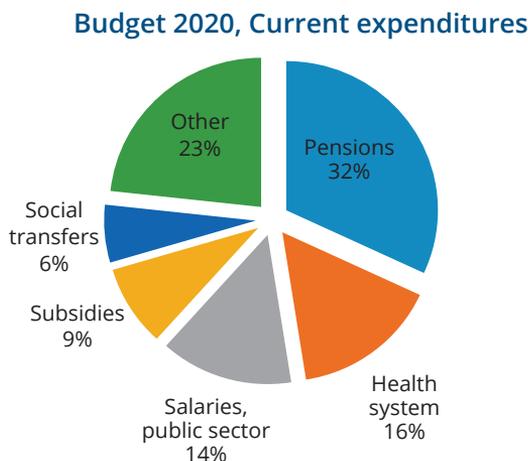
Source: Graph 5. Current expenditures for 2020, Ministry of Finance of the Republic of North Macedonia

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[15] As stated in the latest Working Document by the European Commission on the economic reforms in N. Macedonia, different indicators point to informal economy between 20% and 40% of the GDP, while informal employment represents ~18% of the total employment (around 130,000 individuals), which is a very high number. See: European Commission (2019), "Commission Staff Working Document on Economic Reform Programme of North Macedonia (2019-2021)", *Brussels, 11.04.2019*. The Centre for Economic Analysis estimated that the informal economy was ~24% of GDP in 2010. See Centre for Economic Analysis (2012). "Shadow Economy in Macedonia", April 2012

However, the overreach of the government of North Macedonia is much larger than the data indicates. Alternative experiences, EU reports and other evidence indicate that there are "systemic failures" of the rule of law, the core function of the state necessary for a fair and free economy.[16] According to the latest report of the Heritage Foundation, *"the government has introduced some anti-corruption measures, but political interference, inefficiency, cronyism and nepotism, prolonged processes, and corruption are pervasive."*.

Thus, we can conclude the following:

In North Macedonia, the government size is *already* above the theoretical estimations on optimal government size for similar states. In addition, further research is needed to estimate the *real* size of the government, having in mind its influence on the private sector by means of regulation and various ways of abuse of political power. **A main priority should be to *restrain* further growth of the government.**

The government *already* spends sufficient funds on providing standard public services. However, the quality of the public services is on sub-standard level, especially with regard to its core functions (rule of law, efficient judiciary, environmental protection, etc.), which indicates a pressing need to optimise the spending and reform the fiscal policies.

The economic role of the state in the 21st century: small is beautiful

> *"It is illogical to say, as many etatists do, that liberalism is hostile to or hates the state, because it is opposed to the transfer of the ownership of railroads or cotton mills to the state. If a man says that sulphuric acid does not make a good hand lotion, he is not expressing hostility to sulphuric acid as such; he is simply giving his opinion concerning the limitations of its use*."
>
> Ludwig von Mises,
> *Omnipotent Government (1944)*

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[16] In 2015, according to the assessment and recommendations by the Senior Experts' Group on Systemic Rule of Law Issues, there were systemic rule of law issues, state capture, legal and regime uncertainty, etc. Corruption was seen as the most serious problem that the country is facing. Systemic failure of the rule of law had lead to "*direct involvement of senior government officials in illegal activities, including ... abuse of power and authority, conflict of interest...extortion...severe procurement procedure infringements aimed at gaining illicit profit, nepotism and cronyism*. (pg. 6) Some reforms foreseen in 2015 have been conducted, but not on the level necessary to address the "systemic" failings of the rule of law.

For a long period, the current developed countries were led by public policies of prudence, conservatism (understood as a cautious approach at transferring certain duties to the government) and fiscal responsibility. As stated by James Buchanan and Richard Wagner on fiscal prudence in "Democracy in Deficit: The Political Legacy of Lord Keynes" (1977), "*until the advent of the "Keynesian revolution" in the middle years of this century, the fiscal conduct of the American Republic was informed by the [Adam] Smithian principle of fiscal responsibility"*. Much has changed eve since. Governments are seen as omnipotent mechanisms that can be guided by experts to achieve any possible goals. Economists observe "market failures" in every corner. Different standards are applied to "government failures". As a result, governments have grown in every aspect (expenditures, taxes, public debt, regulation), but, after reaching a certain point, without significant improvements concerning the social and economic objectives, as if government growth had become an end in itself.

We have come a long way. Today,the available data indicates that we should reverse our course as soon as possible and return to the roots of prudent and responsible fiscal policies and the model of small government. Small efficient government does not just mean thatmore freedom and resources will be available for the people and private companies. It also means less opportunities for the abuse of power, unjustified enrichment by political means and increasing social inequality due to non-market methods. Small government means less politisation and polarisation of the society. Small *is* beautiful. And for countries like North Macedonia, a small government could really lead to the state being servant to the individual, rather than vice versa.

In this paper, we provided a series of arguments why governments do not need to grow in size in order to fulfil their role in a free and modern economy, and why it can actually have negative effects on economic growth if a government grows beyond a certain threshold. This position is supported by a large amount of data and logical arguments. It is a fact that the quality of public finances and an efficient public administration are key for providing the necessary public services. More taxes, debts and government revenues are often counterproductive, especially in countries where institutions are less developed and democratic oversight, control and social trust are scarce.

Our main goal was to argue that there is a "theoretical anchor" for the size of government which should be a guiding principle to steer the policymakers in the right direction. Simply put, we need an anchor. As a start.

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IRANIAN FOREIGN POLICY AND THE IMAGE OF THE WEST

59

Introduction

Iran is settled with the Persian Gulf region with an extraordinary strategic geographical location and is the largest Shia country in the world with a population of over 79 million[1]. By virtue of its long and eventful history, Iran is a home to a variety of ethnic, religious and linguistic groups. Its 1259 kilometres long coast in the Gulf and large number of islands and the ownership of 15.5 per cent share of the Persian Gulf reserves of gas which amount to 40 per cent of world's gas reserves, contribute to Iran's status as one of the most important countries of the region[2]. Consequently, it is not far to argue that Iran has always attracted the attention of foreign powers and great powers, in particular. During the past century, various (though mainly western) powers have maintained a foothold on Iranian soil, either by economic or political means.

The article at hand deals with the image of the West in Iranian foreign policy, or, more precisely, with how the West became the "other" – the admired one, the hated one, the grand foe. Sketching the West's image in Iranian political history is hampered by much considerations ranging from the abundant history of inter-relations with specific Western entities and the West in general, the ample range of those relations (economic, cultural, political, military), the vast impact of Western ideas and values in the public and political discourse, imported, infused or adopted, on one hand, and rejected, questioned and abandoned, on the other (due to many reasons, Iran's patchwork of ethnic and regional diversity[3] being one of them). Furthermore, some issues that have grave importance and sway in the examination of the subject, such as the rise and content of Iranian nationalism, bilateral relations with specific parties, or the impact on the negotiations, brokering and scope of the Nuclear deal, will not be analysed, due to the restrictions imposed by the format of the article. Consequently, the temporal scope of the article encompasses the period until 2013 or the election of Hassan Rouhani as President. The subject is limited to the examination, analysis and critical overview of the perception of the West in general, rather than discussing specific countries. And finally, the analysis aims to outline how foreign policy issues have impacted and been projected into Iranian political history. The main hypothesis of the paper is that the image of the West in Iran has been a major factor in foreign policy creation and policy response. The supportive hypothesis is that Iranian foreign policy has been foremost domestically driven, while its utilisation has had a profound implication on Iranian affairs. The analysis will integrate findings, reviews and perspectives from many scholars across the spectrum and address these hypotheses within the limitations mentioned above.

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1   Fuller Graham, The Center of the Universe: the Geopolitics of Iran (Boulder: Westview Press, 1991), 256. AFET, *An EU strategy for relations with Iran after the Nuclear Deal*, June 2016 –PE 578.005, http://www.europarl.europa.eu/RegData/etudes/IDAN/2016/578005/EXPO_IDA(2016)578005_EN.pdf.

2   Sajedi Amri, *Geopolitics of the Persian Gulf security*, IPRI Journal IX, no. 2 (Summer 2009): 88.

3   Abbas Amanat, Introduction: Iranian Identity Boundaries: A Historical Overview, in *Iran Facing Others – Identity Boundaries in a Historical Perspective*, ed. Abbas Amanat and Farzin Vejdani (Palgrave Macmillan, 2012): 1-39, 26.

Encounter with the West

Iran's first encounter with the West dates back to the XV[4] or XVI century,[5] when Portuguese suppliers of firearms and cannon arrived on the Persian Gulf in 1498 or 1507, respectively. Yet, despite this commercial relationship, Iranian knowledge of Western Europe continued to be rudimentary until the accession of Shah Abbas I in 1588 and the celebrated audience in 1562 granted by Shah Tahmasp to the English merchant-adventurer Anthony Jenkinson.[6] The audience was interrupted by the Shah himself when he discovered that the guest was not a true believer. Roger Savory underlines "*the calm assumption on the part of the Shah until he was advised otherwise, that a visitor to his court, even from such a benighted region as England would be a Muslim*".[7] According to Savory, this merely demonstrates Shah Tahmasp's ignorance of Europe.[8] Needless to say that lenses, through which Iran looked at the West at that time, was religious one.

After the Portuguese, the Persian Gulf became inseparably linked to the commercial and political rivalries between western maritime powers such as the Dutch, the French and, finally, the British. Abrahamian refers to that time as an "era of concession hunting" in Iran.[9] Once the oil resources of the Gulf region were discovered in 1908, the first British oil extraction company in Iran was created under the name "Anglo-Persian Oil Company" (APOC).[10] The British interest in the oil concession was related to the imminent conversion of the Royal Navy to fuel, so that the British government provided indirect financial assistance and political backing to the company, especially during the World Wars.[11] APOC soon developed rapidly, spreading its operations throughout most of Iran's provinces and creating subsidiary companies that became part of a greater consortium effectively under the control of the British government. After the end of World War II, Iran decided to nationalise the company, and the decision was implemented in 1951.

Given the world's growing dependency on oil products, other than British embedded interests in Iran, there were additional stakeholders whose involvement in the region, and

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4   Sajedi, Geopolitics, 77-78.

5   Savory Roger, Muslim perceptions of the West, *Comparative Civilizations Review* 13, No. 13 (January 1985): 75.

6   On arrival at the Persian court, Jenkinson presented the friendly letter of Queen Elizabeth I, the purpose of which was "*to treat of friendship and free passage of our Merchants and people, to repair and traffique within his dominions, for to bring in our commodities, and to carry away theirs, to the honour of both princes, the mutual commoditie of both Realmes, and wealth of the Subjects.*" Savory, Muslim, 75.

7   Ibid.

8   Ibid.

9   Abrahamian Ervand, *Iran between Two Revolutions* (Princeton: Princeton University Press, 1982), 54.

10 Later on, in 1935, APOC was renamed "Anglo-Iranian Oil Company" (AIOC), and in 1954, it became the „British Petroleum Company" (BP), -ne of the antecessorsdef the modern British Petroleum BP. According to Encyclopaedia Iranica, the first concession was given to a British financier William Knox D'Arcy in 1901. Furthermore, as indicated byhis source, by employing complicated financial arrangements and intricate political maneuvers in 1909, the original D'Arcy concession became the Anglo-Persian Oil Company (APOC). See more in Sajedi, Geopolitics, 78 and Kazemi Farhad, *Anglo-Persian Oil Company*, in: Encyclopædia Iranica, Vol. II, Fasc. 1, 1985: 61–65. Iranica Online (Last Updated: August 5, 2011), accessed October 26, 2016. http://www.iranicaonline.org/articles/anglo-persian-oil-company

11 Kazemi, Anglo-Persian, 61–65.

Iran in particular, influenced the political history of the country and altered the geopolitics of the region.[12]

By the middle of the XX century USA taken over Great Britain's dominion in the greater region of the Middle East and Persian Gulf, while the Soviet Union emerged as a new international player on the ground. According to Ehteshami, Iran managed to accumulate considerable strategic value during the Cold War era, as a weighty pawn in the Cold War chessboard that straddled much of Asia and Europe.[13] Ayman posits that during World War II, Iran's spiky relations with the West entered a new stage since the British Empire and the Soviet Union jointly invaded and occupied the independent kingdom of Persia and installed Reza Pahvlavi as ruler to the throne to serve the British interests.[14] The occupation of Iran by foreign interference was further fuelled in 1952 by a coup that was engineered by the US and the UK to bring down Mohammed Musaddegh who served as prime minister at the time and was known as the architect of the project of Iranian's oil industry's nationalisation.[15] Thus, Ayman notes, the coup's effects were long-lasting, accompanied by an erosion of trust in the relations between Iran and the West, especially due to the American and British interference in Iran's domestic affairs.[16] In a way, the coup managed to ruin the democratic credentials of the West, but also fortified the belief that the strategic interests of the West always came first, seconding the democratic rights of Iran[17.] Hence, the Iranian Revolution in 1979 heavily employed the idea of bringing foreign intervention to an end, and the decline of the relations between Iran and the West advanced. But more importantly, the 1979 Revolution made Iran stand out on the international scene and, due to the wide ranging coalition of Islamist, liberal, and radical domestic forces, it emerged on the international scene as a defiant, fierce, independent, proactively religious, and non-aligned power,[18] or, as Matin identifies it - *a new Iran has been born.*[19] The latter contributed to the increase of Iran's power in the beginning of the 21st century and paved the way for its allot as a regional superpower[20] and a growing force to reckon with.[21]

On the turn of the XX century, little had changed with regard to the Iranians' perceptions of the West, as Savory argues. According to him, the basic perception of the West

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12 Sajedi, Geopolitics, 78. Also see in Duane Chapman and Neha Khanna, The Persian Gulf, Global Oil Resources, and International Security, *Contemporary Economic Policy* 24, no. 4 (2006): 507-519.

13 Ehteshami Anoushiravan, The foreign policy of Iran, in *The foreign policies of Middle East states*, edited by R. Hinnebusch and A. Ehteshami (Boulder, Co.: Lynne Rienner, 2002): 283-309, 283.

14 Ayman Gülden, Afghanistan as a bridge, in ed. Parsi Rouzbeh and Rydqvist John, *Iran and the West- Regional Interests and Global Controversies*, Swedish Defence Research Agency -FOI, (March 2011): 39-54, 41.

15 Ibid.

16 Ibid.

17 Ibid.

18 Ehteshami, The foreign policy, 283.

19 Hosseini Matin**,** Seyed Mahdi**.** Iran's Desired Power Status**,** *Iran Review of Foreign Affairs*, vol. 3, no.1, (Spring 2012): 183-206, 188.

20 Baer Robert, *The Devil We Know-Dealing with The New Iranian Superpower*, (New York: Crown Publishers, 2008), 2.

21 Ehteshami, The foreign policy, 283.

persisted, as a sink of corruption and a source of unwanted ideas, on one hand, and the perception of the intellectuals for whom it was a panacea, persisted.[22] The first signs of rapprochement occurred after the Second World War when Iranian intellectuals (mainly the ones from the so-called National Front) who had adopted a special strategy to promote western ideas joined forces with the Muslim clergy to overthrow the Shah.[23]

Yet, now it was the lens of culture through which Iran was looking at the West. The profound effect of reflecting the image of the West into Iranian politics has shaped and influenced much of its policies, and foreign policy in particular. Iran's relations with Great Britain had the strongest influence by far, playing an important role not only in Iran's diplomacy and economy, but also in shaping its political identity.[24] Amanat underlines that Great Britain captured the Iranian imagination not only as a world power of extraordinary capabilities to conquer, conspire, and control, but also as the ultimate *Farangestan*— a land of marvelous prosperity, security, justice, and, of course, maritime power.[25] So according to him, Britain became the ultimate example of external "other" versus Iran's emerging nationalist "self" in the modern Iranian consciousness, in a manner that others could not compete with, not even Russia, nor Germany, nor France or the United States. Since the end of World War II, the latter had eclipsed Britain as a superpower, and its vital interest in Iran remained during the Cold War and beyond, even though, in the late twentieth century, it superseded Britain in the Iranian post-revolutionary narrative of victimisation as the Great Satan.[26]

Approaches utilized
by Iran's foreign policy

Rakel argues that, after the 1979 Islamic Revolution, particularly during the first ten years, Iran's foreign policy developed an approach according to two main ideological principles: first, "*Neither East nor West, but the Islamic Republic,*" which, according to her, translated into an aversion towards Western (especially US) influence, and second, "*Export of the Revolution*" in order to free Muslim countries and non-Muslim countries from their "*oppressive and corrupt rulers,*" which served as a means of mobilization of the Iranian people to support the eight-year war with Iraq (1980-1988).[27]

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22 Savory, Muslim, 85.

23 Ibid.

24 Abbas Amanat, Through the Persian Eye: Anglophilia and Anglophobia in Modern Iranian History, in *Iran Facing Others – Identity Boundaries in a Historical Perspective*, ed. Abbas Amanat and Farzin Vejdani (Palgrave Macmillan, 2012): 127-153, 128.

25 Ibid.

26 Ibid.

27 Rakel, P. Eva, Iranian Foreign Policy since the Iranian Islamic Revolution: 1979-2006, *Perspectives on global development and technology*, vol.6 (Leiden, Brill Publishers, 2007): 159-187,160.

According to Azghandi, between 1979 and 2005, Iran pursued four theoretical foreign policy approaches: a realist, an ideological, a pragmatist, and a reformist approach.[28]

The pursuit of the *realist approach* was advanced throughout the reign of Mehdi Bazargan and ended with the Iranian-American crisis. The background of Iran's foreign policy was based on national interest rather than ideological or Islamic values, and predisposed to mend Iran's foreign relations with others but mainly with the USA.

The *ideological approach* was predominant from 1981 to 1989 and led to a more interventionist foreign policy, promoting Islamic principles and values. During this period, Iran hoped to endorse Islamic Revolution outside of its borders, making it a regional issue that could further produce same revolutionary events in other countries. Hence, this foreign policy approach generated enmity between Iran and Persian Gulf states.

The *pragmatist approach* was the essence of the the foreign policy created under President Rafsanjani (1989-1997), who envisaged a reconstructed and economically stronger Iran. After the eight-year-long clash with Iraq that had run down the economy, Iran began a far-reaching military build-up aimed at reconstructing, enlarging and modernizing its armed forces and determining itself as a regional military power.[29] Much of the foreign policy's focus was on post- Iran/Iraq war economic reconstruction and Iran's reintegration into international economy, while the priority was to improve relations with Persian Gulf countries, especially Saudi Arabia, but also with the newly independent states of Central Eurasia (CEA) and Russia.[30] Rafsanjani's main foreign policy aim was to normalise Iran's foreign relations, with other countries and to acknowledge realities of international politics as well as consent to standards of international law. However, Iran's foreign policy during the so-called pragmatist era was principally determined by its geopolitical interests. Ehteshami argues that Iran has always been a rational actor in the classic realist mould, even though some of its excesses could be observed as calculated risks or opportunist moves in complicated settings.[31] He also notes that, looking back at the era after Khomeini, one cannot help but be struck by how normal, largely non-aggressive, and pragmatic Iran's foreign policy has been since 1989.[32]

The *reformist approach* was pursued by president Khatami from 1997 to 2005. In fact, according to Azghandi, his policy was much similar to Rafsanjani's, i.e. his approach was pragmatist, but its domestic aspect support was much different. Khatami's foreign policy was principally aimed at continuing Rafsanjani's foreign policy towards Iran's neighbours, but also at improving relations with the European Union (EU) and its

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28   Ibid., 157-187.
29   Eisenstadt Michael, *Iranian Military Power: Capabilities and Intentions*, The Washington Institute for Near East Policy, 1996, xv.
30   Rakel, Iranian Foreign Policy, 160.
31   Ehteshami, The foreign policy, 284.
32   Ibid.

member states.[33] Namely, Iran became more aware, respectful, and supportive of issues that were internationally significant, such as civil rights, freedom of speech, rule of law and pluralism, hence Iran's foreign policy record was more concerned with dialogue, peaceful coexistence and détente with other counties. Yet, according to Rakel, during Khatami's rule, the Shi'i ideological doctrine, embedded in a nationalist yearning that rejects any "westernisation" of the country and the people, managed to prevail among some elements of the Iranian political elite, preventing major changes in its foreign policy orientation.[34]

A major shift in Iran's foreign policy occurred after 2005, when Ahmadinejad was elected president. Rakel names it as a shift away from the pragmatic approach under presidents Rafsanjani and Khatami, to a more hostile attitude towards the West and Israel.[35] Pirsalami argues that foreign policy under Ahmadinejad was characterized by justice-oriented principalism and that speaking about détente was out of question at the time.[36] Hence, he notes, the foreign policy witnessed an unexpected and deep transformation from interaction with the world to a focus on different countries, broadly called the "third world," given the removal of grounds for cooperation with the West[37]

In 2013, Hassan Rouhani was elected president. He used his first year in office to improve the Islamic Republic's image in the international community and to portray himself and his government as being ready to deal seriously with the West.[38] The majority of his cabinet held PhDs from US universities, which did not imply that they were proponents of Western social values, but that they were quite familiar with the West and had a much better understanding of Western perceptions of Iran than many of their predecessors.[39] Iranian foreign policy under Rouhani envisaged a principled, sober and wise critique of the foreign relations by the previous administration.[40] Zarif advances it as a prudent moderation approach based on realism, self-confidence, realistic idealism and constructive engagement.[41] Yet, according to Shanahan, while Rouhani's foreign policy approach differs markedly in style from Ahmadinejad's, ultimately, the aim of both has been to maximise Tehran's influence in the region — a core foreign policy goal of the Islamic Republic's since its inception.[42]

33 Rakel, Iranian Foreign Policy, 161.

34 Ibid.

35 Ibid.

36 Pirsalami Fariborz A., Third Wordism and Ahmadinejad's Foreign Policy, *Iranian Review of Foreign Affairs*, Vol. 4, No. 2 (Summer 2013): 81-109, 92.

37 Ibid.

38 Shanahan Roger, *Iranian foreign policy under Rouhani* (Sydney - Lowy Institute for International Policy, 2015): 1-15, 3.

39 Ibid.

40 Mohammad Javad Zarif, What Iran Really Wants: Iranian Foreign Policy in the Rouhani Era, *Foreign Affairs* (May/June,2014): 49–58, 55, http://quito.mfa.ir/uploads/ZarifFinalProofs_(1)_28065.pdf.

41 Zarif, What Iran Really Wants, 56.

42 Ibid.

From "*Gharbzadegi*" to "Dialogue of Civilizations"

As it has been said before, the impact of western ideas on Iranian social history can be traced back to as early as the XV century. But even though rudimental communication existed, the exchange of ideas was embedded fairly late and one in particular – nationalism. Cottam rightly asserts that at the time when Westerners considered nationalist values pivotal, the concept was esoteric for the vast majority of Iranians.[43] Despite the fact, according to him, that Iran is an excellent example of a state in which national consciousness can be clearly identified for many centuries, the importance of nationalism as a primary determinant of Iranian attitudes and political behaviour is largely confined to the twentieth century, thus making it a century late behind the West. Furthermore, the penetration of the idea of liberal democracy in the Iranian political milieu due to western influence has been labelled as intervening because of the historically present fear and perception of foreign interference.[44] The latter is related to Iranian nationalism, which, for generations, has been intertwined with the issue of ensuring Iran's territorial integrity, thus creating an intensely Irano-centric view of the world.[45] The Iranian Islamic Revolution can be partly understood as one in a series of events that developed as a reaction to the foreign power domination in Iran as well as exploitation of Iran's wealth and resources by foreign companies: the Tobacco Monopoly Revolt (1890-1891), the Constitutional Revolution (1905-1906), the Oil Nationalisation Movement of Prime Minister Mohammad Mosaddeq (1951-1953), and the Islamic Revolution (1978-1979).[46] Rakel emphasises the fact that all four revolts/ revolutions were actually led by the ulama (clergy) as representatives of the nationalist movement, and that all events were intimately linked to Iran's historical experience of foreign influence and penetration: the rivalry with other empires (e.g. the Ottoman Empire), two centuries of experience in intrusion into its internal matters by European and world powers (France, Russia, Great Britain, and the US), repeated attempts to modernise the country, and intermittent displays of close relations with the West in general.[47] Fuller ascribes the Iranian stance towards the West relationship and Iran's foreign policy to the cultural and historical layers which, according to him, are a result of the Iranians' long history of alien invasions, as it has frequently experienced aggression, looting, and treason.[48]

Bulliet argues that the historical pattern of relations between Iran and the West is reasserting itself as western propensity going back to Herodotus and Aeschylus to

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[43] Richard Cottam, *Nationalism in Iran* (Pittsburgh: University of Pittsburgh Press, 1979), 5.
[44] Quoted from Ehteshami, The foreign policy, 284. See more in Richard Cottam, Nationalism in Iran (Pittsburgh: University of Pittsburgh Press, 1979).
[45] Ehteshami, The foreign policy, 284-285.
[46] Rakel, Iranian Foreign Policy, 160.
[47] Ibid.
[48] Fuller, Graham, *The Center of Universe: the Geopolitics of Iran* (Boulder: Westview Press, 1991, 134.

fantasize Iran as a threatening force of cosmic dimension[49.] He also points out that "*Iran's destiny always lays to the East, not the West*" and that Iran is repeatedly "*configured as a mortal threat to its western neighbours*".[50] According to Ghahremanpour, the confrontational nature of the Iranian-Western relationship stems from the conflicted Iranian appraisal of the West, both as a concept which is related to modernity and a political reality the Great Powers game from the 19th century onwards.[51] He further argues that, in Iran, history is interwoven with a sense of national grandeur and victimisation at the hands of great power[52] and relays his arguments to Moshirzadeh's claim that the perception of geography in Iran has two aspects, the: a negative one of rejecting foreign dominance and a positive one of seeking to realise one's identity.[53]

More importantly, the external image of Iran has been altered and changed from within over the past decades. At the time of Shah Pahlavi's reign (1941-1979), Iran seemed as a rapidly modernising, secularizing society allied with U.S. values and policy objectives, except regarding autocracy.[54.] In comparison, according to Keddie, during the reign of the Qajar dynasty (1796-1925), Iran was seen by westerners as a very backward Oriental society with very different and often irrational values.[55] Hitherto, the Iranian obsession with the West has been so profound that during the Pahlavi era, the term "*Gharbzadegi"* (Occidentosis) was coined to express Iranian national submission to the West and its technology.[56] The term „Weststruckness" or "Westoxication" was created by Jalal Al-e Ahmad in his 1962 essay, which has been commonly described as probably "the single most important essay published in modern Iranian history".[57] According to Dabashi, Al-e Ahmad's idea was to frame, in a way, "the excessive and rather awkward preoccupation of certain influential segments of Iranian society with manners and matters "Western" in origin. He considered this preoccupation a major malady that had gradually but incessantly weakened the Iranian national character, the major component of which he considered to be Shi'a ethos."[58] Asgard also identifies the potent message send by 1973 film Mogholha (The Mongols) by filmmaker Parviz Kamiavi, in which "the perceived Western cultural onslaught was attacked"[59] as one of the key moments of the anti-Western discourse in Iran. He further denotes the stance that it is an "obsolete political

49 Bulliet W. Richard, Iran between the East and West, *Journal of International Affairs*, vol. 60, no.20, 2007:1-14, 1.

50 Ibid., 4.

51 Ghahremanpour Rahman, Iran looking West: identity, rationality and Iranian foreign policy, in *Iran and the West- Regional Interests and Global Controversies*, ed. Parsi Rouzbeh and Rydqvist John, Swedish Defence Research Agency – FOI, (March 2011): 54-73, 54.

52 Ibid. 54.

53 Moshirzadeh Homeira, Discursive Foundations of Iran's Nuclear Policy, *Security Dialogue*, 38(4), 2007: 521–543.

54 Keddie Nikki, Iran: Understanding the Enigma: A Historian's View, *Middle East Review of International Affairs* Vol. 2, No. 3 (September 1998): 1-10, 1.

55 Ibid.

56 Vakil Sanam, Iran: Balancing East against West, *The Washington Quarterly*, 29:4, 51-65, 52.

57 Ramin Asgard, U.S. Cultural Diplomacy: A Historical Perspective, *The Fletcher School Online Journal for issues related to Southwest Asia and Islamic Civilization*, Spring 2010, https://www.files.ethz.ch/isn/116001/Full_Text_Spring_2010.pdf, 5.

58 Hamid Dabashi, *Theology of Discontent: The Ideological Foundation of the Islamic Revolution in Iran* (New Brunswick NJ: Transaction Publishers, 2006), 173-174.

59 Asgard, U.S. Cultural, 5.

culture"[60] that is in question, and that the "paranoia associated with this conspiratorial view of politics (which) is largely cross-class and cross ideological. It is, however, according to him, widespread among Iranian political elites and intelligentsia, who continue to use it as a weapon against political enemies or for the manipulation of their followers."[61] Hence, the view imposed by these authors to determine "outside cultural influences as "a disease" or "an invasion" still shapes Iranian thinking about the outside world today.[62]

Based on these arguments, one can construe that Iranian foreign policy is much dependent on domestic issues and views. The latter has been repeatedly argued by many Iran scholars. Ramazani, for one, asserts that "*generally, the relationship between foreign policy and domestic conditions is easily underestimated.*"[63] Matin affirms that foreign policy is the continuation of domestic politics.[64] Ehteshami says that "*the roots of this transformation in Iran's international relations must be found in Iran itself.*"[65] Ghahremanpour pushes the argument even further, indicating that the anti-Western rhetoric of the Islamic Republic of Iran has served as an instrument in its domestic politics and was used to cement its legitimacy.[66] He also stresses that the formulation of Iran's foreign policy toward the West is based on domestic sources that are independent of the immediate instrumentalisation value, referring to the state identity of Iran as the leader of the anti-hegemonic movement in the Islamic world, which, according to Moshirzadeh, is a significant variable in analysing Iran's foreign policy behaviour,[67] Still according to Ghahremanpour, "*anti-Western trends in Iranian politics are not completely dependent on the type of political regime in power in Tehran",*[68] but part of a multi-layered phenomenon that he labels "an identity dilemma in Iranian society", since "*the majority of Iranians are not satisfied with their current role in the region nor in the international system and Western policies—perceived or real—aimed at restricting and isolating Iran intensifies this sense of frustration.*"[69]

Khatami aimed to reach out beyond Iran by promoting the so-called "Dialogue of Civilizations", as a direct denial of Hungington's "clash of civilisations"doctrine. He advocated his idea in the UN, which, subsequently, adopted it with the declaration of

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60 Ervand Abrahamian, *Khomeinism: Essays on the Islamic Republic* (Los Angeles: University of California Press, 1993), 111.

61 Hooshang Amirahmadi, *Revolution and Economic Transition: The Iranian Experience*, (Albany: SUNY Press, 1990), 283 284.

62 Asgard, U.S. Cultural, 5.

63 Rouhollah K. Ramazani, *Iran's Foreign Policy 1941-1973, A Study of Foreign Policy in Modernizing Nations* (Charlottesville: University Press of Virginia, 1975), 389.

64 Hosseini Matin and Seyed Mahdi, Iran's Desired Power Status, *Iran Review of Foreign Affairs*, vol. 3, no.1 (Spring 2012): 183-206, 200. More on Iran's domestic predicaments see in Abootalebi Ali, The Struggle for democracy in the Islamic Republic of Iran, *Middle East Review of International Affairs*, Vol. 4, No. 3 (Fall 2000): 43-56.

65 Ehteshami, The Foreign policy, 284.

66 Ghahremanpour, Iran looking West, 54.

67 Moshirzadeh, Discursive Foundations, 521.

68 Ghahremanpour, Iran looking West, 55.

69 Ibid., 55-56.

2001 as the Year of Dialogue Among Civilizations.[70] Khatami's idea had little impact on improving relations with the West, due to several reasons and circumstances, but it managed to initiate the process that years later helped both sides to further their dialogue and cooperation in the framework of the Nuclear Deal process.

Concluding remarks

The impact of the West on Iranian political discourse has been intrinsically linked to Iranian political history. Hence, a variety of values and ideas that derive out of modernisation and progress have been labelled Western per se, time and time again, and furthermore written off as unwanted or dangerous. One of the most outstanding issues is the very nature of the state and its inherent struggle (Islamic or democratic republic), and the fact that Iran's labyrinthine political system (and competing sources of power) do complicate diplomacy.[71]

It is valuable to strike out the manner in which the Iranians perceived the West at the time of Mahmoud Ahmadinejad's reign. Namely, one 2007 research showed that a majority of Iranians had a positive view of Europe and would prefer for Europe to have more influence on Iran than the United States.[72] The research also showed that their view of France (but not Jacques Chirac) was positive by trend, while a majority had a negative view of Britain (and Tony Blair).[73]

Still, the understanding of rationale behind Iran's foreign policy is foremost linked to the rejection of foreign dominion , and especially the influence of the United States which ensued after the 1979 Revolution.[74] That revolutionary moment, according to Ostovar was based on anti-Americanism and anti-imperialism that were utilized in the popular slogan— "*neither East nor West"* in order to assert the desire for Iran to strike an independent path, politically and ideologically.

The approach to foreign relations pursued by successive elites in Iranian society can be seen as aggressive or pragmatic,[75] determined by the admiration or the opposition to western influence, framed as religious or nationalistic policy, yet there is no doubt that its ultimate goal has always been the self-interest.[76] Iran's stamina lays in its lush past,

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70 In depth analyses in Fabio Petito, Khatami' Dialogue among Civilizations as International Political Theory,
    Journal of Humanities (2004) Vol. 11 (3): 11-29.

71 Robin Wright, The Challenge of Iran, in *The Iran Primer: Power, Politics, and U.S. Policy*, ed. Robin Wright,
    (Washington: USIP, 2010): 1-10, 7.

72 Kull Stephen, *Public Opinion in Iran and America on Key International Issues*, A WorldPublicOpinion.org Poll conducted in
    partnership with Search for Common Ground and Knowledge Networks, January 2007, http://www.worldpublicopinion.org

73 Ibid.

74 Afshon Ostovar, *Sectarian Dilemmas in Iranian Foreign Policy: When Strategy and Identity Politics Collide*, 2016 Carnegie Endowment for
    International Peace, 1, https://carnegieendowment.org/files/CEIP_CP288_Ostovar_Sectarianism_Final.pdf

75 Ibid.

76 Ibid.

culture, political and economic power, which should not be condensed to the status of a pariah state to be contained and marginalised[77] by anyone, and its potential should be fostered and respected by everyone.

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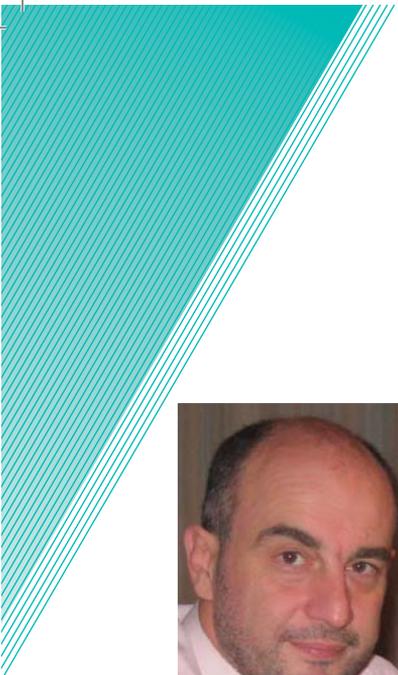
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SYSTEM CHANGE AND MEASURES OF TRANSITIONAL JUSTICE

Introduction

Transitional justice is a concept of justice for times of political change. Its main characteristic is that it provides quality justice for the time of transformation of totalitarian regimes into democratic systems, offering legal solutions with regard to the violation of human rights by the previous regime, as well as a basis for democratisation for post-totalitarian societies. Today, the term "transitional justice" mainly used for addressing concepts and theories for explaining, justifying, implementing and challenging certain practices of moral and societal recovery, as well as and social movements that deal with the past, such as truth commissions, criminal prosecution, administrative reorganisation, building national consciousness, commemoration, and reparations. Transitional justice can also be applied in other contexts, e.g. when states with a long-standing tradition of rule of law are faced with human rights violations committed in the distant past.[1] However, before any society or state institution can apply any measure of transitional justice, it has to identify and mobilise those forces within society which are genuinely prepared to embrace democracy after many years of restrictions to the democratic space.

One of the most important transition issues is building and establishing trust. In the literature on post-authoritarianism, confidence-building is described as a very important measure for supporting democracy.[2] It is widely presumed that well-designed and implemented transitional justice facilitates confidence-building, which in turn fosters democratisation. This presumption is a cornerstone of the discussions on transition that has never been seriously challenged. Measures of transitional justice include confidence-building with regard to the government, public institutions, and civil society, as well as trust between people. The goals of confidence-building are justified as supporting the process of democratic consolidation. While the vital role of trust is broadly elaborated in theory, tracing the link between transitional justice and confidence-building remains a field to be explored.[3] Attempting to sum up the transitional processes in North Macedonia, it seems more and more likely that governance in this transitional and yet to be finalised state is rather based on the misuse and control of institutional weaknesses than on the concept of developing human, economic and institutional capacities.

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1   Freeman, Mark, 2006, "Truth Commissions and Procedural Fairness", Cambridge University Press, New York, USA. Founder and Executive Director of the Institute for Integrated Transitions. Prior to that, he helped launch and direct the International Center for Transitional Justice in New York and Brussels. https://www.ifit-transitions.org/about/people/mark-freeman [accessed 5 January 2020]

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There was a discrepancy between what was promised before the elections and what was realised afterwards. Plurality and competition of interests did not come to life.[4] Over time, the parallel concept led to a rise in poverty and unemployment as well as in corruption and organised crime. Inefficiency grew, and the influx of foreign investments was practically blocked.[5] For a large majority of the citizens, the great expectations from the beginning of the transition period have become great frustrations.[6] This entire process of consciously planned ideological diffusion and joining of interests has hampered the democratic processes and reforms, benefiting those who controlled the redistribution of goods and power. The separation and mutual control of the branches of power was not functional. The parliament was (and still is) subordinate to the government. The members of parliament represented the parties on whose lists they ran instead of the citizens who elected them.[7]

Hence, almost thirty years into the Republic of North Macedonia's independence and the system change, transition cannot be regarded as completed, neither can the current state be labelled post-transitional. Quite the contrary: we are witnessing the same issues being continuously recycled, reforms being conducted for their own sake, and various institutions with very similar tasks but a very low output being multiplied. Meanwhile, the attitude towards law and justice is most alarming. Partisanism, clientelism and a selective approach of the "order" and its institutions towards citizens have given rise to the feeling of legal insecurity. Insecurity and inequality with regard to exercising one's rights has become wide-spread. In a broad sense, we can say that the institutions of the former system have been transformed into poorly functioning institutions which, over time and for different reasons, have practically become self-devaluating within an unfinished system of separation of powers.[8] This process is taking place because the system of power has not been constituted, so that there is no true system of checks and balances. Meanwhile, the one-party system has been replaced by a two-party system. In line with John Moran's concept of turning to the past in oblivion and therefore not feeling the need of substantial change, the weaknesses of the one-party system have been repeated

4   According to the Freedom House report as of 2015, Macedonia belongs to the group of states that are partly free https://freedom-house.org/report/freedom-world/2015/macedonia [accessed 5 January 2020]

5   „ In the capture economy, public officials and politicians privately sell underprovided public goods and a range of rent-generating advantages "a la carte" to individual firms. In the capture economy the 'captor' firm derives significant private benefits at an enormous social cost to the overall enterprise sector—whose overall growth rate over a three-year period is reduced by about ten percentage points."
Hellman, Joel S., Geraint Jones, and Daniel Kaufmann. "Seize the State, Seize the Day: State Capture, Corruption and Influence in Transition." SSRN Scholarly Paper. Rochester, NY: Social Science Research Network, September 1, 2000. http://papers.ssrn.com/abstract=240555 [accessed 5 January 2020]

6   Survey by the Macedonian Centre for International Cooperation (MCIC) and the Institute for Democracy "Societas Civilis" Skopje (IDSCS), December 2019: 46,5% of the respondents think that the Republic of North Macedonia is moving in a bad direction, while 32,0% think that it is moving in a good direction. In the survey carried out in 2018, 38,6% of the respondents had thought that the country is moving in a bad direction (while 44,8% thought that it was moving in a good direction). A group as large as 41,3% said that they do not trust any politician https://idscs.org.mk/mk/portfolio/анкета-гласачки-ставови-и-перцепции-з/ [accessed 5 January 2020]

7   Gordana Siljanovska-Davkova, Sovremeni "modeli" na organizacija na vlasta: dilemi i predizvici, Zbornik, Pravni fakultet Zagreb, 61, (2) 365-389 (2011)

8   Welsh, Helga A. (1996) „Dealing with the Communist past: Central and East European Experiences after 1990", *Europe-Asia Studies*, Vol. 48, No. 3, pp. 413-428.

in sectors that are crucial for establishing a genuine pluralistic democracy,[9] such as security and judiciary. Those two sectors are expected to be treated with most sensitivity and to undergo substantial reforms for a fair and just functioning. One measure of transitional justice often discussed in public is the so-called vetting. This process of performing checks on public officials is a complex issue which needs to be considered from various viewpoints. Before introducing the vetting procedure, a range of questions must be answered, namely concerning its goals, criteria, scope, timing and duration as well as possible sanctions. It should also be clear why exactly vetting is introduced (justification) and how it is combined with other institutional reform measures. By definition, vetting means assessment of a person's integrity in order to establish their suitability for employment in the public service. The vetting procedure can be applied to persons who already work as public officials, usually in the context of a post-conflict, post-authoritarian or in any other way transitional situation, in order to remove inadequate personnel.[10] Finally, we have to ask whether the complex concepts of transitional justice, such as pacification, offer a framework that is broad enough to reduce irrelevant political confrontations and lead to institutional stability, legal security and progress.[11] Pacification needs to be accompanied by coping with the past, accepting responsibility and confidence-(re-)building measures, while the starting point of this long-term process may vary, depending on the situation within the specific society.[12] During the process of pacification, different truths have to be readjusted, responsibility has to be taken, and preparedness to apologise needs to be shown. The parliament can apologise to the citizens in the name of the state in an act of high morality that can have a double effect of pacification: between conflicting parties as well as between the state and the citizens whose rights have been violated during the transition process, which should be accepted as a fact by all political parties.[13] The declarative act of apology to the citizens with regard to the socialist period in Macedonia took place in 2006. The declaration of apology to the victims of the regime from 1945 to 1990 was adopted by the Assembly of the Republic of Macedonia on 7 April 2006, after 11 years of preparation, without a broad debate. Quite the contrary: at first, there was some resistance, but after its adoption, the attempts to forget the declaration were evident (as in Moran's approach[14]).

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9 Moran, John P. 1994. "The Communist Torturers of Eastern-Europe - Prosecute and Punish or Forgive and Forget." *Communist and Post-Communist Studies* vol. 27, No. 1, pp. 95-109.

10 The Rule of Law and Transitional Justice in Conflict and Post-conflict Societies: Report of the Secretary-General. UN Security Council S/2004/616, 23 August 2004

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13 Draft Resolution on condemnation of mass violations of human rights and apology to the citizens; Draft by a parliamentary group within the Assembly of the Republic of North Macedonia, initiated by a group of citizens, put forward for adoption at the 126th session of the Assembly on 23 December 2019.
 https://www.sobranie.mk/materialdetails.nspx?materialId=ba6136ab-9906-4ac5-804c-ae4b4c1af695 [accessed 7 January 2020]

14 Moran, John P. 1994. "The Communist Torturers of Eastern-Europe - Prosecute and Punish or Forgive and Forget." *Communist and Post-Communist Studies* vol. 27, No. 1

The measures of transitional justice are relevant and pressing. They are necessary in order to successfully accomplish the longsome institutional reforms, to adjust the institutions that are responsible for violating human rights, as well as to rebuild trust. If there is enough political and democratic will to adequately tailor and implement these measures, citizens will regain confidence in the institutions and the capacity to defend democratic values will grow.

Key indicators are different approaches and measures of transitional justice and different views on their use, design, and time of introduction. The work on the topic is based on a standard methodological approach, with a focus on observing and analysing the political process, theoretical and comparative findings, and content analysis. Results from past research are used as secondary sources.

System change and institutional transformation

It is interesting to see that the regime change in the Republic of Macedonia and the following transformation mostly took place within the elite, without any significant involvement of the broader society.[15] Analysts have concluded that no more than one per cent of the inhabitants of Macedonia were involved in the historic events at the beginning of the 1990s.[16] Macedonia does not have a philosophical school of its own, nor any true dissidents who could have disputed the legitimacy of the political order. Hence, we can say that when the Socialist Federal Republic of Yugoslavia (SFRY) dissolved, there were no strong independent structures within the Macedonian society. The latter would have been a precondition for building and maintaining stable democratic and political institutions. As a result of this kind of regime change, there was no pressure on the political elites to carry out a fast institutional transformation, nor a public act of renunciation of communism. Since there was no dominant anti-communist discourse, the already high legitimacy of the former system, based on the creation of the Macedonian state within the Yugoslav federation, even grew in the eyes of the citizens.[17] That legitimacy of the former socialist system allowed the approach towards economic and political transformation to be moderate. The successors of the communist party remained in power until 1998. After a boycott of the parliamentary elections in 1994 based on the allegation that they had not been fair and democratic, the opposition did not participate in the work of the Assembly of the Republic of Macedonia during the entire legislative

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15 Simonida Kacarska, Promena na režimot i tranzicija - slučajot na Republika Makedonija; Political Thought No. 27, 2009 „20 Years after the Fall of the Berlin Wall", Konrad Adenauer Foundation and Institute for Democracy „Societas Civilis" https://idscs.org.mk/mk/politich-ka-misla/ [accessed 05.01.2020]

16 Slavko Milosavlesvski, Istočna Evropa megju egalitarizmot i demokratijata, Skopje Ljuboten, 1993, p. 144.

17 Jasna Koteska "Komunistička intima", Skopje, Templum 2008, p. 27: "My father was a political convict during the time when Slovenia already had Laibach and NSK. When everything was really falling apart. Even at a time when nothing was left anymore, we Macedonians, or, actually, you Macedonians, decided to equip yourselves and to take apart those who had heretic thoughts."

period from 1994 to 1998.[18] These events represent an additional impediment for democracy and the development of democratic processes. Furthermore, that was exactly the time when the privatisation process took place, which was later labelled *criminal* in practically all political, party and public debates, rendering the consequences even more dramatic. In states where the transformed communist parties could not be challenged by independent opposition parties, a trend towards failure of progress of reform programmes as well as a strong trend towards political and economic status quo seem to have been common.[19] The latter is confirmed in the analysis of Michael McFaul who, in his typology of post-communist regimes, classifies Macedonia as a partial democracy where the balance of power between the old and the challenging regime was insecure. According to McFaul, the group of transitional states which Macedonia belongs to is characterised by longsome and little convincing transformation processes, contrary to what the authors of the third wave of democratisation had foreseen.[20] Besides, we should also note that during the regime change, Macedonia did not fulfil the condition for democratisation according to Rustow:[21] territorial and national unity. As a result, while for most East European states the time since 1990 stands for the collapse of communism, for the Macedonian society, the agenda was dominated by the collapse of the SFRY.[22]
In addition to the economic, political and societal transition, Macedonia was engaged in state and nation-building processes. Since the independence of 1991 was the first one in the country's history, it is not surprising that the political discourse focused on creating a state and a nation, which was disputed by the neighbour states in different ways.[23] Hence, after achieving independence, the feeling of insecurity with regard to state building grew. According to some authors, societies that are engaged in nation-building practically reject the opportunity to develop civil society, too.[24] Thus, during the Macedonian transition, the democratisation process came second with regard to the processes of state and nation- building. Additionally, the post-communist discourse was also focused on these processes, and there was an evident lack of anti-communist discussions. This factor undoubtedly had an impact in the Macedonian transition, particularly with regard to fostering the political elites and lessening the urgency of coping with the past.

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18 Report of the State Election Commission on the election of Members of the Assembly of the Republic of Macedonia in 1994, 8.11.1994, No. 30-283 http://izbornaarhiva.mk/dokumentacija/Парламентарни%20избори%201994/5_Извештај%20од%20избори/Извештај%20од%20парламентарни%20избори%201994_ДИК.pdf [accessed 5 January 2020].

19 Herbert Kitschelt, "Strategic Conduct of Postcommunist Successor Parties" in John Ishiyama and Andras Bozoki ed. The Communist Successor Parties of Central and Eastern Europe (New York: M.E. Sharpe, 2002) p.24-25.

20 Michael McFaul, "The Fourth Wave of Democracy and Dictatorship," World Politics 54 (January 2002) p. 234.

21 Rustow, Dankwart A. "Transitions to Democracy: Toward a Dynamic Model." *Comparative Politics*, vol. 2, no. 3, 1970, pp. 337–363. *JSTOR*, www.jstor.org/stable/421307

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23 Andrew Rossos, 'The Macedonian Question and Instability in the Balkans,' in Norman N. Naimark and Holly Case, ed. Yugoslavia and its Historians, Stanford, (CA: Stanford University Press, 2002). Also Loring M. Danforth, The Macedonian conflict, (Princeton: Princeton University Press, 1995).

24 John A Hall, "In Search of Civil Society" in John A Hall (ed) *Civil Society-theory, history and comparison*, (UK: Polity Press, 1995) p.22.

However, some of the measures for coping with the consequences of the past were implemented and even prolonged, namely the process of denationalisation, which was continued in 2007 by adopting an amendment to the respective law that stipulated an extension to the period for submitting requests. According to the explanation of the amendment, 22.809 requests for denationalisation had been submitted by the end of 2006, 15.696 (68,8%) of which had been decided on. Out of those decisions, 8.936 had been positive and 3.866 negative, while 2005 requests had been responded to with combined decisions and 899 requests had been discontinued or the process had been stopped. By the end of 2006, out of the total number of submitted requests, 10.306 (45,2%) had been definitely decided on.[25] With regard to denationalisation, we can see that the approach was different than in the case of the other measures as well as the entire process of transitional justice itself.

The right to defend democracy and the measures of transitional justice

Of course, the issue of coping with the past is not a new one, however today, as the awareness about the importance of human rights is growing, states are increasingly turning towards collective remembrance and decreasingly towards oblivion. At a global scale, remembrance and coping with the past are often used as instruments against conflicts, since manipulative oblivion can be a potential hidden impetus for future conflicts. The goal of transitional justice is to deliver justice to those who have suffered from repressions in the past and to offer them rehabilitation and restitution for their harm. Transitional justice offers an opportunity to cope with the past, establishing an atmosphere of peaceful transition, pacification, and democratisation of the society. It represents a legal intervention during the period of the so-called third wave of democratisation, the transition from a totalitarian towards a democratic society. The roots of transitional justice go back to the time after World War II, when it triumphantly emerged from the framework of international law. During the trials against war criminals, national law was pushed away by the entirely new concept of international law. The political conditions for the emergence of transitional justice were unique in world history; they cannot be repeated.

The second phase of transitional justice is linked to the end of the Cold War and the wave of democratisation of the former Eastern Bloc states. This period of accelerated democratisation and political fragmentation is also known as the third wave of

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25 The following have been returned by valid decision: 23.148 sqm living area, 36.213 sqm industrial area, 4.574.584 sqm building area, 107.402.669 sqm agricultural area, and 25.213.721 sqm woodland area. By the end of 2005, there had been five issuances of bonds, and the total sum of compensations amounted to over 180 million euros. By 2011, there had been 10 issuances of denationalisation bonds in the total amount of 293 million euros, with two additional issuances foreseen in 2011. Stenographic notes from the 34th session of the Assembly of the Republic of Macedonia on 28 March 2007 and the 30th session on 8 November 2011.

transition.[26] The end of the Cold War presented the theoretical possibility to return to the post-war model of transitional justice. However, instead of a small number of leaders from the communist time being entrusted with transitional justice and the rule of law, a broader concept was chosen, and the rule of law was thus linked to certain political communities from the past and the local circumstances of transition. In this phase of transitional justice, the dilemma between punishment and amnesty became acute, and the delivery of justice was incomplete and far from satisfactory, depending on the level of implementation of the changes. This process cannot be understood outside of the then political reality and context, which included the features of the former regime as well as the political, legal and social changes that were taking place. The model of transitional justice depended on the level of human rights violations during the preceding period, and on whether they had been systematic, continuous, or supported by the state. The attempts at delivering justice based on responsibility under criminal law led to many predicaments in the implementation of the rule of law in the new democracies, such as the issue of retroactivity, a selective approach to prosecution and compromises regarding penalties. Having in mind that the society also had to recuperate, and that pacification as well as the establishment of a new value system were necessary, alternative models of coping with the past and transitional justice were preferred. Those models included compromises in the delivery of justice and the implementation of the rule of law, "devising an alternative history of the human rights violations of the past".[27] That is why there is a duality of truth and justice, and that is also why transitional societies generally deal with the past by agreeing on the truth of the former regime and thus deliver justice for the harm caused by the latter by deciding who will be exempt from responsibility under criminal law, offering to buy off the harm caused in the past, pacification, and renewal. There are several procedural models of transitional justice. The model of screening and vetting (lustration) does not foresee sanctions under criminal law for those who were part of the apparatus of repression or who collaborated with the secret services under the former regime. Instead, persons who have violated human rights and freedoms are not allowed to hold public offices for a certain period of time. The model of transnational justice that involves an appropriate truth (and pacification) commission foresees publishing the names of those who were part of the repressive apparatus or collaborated with the secret services, as well as establishing whether they are responsible under criminal law. Nevertheless, the goal of this model can be pacification and amnesty for those who have violated human rights, choosing the future over the burden of the past. This model can be combined with elements of a culture of remembrance. If transitional justice is realised by means of the amnesty model, its aim is to ignore crimes and human rights violations committed by the former regime, without any legal solution

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26 Gail R. Farley, Lustration, Decommunization, and European Union Enlargement 2004, Political Science 595, Independent Research Project.

27 Jankulovski, Zvonimir i Madžovski, Marjan, Lustracijata vo Republika Makedonija, 2011, Kultura, Skopje

or debate about the past. The trial model aims at revealing and bringing to justice those who committed brutal crimes or were involved in cases of torture or murder of political dissidents. The last model is the model of accusation, in which accusations are brought forward by the state or by individuals who were victims of human rights violations by other individuals under the former regime.

In the relevant literature, we find arguments in favour of and against the different models of transitional justice. Most often, arguments in favour of a certain model of transitional justice refer to the need to prosecute persons who have violated human rights under the previous regime and prevent them from similar behaviour in the future, relating to at least three aspects. The first aspect is delivering justice for harm caused in the past, in order for a society to transform into a sound democracy. The second aspect is preventing the society from a possible repetition of the same sufferings, and the third is creating a responsible state that fulfils its duties concerning human rights in compliance with international law. One of the main and often cited arguments in favour of implementing transitional justice is that persons who collaborated with the secret services under the previous regime but still hold important positions in the new democracies and can thus influence the democratic processes have to be removed.

The following arguments are often used against transitional justice:

› in states in transition, the judiciary is too weak to cope with the heavy moral responsibility to deliver objective justice;

› the unclarity about criminalising the past behaviour of persons who are subject to lustration (can they be publicly prosecuted for their beliefs and values?);

› publishing documents and information that can jeopardise national security and state defence; and

› the collective guilt and responsibility for the harm caused during the previous regime.[28]

In general, the transition in Eastern Europe was carried out peacefully. Due to historical, cultural and institutional factors, that transition was unique with regard to other historical transitions, affecting the political choice of the best model of transitional justice as a way to cope with one's own past.[29] Having in mind that in Bulgaria and Romania, many members of the communist establishment never left their positions, while in Poland, Hungary and the Czech Republic, many of them were elected high state official or formed majorities in parliament, it is not surprising that the post-communist states chose lustration as the procedure to cope with the past. We will elaborate on the Macedonian concept of lustration on another occasion.

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28   Ibid, p.19

29   Michnik, Adam, and Havel, V. 1993. "Justice or Revenge?" Journal of Democracy vol. 4, no. 1, pp. 20-27.

The concept of transitional justice is not becoming outdated, due to the fact that it is always tied to the actual (unique) political circumstances within a state where human rights are being or have been violated, which are not disclosed at once, i.e. their disclosure is always linked to changes in the political system or in the constitution of power.

Transitional justice is an agent of positive change, therefore it has its own internal dynamic and logic, albeit controversial at first sight.[30] The point is that transitional justice has a stabilising and a destabilising effect at the same time, within a parallel process, but only if the political path is clear and the political will is strong, and if no double games are played and there are no artificial impediments within the political camp that is driving the process. Otherwise, the process is bound to fail. Hence, it is the duty and responsibility of today's democracies to exercise maximum control over the key sector, namely the security institutions, in order not to repeat the negative experience that some citizens had with them in the past.[31]

It seems as if the most important, invisible enemy of transitional justice and justice in general was the silent conspirational pact between the authoritarian elite of the "captured and paralysed" society and its silent supporters, united in a "populistic embrace". The ideology of petty bourgeois apology and intellectual and economic conformism is what is keeping the society captured and paralysed.[32] That kind of society has nothing to do with a genuine community. Therefore, the forces behind the captured and paralysed society are trying to gain the support of fragmented, shattered and carefully selected target groups who are oriented towards material benefit in the spirit of clientelism. These "non-ideological" supporters are prepared to "take risks" in order to get these benefits, knowing that politics driven by interest and benefit can always suspend justice, or even bribe it. The first symptom of inefficiency which then fosters the interest is the lack of political will[33] to implement genuine parliamentary control over the key centres of power in young democracies.[34]

Transitional justice requires a non-linear approach to the temporal aspect of its implementation. This means that every time there is a shift in the democratic concept of governance that allows for human rights and freedoms to be violated, the concept of

[30] Offe, C., Disqualification, Retribution, Restitution: Dilemmas of Justice in Post-Communist Transitions, Journal of Political Philosophy, 17 (1993).

[31] Fran Višnar, Špijunaža i kontrašpijunaža - od KGB do UDBA, Alfa, Zagreb, 1991

[32] The situation of a "captured state" occurs in some transition countries as well as in some segments of democratic and stable states, as a kind of systematic political corruption, when private interest has a significant impact on the state's decision-making processes, to its own benefit. The term "captured state" was coined by the World Bank in 2000 (Policy Research Working Paper 2444) in order to describe some Central Asian states' transition from communism. A state is captured when small corrupt groups exert influence on government officials in order for them to make decisions that benefit the groups' economic position. Similar concepts are "captured economy" and "regulatory capture" (politics of clientelism), which means that a large part or the entire profit goes to one relatively small interest group (like one industry, one profession or one location), while most or all costs are paid by the majority of citizens.

[33] Aucoin, L. and Babbit, E, Transitional Justice: Assessment Survey of Conditions in the Former Yugoslavia, UNDP Serbia, Belgrade, 2006

[34] Parliamentary oversight of Security and Intelligence Agencies in the EU, Aidan Wills, Mathias Vermeulen et al., Brussels, June 2011. p. 86

transitional justice reappears as necessary to scrutinise the past in order for the society to move forward. Transitional justice is also necessary for creating so-called progressive history. The final goal of progressive history is to offer a choice between different truths about the past, as well as reconstructing the present and future of societies in transition. Transitional justice is a means of psychological liberation from the repressions and myths of the past. It delves deep into the political memory of post-transitional societies, making it impossible for politicians to manipulate it. At the same time, transitional justice guarantees that the past will not be repeated, healing the wounds so that the state can move forward into the future.

Control of the public sector

The vetting procedure refers to an "assessment processes with regard to the integrity of a person in order to determine their suitability for public employment."[35] Vetting can also be applied to persons who already are public officials, most often in post-conflict, post-authoritarian or other transitional contexts, in order to remove those who are responsible for war crimes, human rights violations, or have been engaged in corruption or other activities that result in their unsuitability for public office. The severity of the assessment process[36] varies according to the level of risk and the responsibility of the position. Basic assessment usually includes an official data and entries check. Positions that require high responsibility and are related to a greater risk often include checks of finances and credits, interviews with the person to be assessed as well as persons from their environment, and background checks of persons living in the same household.[37]

Vetting procedures have to be designed to fit their context, taking into account the nine basic questions. Regarding the aim of the procedure, it is important to know which institution and position the vetting is carried out for. As for the criteria, it must be clear beforehand what sort of malfeasance is to be detected by means of the vetting, as well as what sanctions will follow if a person is found to have committed such malfeasance. The design has to be determined, i.e. the structure and separate procedures of the assessment process, as well as the scope, i.e. how many persons are assessed and how many sanctioned. The time and duration of the vetting procedure have to be scheduled. Of course, the assessment has to be justified and the reasons for conducting it have to

35 Duthie, Roger, 2007, "Introduction", in Mayer-Rieckh, A. and de Greiff, P., eds., 2007, Justice as Prevention: Vetting Public Employees in Transitional Societies, International Centre for Transitional Justice, Social Science Research Council, New York, USA

36 UN (2006); Moira Lynch, 'Purges,' in Lavinia Stan and Nadya Nedelsky (eds). Encyclopedia of Transitional Justice (CUP 2013) 61.

37 Office of the United Nations High Commissioner for Human Rights (OHCHR), 2006, 'Rule-of-Law Tools for Post-Conflict States: Vetting - An Operational Framework', United Nations, New York and Geneva http://www.ohchr.org/Documents/Publications/RuleoflawVettingen. pdf [accessed 21 March 2020]

be set down. Finally, the coherence of the process has to be confirmed by describing how the vetting is related to the other institutional reform and transitional justice measures.[38]

The UNDP's 2006 operative guideline on vetting procedures for public officials indicates what choices have to be made before embarking on the procedure: should all positions within one organisation be assessed or only some of them? Should the currently employed officials be evaluated and possibly dismissed or should everyone reapply for their positions to be elected in the framework of an open call?[39] Should the vetting apply to all currently employed or only to new appointments, transfers and promotions? Should an ad-hoc mechanism be established for the assessment procedure or should already existing procedures be adhered to if suitable? The operative guide suggests an approach to designing the evaluation process, including the following steps: informing and consulting the public, defining the priorities of the evaluation and choosing an appropriate vetting type, defining criteria and expected results, and designing the procedure, whereas international standards should be observed.[40]

The discrepancy between expectations and the implementation of transitional justice

The rise of of the crime rate is another typical transition problem, forcing many governments to focus on current everyday crime instead of past criminal acts of repression or conflict. In the Republic of Macedonia, the former socialist system, within which the country had achieved statehood for the first time, was considered with mildness, resulting in a soft transformation without actually coping with the elements of rigidity and non-democratic consequences, which then were built into the new democratic order.

In most post-communist states, transformation was much more categorical, which does not mean that the newly democratic systems were not often confronted with missing or destroyed key evidence for past crimes, which additionally impeded accusations and judgements.[41] Besides, witnesses were often afraid of giving evidence before the court, due to real or imagined threats to them or their family members. Additionally, there were legal impediments to delivering justice, such as amnesties, lapsing periods for appeals,

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38 Mayer-Rieckh, A. and Pablo de Greiff, P., eds., 2007, 'Justice as Prevention: Vetting Public Employees in Transitional Societies', International Centre for Transitional Justice, Social Science Research Council, New York, USA

39 E.g., in Bosnia and Herzegovina, both approaches were applied: all persons employed with the police were vetted, while public officials within the judiciary had to re-apply. See: Annex 6 of the OECD DAC Handbook on Security System Reform, in UNDP 2006.

40 UNDP, 2006, 'Vetting Public Employees in Post-conflict Settings: Operational Guidelines', United Nations Development Programme, Bureau for Crisis Prevention and Recovery http://www.ictj.org/static/Vetting/UNDPVettingGuidelines.pdf [accessed 20 December 2019]

41 Maria Michalk, Member of the Bundestag, Why coping with the past is still important 20 years after the fall of the Berlin Wall; Political Thought No. 27, 2009 "20 Years after the Fall of the Berlin Wall", published by the Konrad Adenauer Stiftung and the Institute for Democracy „Societas Civilis"

as well as incoherences in the law itself that hampered trials on certain crimes. Poverty is another feature inherent to transition which additionally challenges the justification of expensive public trials. However, in societies like the Macedonian one, which is experiencing a permanent, unsuccessful transition and mass violations of human rights, history will keep on repeating itself as long as no answer is found.[42]

Those who demand justice are not always the ones deprived of their rights. The notion of justice has rarely served the poor, who usually expect benevolence from the stronger ones. On the contrary, it is most often those in power who, cynically enough, invoke their rights. This is not a phenomenon of the 20th century, but dates back to the Magna Charta, to those in power who were writing the history of rights. "Although a great number of altruistic and well-meaning individuals opposed slavery, serfdom, exploitation, and abuse and called for humanitarianism toward vulnerable groups and weaker members of society – rights have usually been claimed by those strong enough to demand them. Powerful barons in the year 1215, the advancing bourgeoisie of the eighteenth century, and the new political elites in 1948 and 1989 all adopted the idea of rights at a time when it could foster their interests. Once they had assured access to power for themselves, they often abandoned the idea of rights."[43]

All above cases explain the disproportion between the huge demand for justice and the low capacity or weak will to pursue it. According to Freeman, there are at least three direct consequences that can be considered as intellectual and operative starting points of today's transitional justice.[44]

The first consequence is that an "incomplete" or "faulty" justice is practically guaranteed. Namely, the system of criminal law is devised to tackle crime as something that happens rarely and on separate occasions. However, if crime becomes a rule, as in times of repression or conflict, no judiciary system is capable of coping with the accumulated cases, let alone a judiciary system of a transition state.

The second consequence is that the judiciary cannot cope with the massive and systematic past human rights violations on its own. The responses from the judiciary must be accompanied by non-judiciary responses.

The third consequence is to understand that justice cannot be achieved under the conditions of a political vacuum and that it has to be coupled with other public interest goals, such as consolidating peace and democracy, economic development, and providing

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42 The doctrine of eternal repetition has been a topic for many thinkers, from antiquity's Polybius to Macchiavelli to the modern authors: "Hegel remarks somewhere that all great world-historic facts and personages appear, so to speak, twice. He forgot to add: the first time as tragedy, the second time as farce." Karl Marx, The Eighteenth Brumaire of Louis Bonaparte (1852), in: *Marx Engels Selected Works*, Volume I, p. 398

43 Osiatyński, W. (2009). *Human Rights and their Limits*. Cambridge: Cambridge University Press. https://epdf.pub/queue/human-rights-and-their-limits.html [accessed 7 January 2020]

44 Freeman, Mark, 2006, "Truth Commissions and Procedural Fairness", Cambridge University Press, New York, USA.

public security. The chances to achieve justice are high under the conditions of peace and democracy, otherwise they are low.

In the context of the Republic of Macedonia, the three above consequences have to be considered from two perspectives: from the perspective of coping with the consequences of socialism, but also from the perspective of coping with the consequences of the massive human rights violations during the time of transition, which have paralysed and captured the society in phases. We can generally say that the Macedonian society is experiencing a constant dissonance between having to cope with the consequences of the transition and having to resolve "state issues". Thus, the consequences of socialism were substituted by achieving statehood and the struggle for international recognition. The transitional consequences of privatisation were substituted by the interethnic conflict and the enforced desire of integration into the European Union and NATO, altogether referring to stability and security (the above-mentioned third consequence, peace and democracy). And of course, the consequences of the society being captured and paralysed were literally substituted with EU and NATO integration, thus giving absolute priority to the international integration of the state by means of signing agreements for settling the name issue and other unresolved issues with the neighbouring states.[45] The state's activities in order to deal with crime and other consequences have been overshadowed by massive political and integrational processes. With regard to the first consequence, it is more than clear that the judiciary is not capable of going about solving the accumulated transition issues on its own. The Government and the Assembly have to show their clear and unambiguous political will to deal with the transitional injustice and the right to truth.[46] Finally, it is one of the basic facts of transitional justice that the same transitional personnel cannot play a significant role in European integration and the reforms that should move the country towards European standards. It was in this context that the issue of vetting, the types of vetting procedures and the nine basic questions to be answered before initiating them were discussed above.

The duties of the Republic of North Macedonia also derive from the Council Conclusions on the Action Plan on Human Rights and Democracy 2015 - 2019 adopted by the Council of the European Union on 20 July 2015: activity 22b refers to developing and implementing an EU policy on transitional justice and the adopted "EU Framework on Political Support to Transitional Justice" that recommends to address this issue in the early phase, during the accession negotiations (Political Criteria and Chapter 23), in order to provide enough time for a tangible progress. According to chapter V of the "EU

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45 https://vlada.mk/sites/default/files/dokumenti/konechna_spogodba_makedonija_grcija.pdf; https://vlada.mk/sites/default/files/dogov-ori/Dogovor_Za_Prijatelstvo_Dobrososedstvo_Sorabotka_Megju_Republika_Makedonija_I_Republika_Bugarija.pdf, [accessed 5 January 2020]

46 UN Human Rights Commission, Resolution on Human Rights 2005/66, „Right to the Truth". The resolution was adopted without voting. The resolution requests the Office of the UN High Commissioner for Human rights "to prepare a study on the right to the truth, includ-ing information on the basis, scope and content of the right under international law, as well as best practices and recommendations for effective implementation of this right..." https://www.refworld.org/docid/45377c7d0.html [accessed 6 January 2020]

Framework" titled "Measures to implement the EU framework on support to transitional justice", point 7, "Transitional Justice in the EU enlargement policy", the EU considers transitional justice to be a priority for candidate countries and potential candidates.

Basic responsibilities regarding human rights and mechanisms of transitional justice

According to the legal doctrine of transitional justice, the rulings of the European Court of Human Rights and the respective UNO documents, all states have five basic responsibilities regarding human rights: taking measures for preventing human rights violations, conducting serious investigations in cases of human rights violation, identifying the victims and offenders in cases of human rights violation, determining appropriate penalties for the offenders, and providing reparations for the victims.[47]

Altogether, these responsibilities add up to the theoretical basis of transitional justice. In practice, they are implemented by means of four main mechanisms: criminal prosecution, truth commissions, reparation programmes and vetting programmes. Criminal prosecution should take place on a national level, so that it is most likely to contribute to preventing crimes and regaining the citizens' trust in the judiciary and the rule of law.[48] Truth commissions are temporary investigative bodies that focus on the victims, founded and authorised by the state. Their main goal is to interview the victims and inform about key periods of human rights violations, as well as to suggest a form of compensation for the massive abuse of human rights and measures for preventing future violations. Reparation programmes take place outside the courts. Their goal is to contribute to alleviating material and moral damage caused by human rights violations.[49] Criminal prosecution of crimes and repressions is most likely to contribute to preventing future crimes and regaining the citizens' trust in the judiciary and the rule of law.[50] On the other hand, modern reparation programmes for victims of repression usually include material compensation for the victims and their families, as well as privileged or separate access to certain public or private services, such as health services, pensions, or education. A growing number of such programmes include different symbolic forms of reparation, including memorials to uphold respect for the victims and remind the public of their

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47 Ruling of the Inter-American Court of Human Rights from 1988 in the case Velazquez-Rodriguez vs. Honduras. In legal practice, the essence of this ruling was explicitly confirmed in later rulings of the European Court of Human Rights and various UN documents, such as the 2004 report of the Secretary-General on "Rule of law and transitional law in conflict and post-conflict societies".

48 Elster, J., (1998), Coming to Terms with the Past. A Framework for the Study of Justice in the Transition to Democracy, *Archives Européens de Sociologie*, 39(1):7-48. In the discussions, many misunderstandings occur as a result of the indistinct differentiation between the socio-moral aspect and the aspects of criminal prosecution and law with regard to coping with the past.

49 Jeffrey Olick and Brenda Coughlin, "The Politics of Regret," 2003

50 Roy L. Brooks, "When Sorry Isn't Enough", New York University Press, 1999

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fate.[51] The goal of politics of reparation is to provide the conditions for, at least, political pacification. When the state is involved in the negotiations with the victims, victimisation of "never to be forgotten" is removed from the sphere of what has been politically agreed.[52] In the scientific discussion, pacification is one of the most complex and controversial concepts, and it probably the most difficult to measure empirically,[53] but at the same time, it poses the greatest challenge and can play the most important role. In order to be effective, pacification measures must include all stakeholders at the same time, top down and bottom up.[54] It should be regarded and analysed rather as a process than as a goal. Methodological analyses include specifying the concept of pacification so that it is limited enough to be measured in terms of cases and to allow enough time to pass before measuring the effect of the mechanisms that are expected to contribute to pacification.

Conclusions and recommendations

1. In the Republic of North Macedonia, the great expectations from the beginning of the transition period have turned into great frustrations and disappointment. During the entire transition period, which is actually still ongoing, the established order and the institutions seem to be creating an atmosphere of legal insecurity instead of security and rule of law.

    Societies that have not honestly faced the black marks in their past usually witness history repeating itself, or they lack stability due to internal divisions, weak institutions and feeble democracy – a deficit that they constantly try to manage with the help of external international factors. It is also possible that both factors are present at the same time, and that this is actually the case in the Republic of North Macedonia. Taking into account that the transition still continues, that the reforms do not show any results nor finalisation, that legal insecurity is still high while living standards have been low for years, we can see that transforming the system by fostering democratic and institutional capacities is still an impossible mission in the Republic of North Macedonia.

    Based on the above research findings and discussion, we can identify the factors that confirm the hypothesis that regaining confidence in the institutions, their independence and their work, as well as re-establishing legal security are complementary to appropriately applying the measures of transitional justice,

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51 Janna Thompson, Taking Responsibility for the Past: Reparation and Historical Injustice, Cambridge: Polity Press, 2002

52 Maier, Charles S. "Overcoming the Past? Narrative and Negotiation, Remembering, and Reparation: Issues at the Interface of History and the Law." In Politics and the Past: On Repairing Historical Injustices, edited by John Torpey. New York: Rowman & Littlefield Publish-ers, 2003.

53 Elin Skaar, Reconciliation in a Transitional Justice Perspective, Chr. Michelsen Institute, Transitional Justice Review, Vol.1, Iss.1, 2012, p. 54-102

54 Bar-Tal, Daniel and Gemma H. Bennink 2004. The Nature of Reconciliation as an Outcome and a Process, in: Yaacov Bar-Siman-Tov (ed.). From Conflict Resolution to Reconciliation. Oxford: Oxford University Press, 11-38.

adapted to the circumstances in the Republic of North Macedonia, whereas achieving common political will is a key factor.

Sustainable political will, mutual trust and an efficient political dialogue between the government and the opposition could be established by means of an appropriate model of pacification. It seems that it is only with this model that possible political misuse of the transitional measures can be prevented. In a broader sense, with regard to the excessive duration of the transition and its lack of success, a new paradigm is needed, a true game changer. It would be preferable for this model to finally be the result of political reason and maturity of the nation. Since Macedonia gained independence, the model of broad agreements (the Ohrid Framework Agreement and the Pržino Agreement) has been resorted to after inter-ethnic and intra-ethnic confrontations. Agreements with neighbouring states were signed under pressure, as a precondition for EU and NATO integration. There is no comparable external pressure to consequently implement the rule of law, nor an initiative to reach internal strategic consensus.

Below, we will outline the parameters for the variables, the factors that were mapped out, and the final conclusion as a synthesis.

2. According to some analyses, the elitist regime change in the Republic of Macedonia had a negative impact on the reform during the transition. This assessment is based on the level of correlation between the type of regime change and the following democratisation, according to the analysts of the third wave of democratisation in South European as well as former communist countries.

3. The theoretical discussion on the implementation of transitional measures shows that the success of the process depends on certain variables. Namely, it depends on the way the power was transferred, i.e. whether the former government transferred its power voluntarily (and thus, whether there will be criminal prosecution) and on the rigidity of the former regime (such systems often choose the so-called path of oblivion with regard to the past). Whether coping with the past will be initiated sooner or later during the transition period depends on the political battle. Another factor that has direct impact on the latter is whether the transitional measure has become an instrument in the battle between the parties, i.e. if it has become a hot political question, and what the motives of the supporters and the opponents are. The important question is, of course, as acknowledged in relevant analyses, whether the political opponents will engage in a spiral of mutual recriminations. There is no ideal correlation between the type of transition and the form of transitional justice to be applied. The concept of transitional justice is not becoming outdated, due to the fact that it is always tied to the actual (unique) political circumstances within a state where human rights are being or have been violated, which are not disclosed at

once, i.e. their disclosure is always linked to changes in the political system or in the constitution of power.

4. In the Republic of North Macedonia, the topic of vetting is the least elaborated one, however the introduction of vetting procedures has now been announced. In the case of vetting, the approach and weighting were different than with regard to other transformation measures and to coping with the past. Denationalisation has not been in the focus of theory either, however it is the only measure that has been applied to a significant extent. Privatisation was a complex and lengthy process, leaving the bitter aftertaste of unfairness. The controversial lustration process went from one extreme to the other. The different approaches and experiences regarding the measures of transitional justice show that their implementation and their role largely depend on the political constellation and interests at the moment, as well as on the above-mentioned variables.

The standard vetting procedure involves three main stages: registration in the programme, which can be compulsory; evaluation based on the information provided, self-registration or information received from reliable independent sources; and certification of those who have been found fit to work with public services. This standard programme is also recommended under the Macedonian circumstances, provided there is a clear political will to do so.

5. In the Republic of North Macedonia, the Government as well as the Assembly have to show clear and unambiguous political will for a joint institutional approach to deal with transitional injustice. We can conclude that political will, i.e. whether there is or there is no political will, is crucial for introducing any measures whatsoever. Regaining confidence in the institutions requires establishing a sustainable system of human rights protection and legal security that will not allow for future violations of the human rights and freedoms. That system must not depend on political turmoil or disputes between the parties. Maintaining this kind of stability is key for the overall perspectives of the state. For that matter, it is one of the basic facts of transitional justice that the same transitional personnel cannot play a significant role in European integration and the reforms that should move the country towards European standards.

6. The paradigm of transitional justice has been developed during the past thirty years, focusing on a set of concrete measures for attempting to deal with human rights abuse. In Macedonia, it seems that this issue is constantly in dissonance with higher state interests and integrations. At the same time, the political system is dominated by a permanent situation of political confrontation. In this regard, we recommend to design an appropriate transition model for pacification, which could lead to a stabilisation of the order and a sustainable political dialogue among the key stakeholders. Such a model should also initiate an effective approach to the issue of

respecting human rights, from state level down to the bottom. This recommendation is targeted beyond the goals of everyday politics and election cycles, it sums up internal weaknesses and characteristics of the country, being one of the transitional measures. Meanwhile, serious prosecution of crime and past repression, together with current reparation decrees and programmes for the victims, are most likely to contribute to preventing institutional capture and paralysis as well as future crime, and to re-establish the citizens' trust in the rule of law and the delivery of justice. Hence, all the other elements – historical remembrance, unimpeded access to and exercise of the right to the truth for the citizens and the society as a whole –, as well as state measures and gestures of apology, together with the pursuit of justice and recognition of the inviolable value of the human rights in the Republic of North Macedonia are crucial for the development of the society, its stability, and the prevention of future misuse of political power and massive human rights violation.

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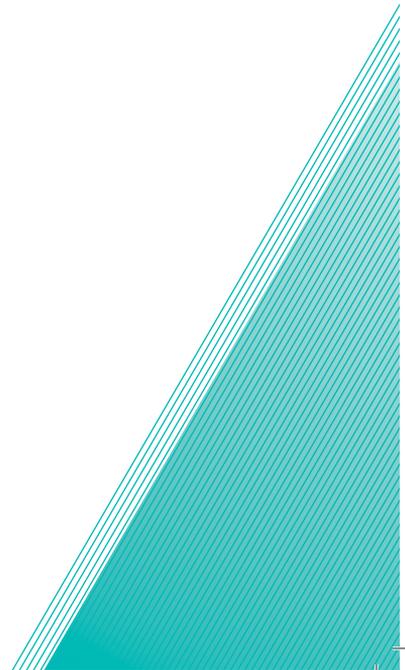
Vera Dimitrievska
Dimitar Kovachevski

HEALTHCARE MARKETING PERSPECTIVES AND CHALLENGES

A REVIEW ANALYSIS OF CURRENT CONCEPTS AND FACTORS

POLITICAL THOUGHT

59

Introduction

Health marketing in public health systems is gaining a lot of attention. Mainly used in the business sector and hence a new concept in the field of public health systems, health marketing has become an important tool for delivering healthcare services. With the privatisation of the health sector in many countries, marketing activities began to boom, however, marketing plays an important role even where the health sector has not been privatised.[1] Additionally, the expansion of the new information and communication technologies forces this traditionally reserved sector to open toward different stakeholders and, most importantly, the patients/clients. Health marketing implies that marketing principles are applied systematically to the very broad, heterogeneous, and complex field of health.[2]

However, for any healthcare programme or project to be successful, consumer (in this sector: patient) participation is required. In a broader sense, some scholars[3] state that health marketing concepts seek to reach individuals who are healthy and wish to remain so, on the one hand, and individuals who are sick and seek to recover, on the other. Health marketing concepts shape behaviour in a competitive environment.[4,5,6] From a practical and theoretical point of view, health marketing within a complex institutional environment is made difficult by the fact that healthcare consumers and providers have different viewpoints and priorities. The main dilemma is to decide which is more important: a humanistic approach concentrated on the well-being of the patient, or the profits.[7] As scholars have noted, there are mainly two confronting opinions on health marketing. For instance, what is important to the consumer or patient may differ from what is important for healthcare providers, which would usually result in the healthcare system failing patients' expectations. If this is the case, the system cannot achieve its maximum effectiveness and efficiency.[8] Therefore, a good marketing mix (tools and activities) and applying the approaches of segmentation, targeting, and positioning, can help healthcare systems to achieve a more effective and efficient output.

1   Proctor, T. *Internal marketing and its basis for sound customer relationship management. Journal of Management & Marketing in Healthcare, 3(4), (2010),256–263.*doi:10.1179/175330310x12918040319658

2   Crié, D., & Chebat, J.-C. Health marketing: Toward an integrative perspective. *Journal of Business Research, 66(1), 123–126.*doi:10.1016/j.jbusres.2012.09.002

3   Ibid.

4   Berry, L. L., & Bendapudi, N. Health care: A fertile field for service research. *Journal of Service Research, 10(2), (2007),111–122.*

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6   Stremersch, S., & Van Dyck, W. Marketing of the life sciences: A new framework and research agenda for a nascent field. *Journal of Marketing, 73(4), (*2009), *4–30.*

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8   Stoline A, Weiner K. The new medical marketplace: a physician's guide to health care economics in the 1990's. *Baltimore, MD: John Hopkins University Press;* 1993.

The paper at hand presents a systematic review on health marketing. The methodology was chosen based on its practicality in the marketing field. To fulfil the requirements of a review, a broad and detailed online search on relevant academic and business management databases with a particular emphasis on healthcare, pharmaceuticals, hospital management and marketing was carried out, using the search engine Google Scholar. Peer-reviewed journals, periodicals, blogs and websites of industry players provided resource materials for this study.

Literature review

The reviewed literature contains studies in several fields: marketing mix tool (4 texts), marketing mix services (7 texts), and internal, institutional, social and strategic marketing.

We define marketing as the activity, set of organisations and processes for creating, communicating, delivering and exchanging offerings that have a value for customers, clients, and partners. The nature and content of marketing differs in healthcare organisations, based on whether they act as a purchaser or a provider, or combine both activities.[9] The concept of health care marketing and its possible impact on delivering health care services has been studied by a variety of academic and professional scholars. Weiner points out that health care marketing depends on the marketing mix.[10] One core concept that has been adopted from the commercial sector is the concept of the four P's: product, price, place, and promotion. These key social marketing elements are central to planning and implementing an integrated marketing strategy. The marketing mix, i.e. "4P", has been extensively used in pharmaceutical marketing.[11] Social marketing uses commercial marketing strategies to change individual and organisational behaviour and policies. There is evidence that social marketing is effective on the level of an entire population in public health and health care domains. Literature yields significant evidence of the effectiveness of social marketing in changing health care consumer behaviour by means of its impact on patient-provider interaction and provider behaviour. There are also some scientific texts on achieving this goal by employing the patient empowerment concept, which basically refers to stimulating a certain target audience (e.g. obese children, female smokers, type 2 diabetics).[12] Scholars argue that the main target groups of health care marketing are patients and families, communities, doctors, medical personnel, hospital staff, and charitable donors. Since hospitals are in general complex

9   Lega, 343

10   Ibid, 345

11   Evans WD, McCormack L. Applying social marketing in health care: communicating evidence to change consumer behavior. *Med Decis Making 2008;28:781-92.*

12   Abedi, G., & Abedini, E. Prioritizing of marketing mix elements effects on patients' tendency to the hospital using analytic hierarchy process. *International Journal of Healthcare Management, 10(1), 34–41.* doi:10.1080/20479700.2016.1231435

settings with a number of services, it becomes difficult to position their services in the huge market place.

The term *product* refers to a set of benefits associated with the desired behaviour or use of a service.[13] We distinguish between the *core product* (what people will gain when they apply a certain behaviour) and the *actual product* (the desired behaviour). Furthermore, the concept of the *increased product* is used to refer to any tangible objects and services used to facilitate behaviour change.

Place indicates the distribution of goods and the location of sales and service encounters. Kotler et al. argue that, in social marketing, *place* may be thought of as an action outlet: "where and when the target market will perform the desired behaviour, acquire any related tangible objects, and receive any associated services".[14] *Place* includes the actual physical location of the outlets, operating hours, general attractiveness and comfort, as well as accessibility, e.g., parking and availability by public transportation.

Promotion is often the most evident factor of marketing. Promotion includes the type of persuasive communications marketers use to convey product benefits and associated tangible objects and services, pricing strategies, and place components. Promotional strategies involve a carefully designed set of activities intended to influence change. Usually, promotional strategies involves multiple elements: specific communication objectives for each target audience; guidelines for designing attention-getting and effective messages; and designing appropriate communication channels. In public health, promotional activities refer to policy changes, professional training, community-based activities, and skill building, which are usually combined with communication activities to bring about the desired changes.[15]

Price refers to the cost or exchange for the promised benefits. This cost is always considered from the patient's perspective. According to Grier, the price usually includes so called intangible costs, such as diminished pleasure, embarrassment, loss of time, and the psychological hassle that often accompanies change, especially when modifying ingrained habits. In setting the right price, it is important to know if consumers prefer to pay more to obtain "value added" benefits, or if they think that free or low-priced products are inferior to more expensive ones.[16]

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13   Kotler P, Roberto N, Lee N. 2002. Social Marketing: Improving the Quality of Life, Thousands Oaks, CA: SAGE
14   Donovan RJ, Henley N. *Social Marketing: Principles and Practices*. Melbourne: (2003),IP Commun
15   Grier S, Bryant CA. Social marketing in public health. *Annu Rev Public Health 2005; 26: 319–39.*
16   Ibid, 340

Contrarily to the 4P model, Jena introduces the 4Ss model aimed at entry-level managers in health care industry, so that they can understand the basics of marketing principles in health. The four S are *size*, *shape*, *share* and *soar*.[17]

The first S is market *size*. Jena argues that, most often, entry-level marketing professionals ignore the market size for the medical or clinical service they work for or promote. Sizing the market for medical or clinical service is slightly more complicated than for other services. Sizing the patient pool is critical for marketing and positioning of medical or clinical services for both acute and chronic diseases.

Shape is the second S in the 4 S model. The market shape indicates the consumers' location and where the service is provided, which is very important for the marketing of healthcare services, especially in developing countries.

The third S in the 4 S model is *share.* Harvard Business Review (HBR) has reiterated that one of the main determinants of business profitability is market share and that the return on investment is directly related to the degree of market share. The entry-level manager should have an in-depth understanding of the share of a particular medical service with regard to all the competitors operating on the specific market.

The fourth and last S in the 4 S model is s*oar.* A good market analysis includes an economy overview, which is very helpful for understanding the current market situation is how it is expected to develop. The healthcare industry is growing at a rapid rate. *Soar* mainly refers to setting up a forecasting platform for the marketing team in order to influence the organisation's investment decisions.

In order to respond to the main question in health care marketing, particularly for patients, 'How can we provide the target market customers with a superior value?', Abedi and his colleagues describe a similar extended marketing mix. This hierarchically structured marketing mix model for hospitals and medical centres includes seven elements (7P): product (service), price, place, promotion, people (employees), physical assets, and processes management. According to the authors, the interaction between and attention towards all elements leads to success in marketing activities.[18] *Product* encompasses all therapeutic and medical services provided by the hospital; *price* indicates the cost of the therapeutic and medical services provided; *place* stands for the internal and external environment of the hospital; *promotion* by the hospital is needed to attract the patients' attention; *people* are the hospital staff and personnel who provide therapeutic and medical services; *physical assets* are all facilities and equipment that

17 Jena, B. N. Effective marketing tool for the marketing professionals in healthcare organization: The 4 "S" model. *International Journal of Healthcare Management, 1–6.*doi:10.1080/20479700.2017.1402423

18 Abedi, G., & Abedini, E. Prioritizing of marketing mix elements effects on patients' tendency to the hospital using analytic hierarchy process. *International Journal of Healthcare Management, 10(1), 34–41.* doi:10.1080/20479700.2016.1231435

belong to hospital; and *process management* describes the work trend management in the hospital.

The vast literature on health care marketing comprises a wide range of marketing tools, most of which are very similar to above mentioned. Hence, Lega proposes a classification of different marketing approaches relevant for healthcare organisations: operational marketing, strategic marketing, and institutional marketing. In all three approaches, Lega distinguishes between four interacting key players within healthcare organisations: providers, purchasers, insurers–financers, and regulators.[19]

Operational marketing refers to expectations, needs and desires of a specific cluster of clients, and it focuses on applying the knowledge and techniques of the marketing mix to single delivery processes (care/cure processes). As we know, many healthcare organisations have already started to work on service peripherals like booking procedures, visiting times, room amenities, consultation hours with physicians, information and easy-to-read process explanations. Strategic marketing is focused on analysing, targeting and segmenting clusters of patients according to the mission and goals of the organisation and its departments, as well as matching them with an attractive service mix. Strategic marketing encompasses analysis, segmentation and targeting of markets, as well as analysis of organisation positioning, redefinition of organisation positioning, evaluation of the combination of services and markets in which to invest, etc.[20]

Lega's last approach is institutional marketing, which focuses on building a 'dependable, equitable and integrated continuum of care by matching the health needs of the target population and the system supply structure'. This requires both vertical and horizontal integration among providers and insurers, wheareas marketing plays a key role in the interaction with the stakeholders.

Another relevant approach in health marketing is described by Proctor. He argues that internal marketing focuses on the creation of motivated and patient-aware personnel at each level of the organisation.[21] As the patients are considered the main targets in hospitals, providing health services does not only mean to understand, but also to anticipate, evaluate, and channel their concealed needs, as well as to design and implement programmes to provide healthcare services to attract them.[22] The main point in internal marketing is that both employees and customers/patients should be treated as equally important for deciding on a strategy for the organisational setting. It is of critical

19 Lega, 345
20 Andreasen, A. R. Marketing Social Marketing in the Social Change Marketplace. *Journal of Public Policy & Marketing, 21(1), 3–13. (2002)* doi:10.1509/jppm.21.1.3.17602
21 Proctor, 259
22 Abedi, 40

importance that they gain internal understanding of and commitment to the organisation and of what it is striving to achieve. Managing these relationships is the task of the customer relationship management concept.

Patient experience

As discussed above, service quality and patient experience observations are essential in order to assess patient satisfaction and to keep up a good health marketing. In this perspective, the patients' perceptions of their interactions with both health care professionals and the environment are most important.[23] Drawing on rich data, the following section sets out to explore the dimensions and consequences of patient experience, patient journey and factors of patient satisfaction.

Since the last century, the competition in the health market has been increasing, so that health care professionals need to provide high quality health care at every level. With the rising quality of care in some health care institutions, patient satisfaction will be inclined to progress as well, with a tendency to reach the highest level. For instance, in Great Britain, the National Health Service (NHS) data on patient experience is not only valuable, but also obligatory in order to measure the strengths and weaknesses of health care services.

With the help of internet technologies, patients retrieve information from many sources and, as a result, expect highest level health care services with regard to both service and clinical outcome. Thus, health care practices have to consider patients' experiences and to provide them with the services they desire. "Satisfied patients (are) becoming "loyal customers," and thus become positive contributors to the success of both their healthcare experience and the overall function of their chosen healthcare entity".[24]

According to Doyle and associates, patient experience is increasingly recognised as one of the three 'pillars of quality in healthcare' alongside clinical effectiveness and patient safety. Besides, scholars now recognise that aspects of care such as dignity, respect and compassion are highly relevant for care decisions.[25]

Theoretically, patient experience is created during the situations when the organisation (health service) and consumer (the patient) meet.[26] According to Johnston and Kong,

23 Frederic Ponsignon Andi Smart Mike Williams Juliet Hall ,"Healthcare experience quality: an empirical exploration using content analysis techniques", *Journal of Service Management,* Vol. 26 Iss3 (2015), pp. 460 – 485 http://dx.doi.org/10.1108/JOSM-10-2014-0265

24 C.L. Corbin et al. / The American Journal of Surgery 181 (2001) 1–7

25 Doyle, C., Lennox, L., & Bell, D. A systematic review of evidence on the links between patient experience and clinical safety and effectiveness. *BMJ Open, (2013), 3(1), 1–18*

26 Stephen McCarthy, Paidi O'Raghallaigh, Simon Woodworth, Yoke Lin Lim, Louise C. Kenny & Frédéric Adam , An integrated patient journey mapping tool for embedding quality in healthcare service reform, *Journal of Decision Systems*, 25:sup1, 354-368, DOI: 10.1080/12460125.2016.1187394

customer experience can be defined as a customer's 'personal interpretation of the service process and their interaction with and involvement in it during their journey or passage through a series of contacts'.[27] Similarly, Zomerdijk and Voss state that 'experiences are constructed by customers based on their interpretation of a series of encounters and interactions designed by a service provider'.[28]

Doyle states that patient experience is composed of two aspects: rational and functional. The rational aspect is focused on 'interpersonal aspects of care' such as the clinicians' ability to treat patients with respect and compassion, to empower patients (i.e. allowing them to care for their own health through the provision of information), and to engage patients and the family members in the decision-making process.[29] In the best scenario, this feature targets the patients' expectation that clinicians will act in their best interest and remain transparent even if something goes wrong. The functional aspect is related to the patient's basic expectations about the healthcare service, including concerns such as the effectiveness and efficiency of healthcare delivery and the cleanliness and safety of the healthcare environment. Summed up, patient experience is a critical factor for service providers at all levels of the health care system, operational as well as strategical. Some scholars observe that there is a lack of information and knowledge on the emotional aspects of patient experience.

Similarly, there is a lack of conceptual clarity regarding the criteria for a positive or negative experience in healthcare. Some authors argue that the quality of experience is a context-specific construct.[30]

Manary argues that health service quality models often evaluate a particular aspect of patient experience while they ignore others.[31] Dagger for instance focuses on service quality perceptions in an outpatient clinic, a specific aspect of healthcare experience.[32] Within the existing frameworks for evaluating health service quality, four main quality dimensions can be distighuished and evaluated: technical quality (i.e. competence and outcomes), interpersonal quality (i.e. staff-customer interactions and relationship), administrative quality (i.e. timeliness, operation and support), and environment quality (i.e. atmosphere and tangibles).[33] Raleigh's model of measuring patient experience was developed based on existing service quality models in healthcare. It incorporates

27   Johnston, R., Kong, X..The customer experience: a road-map for improvement. Managing Service Quality 21 (1),(2011), 5–24.

28   Zomerdijk, L.G. and Voss, C.A. "Service design for experience-centric services", *Journal of Service Research, Vol. 13 No. 1, (2010), pp. 67-82.*

29   Doyle, 10.

30   Grewal, D., Levy, M. and Kumar, V. "Customer experience management in retailing: an organizing framework", Journal of Retailing, Vol. 85 No. 1,(2009), pp. 1-14.

31   Manary, M.P., Boulding, W., Staelin, R. and Glickman, S.W. "The patient experience and health outcomes", *New England Journal of Medicine, Vol. 368 No. 3,(2013) pp. 201-203.*

32   Dagger, T.S., Sweeney, J.C. and Johnson, L.W. "A hierarchical model of health service quality: scale development and investigation of an integrated model", Journal of Service Research, Vol. 10 No. 2, (2010), pp. 123-142.

33   Zineldin, M. "The quality of health care and patient satisfaction: an exploratory investigation of the 5Qs model at some egyptian and jordanian medical clinics", *International Journal of Health Care Quality Assurance, Vol. 19 No. 1, (2006), pp. 60-93.*

six domains of patient experience: cleanliness, communication consistency, patient involvement in decision-making, information provided, confidence in staff, and dignity and respect. It is, however, unclear if these frameworks extensively address all the dimensions of the patient experience concept.[34]

Patient journey

Patient journey maps are used to measure patient experience in encounters with health care services throughout their life. Journey maps which seem complex and multi-layered are used to depict the healthcare service from the perspective of the patient.[35] Patient journey maps are a visual tool that bridges the gap between performance improvement, regulatory constraints, and patient experience, containing elements from patient experience modelling tools such as journey maps, user personas, and storyboarding, seeking to address the limitations inherent in each method.[36] Merely the study by McCarthy describes the patient trajectory on the experience of health care services, consisting of patient persona, medical timeline, and medical pathway, with the aim to capture the key elements of the journey, the underlying structure, relationships between elements, and implicit rules. *Patient persona* provides a characterisation of the user group and its emotional, physical and technological journey. On the *medical pathway*, each *encounter* is divided into *tasks,* which are subdivided into *goals, constraints*, and *actors.* Encounters are also linked to the *emotional journey, physical journey,* and *device touch points* associated with the episode of care.

To summarise, this section shows that patient journey is a tool used to bridge the gap between performance improvement and patient experience, providing a strong confirmation for the exploration of those tools in the specific context of healthcare, as patient experience is a holistic concept that goes beyond the "service encounter".[37]

Factors that influence
patient satisfaction

Healthcare service performance depends on individual features of the healthcare service provider and the patient, but also on factors related to the healthcare environment. A number of possible relations are listed in an Iranian study about factors in health care quality and patient satisfaction. The study presents a variety of individual, organisational,

34 Raleigh, V.S., Frosini, F., Sizmur, S. and Graham, C. "Do some trusts deliver a consistently better experience for patients? An analysis of patient experience across acute care surveys in English NHS trusts", *BMJ Quality & Safety, Vol. 21 No. 5, (2012),pp. 381-390.*

35 Trebble TM, Hansi N, Hydes T, Smith MA, Baker M. Process mapping the patient journey: An introduction. BMJ. 2010;341:c4078. doi: 10.1136/bmj.c4078.

36 McCarthy, 360

37 McCarthy, 361

and environmental factors that influence a caregiver's job satisfaction and thus providing high-quality services in general.[38] Individual factors include age, personality, education, abilities, and experience. Organisational factors include management style, working conditions, and relationships with co-workers. Environmental factors are economic and social influences. Furthermore, customer-related factors such as socio-demographic variables, attitude, and cooperation have an impact on the quality of care provided. The provider's subjective attributes, including the priority they give to care, has a regulating influence on the delivery of care. The study establishes a clear relationships between employee satisfaction, quality of care, and patient satisfaction.

A Malaysian study on patient satisfaction with healthcare settings draws the conclusion that marketing outcomes are positively related to customer satisfaction and loyalty. The findings reveal a positive impact of customer experience perceptions on marketing outcomes such as customer satisfaction, customer loyalty, and positive word of mouth.[39] In the study, a new tool is applied: service experience quality (EXQ). EXQ dimensions are called moments of truth, peace of mind, outcome focus, and product experience, and they are all validated with an average. Besides, we can state that customers/patients value brands of healthcare service providers which address items such as safety, flexibility, and ease of service provision, as pointed out in previous healthcare studies.

Public health system and marketing in North Macedonia

The health care system in North Macedonia (hereinafter: Macedonia) was initially an adoption of the centralised "Semashko" model in Yugoslav time, mainly financed by the central government, with all citizens being entitled to free health care. Since 2000, this system has changed drastically, shifting towards a nationwide decentralised public health system like the "Bismarck" model which is common in western European countries (Austria, Germany, Belgium, and the Netherlands). In this model, social security is provided by means of a compulsory healthcare insurance. Due to the fact that, in public health systems, health is often regarded as a right, the marketing concept is not considered.

In Macedonia, the term "health marketing" is still not commonly used in the public health system on a state level, where there is a lack of knowledge about marketing, and difficulties to catch up with new updates of business strategy concepts. Nevertheless, since the introduction of the private health sector on all levels (primary, secondary and

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38 Mosadeghrad AM. Factors influencing healthcare service quality. *Int J Health Policy Manag*; 3: 77–89. doi: 10.15171/ijhpm.2014.65

39 Muhammad Kashif Siti Zakiah Melatu Samsi Zainudian Awang Mahadzirah Mohamad,"EXQ: measurement of healthcare experience quality in Malaysian settings – a contextualist perspective", *International Journal of Pharmaceutical and Healthcare Marketing, Vol. 10 Iss 1 (2016), pp. http://dx.doi.org/10.1108/IJPHM-03-2015-0011*

tertiary), services are related to a business and marketing strategy aimed at the upper class and persons who do not trust the public sector. As expected, medicinal products take up a large portion of out-of-pocket expenditure, which has to be subject to further analysis by policy-makers.[40]

It is a commonly shared view about the main difference between private and public marketing that, as Lega argues, instead of gaining profits by applying marketing tools, the role of a public sector marketer is 'maximizing the sum of benefits to society'.[41]

Conclusion

The framework that we have presented contributes to the understanding of health care marketing in a global sense. As a case study, we shed some light on the Macedonian health care marketing experiences and its challenges. The current study contributes essentially in the sphere of service marketing, particularly in the domain of healthcare experience quality models that were used in commercial sectors prior to this. The paper summarises the key findings, shows the gaps identified and recommends aspects that require further studies.

Systematic reveiw was used as the main research tool. The methodology was chosen based on its practicality in the marketing field. A broad and detailed online search on relevant academic and business management databases with a particular emphasis on healthcare, pharmaceuticals, hospital management and marketing was carried out.The main research questions was "What are the global concepts of health marketing, and how is patient experience related to health marketing and better health services?".

Our study highlights the importance of understanding patient experience in its interaction within the health care environment. The case study does not explore in detail how local health organisations approach these issues. Instead, our study demonstrates an urgent need for unifying and agreeing on an adequate health care marketing concept and its meaning.

We can conclude that there has been a massive globalisation of healthcare organisations during the last four decades. However, research and practice of healthcare marketing are progressing at a slow pace, since long-held traditional beliefs still dominate healthcare services. We have seen that more and more healthcare organisations are beginning to apply marketing models to formulate strategic plans for their businesses.

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The findings of this study are of importance for public hospital administrators in Macedonia with respect to the outpatient aspects of service quality. The public hospital administrators should make an effort to modernise hospitals and introduce the concept of health care marketing in order to successfully improve the level of service quality. Future studies and findings will hopefully contribute to filling the gap in the literature about health care marketing and service quality perception in Macedonia.

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